
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 183 Session of
1991

INTRODUCED BY GEORGE, HASAY, SURRA, HANNA, CAPPABIANCA, FARGO,
COLE, PESCI, JOSEPHS, FEE, STISH, COHEN, STUBAN, CARONE,
KRUSZEWSKI, FREEMAN, CAWLEY, TIGUE, TRELLO, GODSHALL,
MIHALICH, JAROLIN, WOZNIAK, STABACK, BUSH, BILLOW,
D. R. WRIGHT, FAIRCHILD, G. SNYDER, HALUSKA, COLAIZZO,
KASUNIC, SCHEETZ AND McNALLY, JANUARY 30, 1991

REFERRED TO COMMITTEE ON CONSERVATION, JANUARY 30, 1991

AN ACT

1 Providing for the review of persons making application for
2 certain permits relating to the disposition of waste;
3 providing for further duties of the Department of
4 Environmental Resources and the Attorney General; providing
5 penalties; and making repeals.

6 The General Assembly finds as follows:

7 (1) The collection, transportation, treatment, storage,
8 recycling, brokering and disposal of solid waste are critical
9 components of the economic structure of this Commonwealth
10 and, when properly controlled and regulated, make substantial
11 contributions to the general welfare, health and prosperity
12 of this Commonwealth and its inhabitants by minimizing the
13 serious health and environmental threats inherent in the
14 management of these wastes.

15 (2) The regulatory provisions of this act are designed
16 to extend strict Commonwealth regulation to those persons
17 involved in the operations of these permitted activities so

1 as to foster and justify public confidence and trust in the
2 credibility and integrity of the conduct of these activities.

3 (3) The solid, hazardous and low-level radioactive waste
4 industries in this Commonwealth can attain, maintain and
5 retain integrity, public confidence and trust, and can
6 promote the general public interest, only under a system of
7 control and regulation that precludes the participation
8 therein of persons with known criminal records, habits or
9 associations, and excludes or removes from any position of
10 authority or responsibility any person known to be so
11 deficient in reliability, expertise or competence with
12 specific reference to the solid, hazardous or low-level
13 radioactive waste industries that his participation would
14 create or enhance the dangers of unsound, unfair or illegal
15 practices, methods and activities in the conduct of the
16 business of these industries.

17 (4) Notwithstanding the fact that the major percentage
18 of operators involved in these industries are respectable and
19 responsible and that there exists in this Commonwealth a
20 substantial waste industry capable of meeting the permit
21 standards, the solid, hazardous and low-level radioactive
22 waste industries remain vulnerable to corrupting influences.

23 (5) Therefore, it is vital to the interests of the
24 Commonwealth to prevent entry, direct or indirect, into the
25 operations of the solid, hazardous or low-level radioactive
26 waste industries of persons who have pursued economic gains
27 in an occupational manner or context violative of the
28 criminal code or civil public policies of the Commonwealth,
29 and it is to the end of excluding such persons that the
30 regulatory and investigatory powers and duties provided in

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Applicant." Any person seeking a permit under any of the
4 regulatory acts.

5 "Application." The forms and accompanying documents filed in
6 connection with the applicant's request for a permit.

7 "Business concern." Any corporation, association, firm,
8 partnership, trust or other form of commercial organization.

9 "Department." The Department of Environmental Resources of
10 the Commonwealth.

11 "Disclosure statement." A statement submitted to the
12 department by an applicant as provided for in Chapter 3.

13 "Key employee." Any person employed by the applicant or the
14 permittee in a supervisory capacity or empowered to make
15 discretionary decisions with respect to the solid, hazardous or
16 low-level radioactive waste operations of the business concern
17 but shall not include employees exclusively engaged in the
18 physical or mechanical collection, transportation, treatment,
19 storage, recycling, brokering or disposal of solid, hazardous or
20 low-level radioactive waste.

21 "Permittee." Any person who has received a permit.

22 "Regulatory acts." The act of July 7, 1980 (P.L.380, No.97),
23 known as the Solid Waste Management Act; the act of July 28,
24 1988 (P.L.556, No.101), known as the Municipal Waste Planning,
25 Recycling and Waste Reduction Act; and the act of October 18,
26 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup
27 Act.

28 CHAPTER 3

29 DISCLOSURE STATEMENTS

30 Section 301. Requirements.

1 (a) General rule.--In addition to any procedure, condition
2 or information requirement of any of the regulatory acts, every
3 permittee shall file the disclosure statement required under
4 this act with the department and the Attorney General. All
5 permittees shall also file the disclosure statement when there
6 is a change in the controlling interest of the business concern.

7 (b) Fingerprints.--Any person required to be listed in the
8 disclosure statement shall be fingerprinted for identification
9 and investigation purposes in accordance with the regulations of
10 the Attorney General.

11 Section 302. Content.

12 The disclosure statement shall include the following:

13 (1) The full name, business address and Social Security
14 number of the applicant, or, if the applicant is a business
15 concern, of any officers, directors, partners or key
16 employees thereof and all persons or business concerns
17 holding any equity in or debt liability of that business
18 concern. If the business concern is a publicly traded
19 corporation, the disclosure statement shall include all
20 persons or business concerns holding more than 5% of the
21 equity in or debt liability of that business concern, except
22 that, where the debt liability is held by a chartered lending
23 institution, the applicant need only supply the name and
24 business address of the lending institution.

25 (2) The full name, business address and Social Security
26 number of all officers, directors or partners of any business
27 concern disclosed in the statement and the names and
28 addresses of all persons holding any equity in or the debt
29 liability of any business concern so disclosed. If the
30 business concern is a publicly traded corporation, the

1 disclosure statement shall include all persons or business
2 concerns holding more than 5% of the equity in or debt
3 liability of that business concern, except that, where the
4 debt liability is held by a chartered lending institution,
5 the applicant need only supply the name and business address
6 of the lending institution.

7 (3) The full name and business address of any company
8 which collects, transports, treats, stores, recycles, brokers
9 or disposes of solid waste, residual, municipal, low-level
10 radioactive or hazardous waste and in which the applicant
11 holds an equity interest.

12 (4) A description of experience and credentials in,
13 including any past or present licenses for, the collection,
14 transportation, treatment, storage, recycling, brokering or
15 disposal of solid, hazardous or low-level radioactive waste
16 possessed by the applicant, or, if the applicant is a
17 business concern, by the key employees, officers, directors
18 or partners thereof.

19 (5) A listing and explanation of any notices of
20 violation or prosecution, administrative orders or license
21 revocations which were issued by any Federal or State
22 authority in the ten years immediately preceding the filing
23 of the application and which are pending or have resulted in
24 a finding or a settlement of a violation of any law or rule
25 and regulation relating to the collection, transportation,
26 treatment, storage, recycling, brokering or disposal of
27 solid, hazardous or low-level radioactive waste by the
28 applicant, or, if the applicant is a business concern, by any
29 key employee, officer, director or partner thereof.

30 (6) A listing and explanation of any judgment of

1 liability or conviction which was rendered, pursuant to any
2 Federal or State statute or local ordinance, against the
3 applicant, or, if the applicant is a business concern,
4 against any key employee, officer, director or partner
5 thereof.

6 (7) A listing of all labor unions and trade and business
7 associations in which the applicant was a member or with
8 which the applicant had a collective bargaining agreement
9 during the ten years preceding the date of the filing of the
10 application.

11 (8) A listing of any agencies outside this Commonwealth
12 which had regulatory responsibility over the applicant in
13 connection with his collection, transportation, treatment,
14 storage, recycling, brokering or disposal of solid, hazardous
15 or low-level radioactive waste.

16 (9) Any other information the Attorney General or the
17 department may require that relates to the competency,
18 reliability or good character of the applicant.

19 Section 303. Procedure.

20 (a) Investigative report.--The Attorney General shall,
21 within 120 days of the receipt of the disclosure statement from
22 an applicant for an initial permit, prepare and transmit to the
23 department an investigative report on the applicant, based in
24 part upon the disclosure statement, except that this deadline
25 may be extended for a reasonable period of time, for good cause,
26 by the department and the Attorney General. In preparing this
27 report, the Attorney General may request and receive criminal
28 history information from the Federal Bureau of Investigation.

29 (b) Review of report in connection with application.-- The
30 departmental review of the application shall include a review of

1 the disclosure statement and investigative report.

2 (c) Duty of applicants and permittees.--All applicants and
3 permittees shall have the continuing duty to provide any
4 assistance or information requested by the department or the
5 Attorney General and to cooperate in any inquiry or
6 investigation conducted by the Attorney General and in any
7 inquiry, investigation, or hearing conducted by the department.
8 If, upon issuance of a formal request to answer any inquiry or
9 produce information, evidence or testimony, any applicant or
10 permittee refuses to comply, the application may be denied or
11 the permit may be revoked by the department.

12 (d) Fee.--The Attorney General may charge and collect, in
13 accordance with a fee schedule adopted by regulation, such fees
14 from applicants and permittees as may be necessary to cover the
15 costs of enforcing this act. The fee shall be calculated on the
16 basis of \$100 per each individual required to be listed in the
17 disclosure statement or shown to have a beneficial interest
18 other than an equity interest or debt liability in the business
19 of the applicant or the permittee.

20 (e) Changes and additions.--If any of the information
21 required to be included in the disclosure statement changes, or
22 if any additional information should be added after the filing
23 of the statement, the applicant or permittee shall provide that
24 information to the department and the Attorney General, in
25 writing, within 30 days of the change or addition.

26 (f) Penalty.--A person commits a felony of the third degree
27 if he provides any false information or makes any false
28 statement on any document or during any testimony offered at any
29 stage of the permit process or investigation made by the
30 Attorney General.

1 Section 304. Investigative interrogatory.

2 (a) General rule.--Whenever the Attorney General determines
3 that there exists a reasonable suspicion that any person may
4 have information or may be in possession, custody or control of
5 any documentary materials relevant to an investigation of an
6 applicant or a permittee conducted pursuant to this act, it may
7 issue, in writing, and cause to be served upon that person an
8 investigative interrogatory requiring that person to answer
9 questions under oath and produce material for examination.

10 (b) Content of interrogatory.--Each interrogatory shall:

11 (1) Identify the permittee or applicant who is the
12 subject of the investigation.

13 (2) Advise the person that he has the right to discuss
14 the interrogatory with legal counsel prior to returning it to
15 the Attorney General or prior to making material available,
16 as provided in subsection (f), and that he has the right to
17 file in Commonwealth Court a petition to modify or set aside
18 the interrogatory, as provided in subsection (i).

19 (3) Describe the class or classes of documentary
20 material to be produced thereunder, with sufficient
21 particularity as to permit the material to be reasonably
22 identified.

23 (4) Prescribe a return date, which date shall provide a
24 reasonable period of time within which answers may be made
25 and within which material so demanded may be assembled and
26 made available for inspection and copying or reproduction, as
27 provided in subsection (f).

28 (c) Prohibitions.--No interrogatory shall:

29 (1) contain any requirement which would be held to be
30 unreasonable if contained in a subpoena duces tecum issued in

1 aid of a grand jury investigation; or

2 (2) require the production of any documentary evidence
3 which would be otherwise privileged from disclosure if
4 demanded by a subpoena duces tecum issued in aid of a grand
5 jury investigation.

6 (d) Service.--Service of any interrogatory filed under this
7 section may be made upon any person by:

8 (1) delivering a duly executed copy thereof to the
9 person or any partner, executive officer, managing agent,
10 employee or general agent thereof, or to any agent thereof
11 authorized by appointment or by law to receive service of
12 process on behalf of the person;

13 (2) delivering a duly executed copy thereof to the
14 principal office or place of business of the person to be
15 served; or

16 (3) depositing a copy in the United States mail, by
17 registered or certified mail duly addressed to the person at
18 his principal office or place of business.

19 (e) Proof of service.--A verified return by the individual
20 serving an interrogatory, setting forth the manner of service,
21 shall be prima facie proof of service. In the case of service by
22 registered or certified mail, the return shall be accompanied by
23 the return post office receipt of delivery of the interrogatory.

24 (f) Documentary material.--

25 (1) Any person upon whom an interrogatory issued under
26 this section has been duly served which requires the
27 production of material shall make the material available for
28 inspection and copying or reproduction to the Attorney
29 General at the principal place of business of that person in
30 this Commonwealth or at any other place as the Attorney

1 General and the person thereafter may agree and prescribe in
2 writing, on the return date specified in the interrogatory or
3 on a later date as the Attorney General may prescribe in
4 writing. Upon written agreement between the person and the
5 Attorney General, copies may be substituted for all or any
6 part of the original material. The Attorney General may cause
7 the preparation of any copies of documentary material as may
8 be required for official use by the Attorney General.

9 (2) No material produced pursuant to this section shall
10 be available for examination by an individual other than the
11 Attorney General or any person retained by the Attorney
12 General in connection with the enforcement of this act,
13 without the consent of the person who produced the material.
14 Under reasonable terms and conditions as the Attorney General
15 shall prescribe, documentary material, while in his
16 possession, shall be available for examination by the person
17 who produced the material or by any of his duly authorized
18 representatives.

19 (3) In any investigation conducted pursuant to this act,
20 the Attorney General may present before the department, court
21 or grand jury any documentary material in his possession
22 pursuant to this section, subject to any protective order
23 deemed proper by the Commonwealth Court.

24 (g) Return of material.--

25 (1) Upon completion of the review and investigation for
26 which any documentary material was produced under this
27 section and completion of any case or proceeding arising from
28 the investigation, the Attorney General shall return, to the
29 person who produced the material, all the material, other
30 than copies thereof made by the Attorney General pursuant to

1 this section, which has not passed into the control of the
2 department or any court or grand jury through the
3 introduction thereof into the record of the case or
4 proceeding.

5 (2) When any documentary material has been produced by
6 any person under this section for use in an investigation,
7 and no case or proceeding arising therefrom has been
8 instituted within two years after completion of the
9 examination and analysis of all evidence assembled in the
10 course of the investigation, the person shall be entitled
11 upon written demand made upon the Attorney General, to the
12 return of all documentary material, other than copies thereof
13 made pursuant to this section, so produced by him.

14 (h) Enforcement.--Whenever a person fails to comply with any
15 investigative interrogatory duly served upon him under this
16 section, or whenever satisfactory copying or reproduction of any
17 material cannot be done and a person refuses to surrender the
18 material, the Attorney General may file in Commonwealth Court a
19 petition for an order of the court for the enforcement of this
20 section.

21 (i) Petition for relief.--At any time before the return date
22 specified in the interrogatory, the person served with the
23 interrogatory may file in Commonwealth Court a petition for an
24 order modifying or setting aside the interrogatory. The time
25 allowed for compliance with the interrogatory shall not run
26 during the pendency of this petition. The petition shall specify
27 each ground upon which the petitioner relies in seeking relief,
28 and may be based upon any failure of the interrogatory to comply
29 with the provisions of this section or upon any constitutional
30 or other legal right or privilege of the petitioner. In this

1 proceeding, the Attorney General shall establish the existence
2 of an investigation pursuant to this act and the nature and
3 subject matter of the investigation.

4 Section 305. Subpoena power.

5 (a) General rule.--Whenever the Attorney General determines
6 that there exists a reasonable suspicion that any person may
7 have information or knowledge relevant to an investigation
8 conducted pursuant to this act, he may issue in writing and
9 cause to be served upon that person a subpoena to appear and be
10 examined under oath before the Attorney General.

11 (b) Content of subpoena.--The subpoena shall:

12 (1) Identify the permittee or applicant who is the
13 subject of the investigation.

14 (2) Advise that person that he may have an attorney
15 present when he appears and testifies or otherwise responds
16 to the subpoena, and that he has the right, at any time
17 before the return date of the subpoena, to file in
18 Commonwealth Court a petition to modify or set aside the
19 subpoena, as provided in subsection (f).

20 (3) Prescribe a date and time at which time that person
21 must appear to testify, under oath, provided that this date
22 shall not be less than seven days from the date of service of
23 the subpoena.

24 (c) Disclosure of information.--

25 (1) Except as otherwise provided in this section, no
26 information derived pursuant to the subpoena shall be
27 disclosed by the Attorney General or the department without
28 the consent of the person testifying.

29 (2) In any investigation conducted pursuant to this act,
30 the Attorney General may present before the department, court

1 or grand jury any information disclosed pursuant to the
2 subpoena, subject to any protective order deemed proper by
3 the Commonwealth Court.

4 (d) Service.--Service of a subpoena pursuant to this section
5 shall be by any of those methods specified in the Pennsylvania
6 Rules of Civil Procedure for service of summons and complaint in
7 a civil action.

8 (e) Enforcement.--Whenever any person fails to comply with
9 any subpoena duly served upon him under this section or whenever
10 satisfactory copying or reproduction of any material cannot be
11 done and a person refuses to surrender the material, the
12 Attorney General may file in the Commonwealth Court a petition
13 for an order of the court for the enforcement of the subpoena.

14 (f) Petition for relief.--At any time before the return date
15 specified in the subpoena, the person who has been served with
16 the subpoena may file in the Commonwealth Court a petition for
17 an order modifying or setting aside the subpoena. The time
18 allowed for compliance with the subpoena shall not run during
19 the pendency of this petition. The petition shall specify each
20 ground upon which the petitioner relies in seeking relief and
21 may be based upon any failure of the subpoena to comply with the
22 provisions of this section or upon any constitutional or other
23 legal right or privilege of the practitioner. In this
24 proceeding, the Attorney General shall establish the existence
25 of an investigation pursuant to this act and the nature and
26 subject matter of the investigation.

27 Section 306. Unauthorized disclosure.

28 Any public officer or employee who discloses to any person or
29 agency, other than the Attorney General or a person retained by
30 the Attorney General as herein provided, the name of any person

1 who receives an investigative interrogatory or a subpoena or any
2 information obtained pursuant thereto, except in proceedings
3 involving an alleged violation of this act and except as so
4 directed by the Attorney General, commits a misdemeanor of the
5 third degree.

6 Section 307. Immunity.

7 (a) General rule.--If any person in attendance pursuant to a
8 subpoena or interrogatory issued pursuant to this act refuses to
9 answer personally a question or produce evidence of any kind, or
10 make the required answers on the ground that he may be
11 incriminated thereby, and if the Attorney General, in a writing
12 directed to that person, orders that he answer the question or
13 produce the evidence, the person shall comply with the order. If
14 the person has complied with the order and if, but for this
15 section, he would have been privileged to withhold the answer
16 given or the evidence produced, that answer, testimony or
17 evidence, or any evidence directly or indirectly derived
18 therefrom, may not be used against him in any prosecution for a
19 crime or offense concerning which he gave answer or produced
20 evidence, provided that the answer, testimony or evidence is
21 responsive to the question propounded. That person may, however,
22 be prosecuted or subject to penalty or forfeiture for any
23 perjury, false swearing or contempt committed in answering, or
24 failing to answer, or in producing evidence or failing to
25 produce evidence or in failing to do so in accordance with the
26 order.

27 (b) Penalty.--Any person who fails to obey the command of
28 the subpoena, after being ordered to do so by a court of
29 competent jurisdiction, commits a felony of the third degree. In
30 the alternative, if a person fails to obey the command of a

1 subpoena after being ordered to do so by a court of competent
2 jurisdiction, the Attorney General may apply to that court to
3 adjudge the person in contempt and to commit him to jail until
4 such time as he purges himself of contempt by responsively
5 answering, testifying or producing evidence as ordered.

6 Section 308. Denial of applications and action on permits.

7 (a) Involvement in criminal matters.--Except as provided in
8 subsections (c) and (d), the department shall not approve a
9 permit application and may revoke, suspend or modify a permit
10 under the regulatory acts or the act of July 13, 1988 (P.L.525,
11 No.93), referred to as the Infectious and Chemotherapeutic Waste
12 Law if any of the following apply:

13 (1) The applicant or permittee or a related party of the
14 applicant or permittee:

15 (i) has been convicted of a felony under the laws of
16 the Commonwealth, the United States or any other
17 jurisdiction;

18 (ii) has been convicted of a misdemeanor relating to
19 solid waste management or the business of solid waste
20 management under the laws of the Commonwealth, the United
21 States or any other jurisdiction;

22 (iii) has entered into a plea bargain arrangement
23 and pleaded guilty to lesser charges if the original
24 charge was a felony under subparagraph (ii); or

25 (iv) is currently under investigation by any
26 Federal, State or local law enforcement agency; however,
27 at the written request of the applicant or permittee, the
28 department may defer decision upon the application or
29 action upon the permit until the investigation is
30 completed.

1 (2) The applicant or permittee or any related party of
2 the applicant or permittee is subject to current or pending
3 charges for a misdemeanor related to solid waste management
4 or a felony. However, at the written request of the applicant
5 or permittee or person charged, the department may defer
6 decision upon the application or action upon the permit
7 during pendency of the charge.

8 (b) Lack of integrity or competence.--The department may
9 deny, suspend, modify or revoke a permit under the regulatory
10 acts or the Infectious and Chemotherapeutic Waste Law if:

11 (1) there is substantial evidence that the applicant or
12 permittee lacks the honesty, trustworthiness or integrity
13 necessary to operate under the permit in a manner as to
14 safeguard the interest of the public; or

15 (2) the applicant or permittee, or a related party of
16 the applicant or permittee, in any prior business management
17 performance record in the collection, transportation,
18 processing, treatment, storage or disposal of solid waste has
19 not exhibited the expertise and competence necessary to
20 conduct the activities authorized by the permit.

21 (c) Severance of interest or affiliation.--The department
22 may approve a permit application under the regulatory acts or
23 the Infectious and Chemotherapeutic Waste Law if the applicant
24 severs the interest, affiliation or activity which would result
25 in a permit denial, revocation, suspension or modification under
26 subsection (a) and the department determines that approval of
27 the permit is in the public interest.

28 (d) Application filed under prior law.--The department may
29 approve a permit application under the regulatory acts or the
30 Infectious and Chemotherapeutic Waste Law if the application was

1 filed with the department before the effective date of this
2 section and the permit issued by the department includes a
3 condition that allows the department to revoke the permit if the
4 disclosure form, a compliance review or an investigation shows
5 that the permit would be subject to denial, revocation,
6 suspension or modification under subsections (a) or (b).

7 Section 309. Severance of affiliation.

8 Notwithstanding the disqualification of the applicant or
9 permittee pursuant to this act, the department may issue or
10 renew a permit if the applicant or permittee severs the interest
11 of or affiliation with the person who would otherwise cause that
12 disqualification or may issue or renew a permit on a temporary
13 basis for a period not to exceed six months if, upon the
14 recommendation of the Attorney General, the department
15 determines that the issuance or renewal of the permit is
16 necessitated by the public interest.

17 CHAPTER 9

18 MISCELLANEOUS PROVISIONS

19 Section 901. Rules and regulations.

20 The department, with the advice of the Attorney General and
21 in the manner provided by law, shall promulgate the rules and
22 regulations necessary to carry out this act. These regulations
23 shall not, however, be subject to review under any provision of
24 the act of June 25, 1982 (P.L.633, No.181), known as the
25 Regulatory Review Act.

26 Section 902. Repeals.

27 All acts and parts of acts are repealed insofar as they are
28 inconsistent with this act.

29 Section 903. Effective date.

30 This act shall take effect in 60 days.