

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2031 Session of  
1995

INTRODUCED BY KIRKLAND, RAMOS, JAMES, THOMAS, McGEEHAN, JOSEPHS,  
WILLIAMS, LEDERER, YOUNGBLOOD, BUTKOVITZ, HORSEY, BISHOP,  
COWELL, PISTELLA, DeLUCA, GIGLIOTTI, VITALI, CARN, ROEBUCK,  
DONATUCCI, MICOZZIE, ADOLPH, LAWLESS, FLICK, CIVERA AND  
SAYLOR, SEPTEMBER 25, 1995

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
SEPTEMBER 25, 1995

AN ACT

1 Amending the act of July 28, 1988 (P.L.556, No.101), entitled  
2 "An act providing for planning for the processing and  
3 disposal of municipal waste; requiring counties to submit  
4 plans for municipal waste management systems within their  
5 boundaries; authorizing grants to counties and municipalities  
6 for planning, resource recovery and recycling; imposing and  
7 collecting fees; establishing certain rights for host  
8 municipalities; requiring municipalities to implement  
9 recycling programs; requiring Commonwealth agencies to  
10 procure recycled materials; imposing duties; granting powers  
11 to counties and municipalities; authorizing the Environmental  
12 Quality Board to adopt regulations; authorizing the  
13 Department of Environmental Resources to implement this act;  
14 providing remedies; prescribing penalties; establishing a  
15 fund; and making repeals," further providing for civil  
16 penalties and criminal penalties.

17 The General Assembly of the Commonwealth of Pennsylvania  
18 hereby enacts as follows:

19 Section 1. Sections 1704 and 1705 of the act of July 28,  
20 1988 (P.L.556, No.101), known as the Municipal Waste Planning,  
21 Recycling and Waste Reduction Act, are amended to read:

22 Section 1704. Civil penalties.

23 (a) Assessment.--In addition to proceeding under any other

1 remedy available at law or in equity for a violation of any  
2 provision of this act, the regulations promulgated hereunder,  
3 any order of the department issued hereunder or any term or  
4 condition of an approved municipal waste management plan, the  
5 department may assess a civil penalty upon a person for such  
6 violation. Such a penalty may be assessed whether or not the  
7 violation was willful or negligent. In determining the amount of  
8 the penalty, the department shall consider the willfulness of  
9 the violation; the effect on the municipal waste planning  
10 process; damage to air, water, land or other natural resources  
11 of this Commonwealth or their uses; cost of restoration and  
12 abatement; savings resulting to the person in consequence of  
13 such violation; deterrence of future violations; and other  
14 relevant factors. If the violation leads to issuance of a  
15 cessation order, a civil penalty shall be assessed.

16 (b) Escrow.--When the department assesses a civil penalty,  
17 it shall inform the person of the amount of the penalty. The  
18 person charged with the penalty shall then have 30 days to pay  
19 the penalty in full or, if the person wishes to contest either  
20 the amount of the penalty or the fact of the violation, either  
21 to forward the proposed amount to the department for placement  
22 in an escrow account with the State Treasurer or with a bank in  
23 this Commonwealth or to post an appeal bond in the amount of the  
24 penalty. The bond must be executed by a surety licensed to do  
25 business in this Commonwealth and must be satisfactory to the  
26 department. If, through administrative or judicial review of the  
27 proposed penalty, it is determined that no violation occurred or  
28 that the amount of the penalty shall be reduced, the department  
29 shall, within 30 days, remit the appropriate amount to the  
30 person, with an interest accumulated by the escrow deposit.

1 Failure to forward the money or the appeal bond to the  
2 department within 30 days shall result in a waiver of all legal  
3 rights to contest the violation or the amount of the penalty.

4 (c) Amount.--The maximum civil penalty which may be assessed  
5 pursuant to this section is [\$10,000] \$25,000 per violation.  
6 Each violation for each separate day and each violation of any  
7 provision of this act, any regulation promulgated hereunder, any  
8 order issued hereunder or the terms or conditions of any  
9 approved municipal waste management plan shall constitute a  
10 separate offense under this section.

11 (d) Statute of limitations.--Notwithstanding any other  
12 provision of law to the contrary, there shall be a statute of  
13 limitations of five years upon actions brought by the  
14 Commonwealth under this section.

15 Section 1705. Criminal penalties.

16 (a) Summary offense.--Any person, other than a municipal  
17 official exercising his official duties, who violates any  
18 provision of this act, any regulation promulgated hereunder, any  
19 order issued hereunder or the terms or conditions of any  
20 approved municipal waste management plan shall, upon conviction  
21 thereof in a summary proceeding, be sentenced to pay a fine of  
22 not less than [\$100] \$1,000 and not more than [\$1,000] \$5,000  
23 and costs and, in default of the payment of such fine and costs,  
24 to undergo imprisonment for not more than 30 days.

25 (b) Misdemeanor offense.--Any person, other than a municipal  
26 official exercising his official duties, who violates any  
27 provision of this act, any regulation promulgated hereunder, any  
28 order issued hereunder or the terms or conditions of any  
29 approved municipal waste management plan commits a misdemeanor  
30 of the third degree and shall, upon conviction, be sentenced to

1 pay a fine of not less than [\$1,000] \$2,500 but not more than  
2 [\$10,000] \$20,000 per day for each violation or to imprisonment  
3 for a period of not more than one year, or both.

4 (c) Second or subsequent offense.--Any person, other than a  
5 municipal official exercising his official duties, who, within  
6 two years after a conviction of a misdemeanor for any violation  
7 of this act, violates any provision of this act, any regulation  
8 promulgated hereunder, any order issued hereunder or the terms  
9 or conditions of any approved municipal waste management plan  
10 commits a misdemeanor of the second degree and shall, upon  
11 conviction, be sentenced to pay a fine of not less than [\$2,500]  
12 \$5,000 nor more than [\$25,000] \$50,000 for each violation or to  
13 imprisonment for a period of not more than two years, or both.

14 (d) Violations to be separate offense.--Each violation for  
15 each separate day and each violation of any provision of this  
16 act, any regulation promulgated hereunder, any order issued  
17 hereunder or the terms or conditions of any approved municipal  
18 waste management plan shall constitute a separate offense under  
19 subsections (a), (b) and (c).

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