

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1164 Session of
1997

INTRODUCED BY KIRKLAND, FLICK, BUXTON, CAPPABIANCA, THOMAS,
MELIO, BELARDI, ROBINSON, JOSEPHS, TRELLO, MANDERINO,
STABACK, MIHALICH, STEELMAN, RAMOS, TRICH, STURLA, JAMES,
ROONEY, BOSCOLA, DALEY, MARSICO, CURRY AND A. H. WILLIAMS,
APRIL 3, 1997

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
APRIL 3, 1997

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," providing for permit provisions;
16 and further providing for civil penalties and criminal
17 penalties and for joint inspections with host municipalities.

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

20 Section 1. Section 512(b) of the act of July 28, 1988
21 (P.L.556, No.101), known as the Municipal Waste Planning,
22 Recycling and Waste Reduction Act, is repealed.

23 Section 2. The act is amended by adding a chapter to read:

1 CHAPTER 6

2 PERMIT PROVISIONS

3 Section 601. Permit requirements.

4 The following requirements shall apply to the department's
5 review of an application for a new permit, permit reissuance,
6 permit renewal or for a major permit modification regarding a
7 municipal waste landfill:

8 (1) The department shall conduct a technical review of
9 the complete application and provide its technical review
10 comments to the applicant in writing.

11 (2) With respect to an application pending before the
12 department which has been suspended from review by the
13 department at the request of the applicant on or before
14 October 1, 1996, if the applicant submits a significant
15 modification to the application, the modified application
16 shall be deemed for all legal purposes to be a new
17 application. For the purposes of this subsection, a
18 modification to an application shall be considered
19 significant if it makes any of the following changes to the
20 application:

21 (i) Change in site volume-waste capacity.

22 (ii) Change in daily waste volume.

23 (iii) Change in permitted acreage.

24 (iv) Other changes or corrections as shall be
25 determined by regulation.

26 (3) The department may grant the request of an applicant
27 that the department suspend its review of the application.
28 The maximum length of this suspension shall be 60 days. The
29 department shall not grant more than one suspension request
30 every 180 days.

1 Section 602. Timetable for review.

2 Upon the request of an applicant, the department shall
3 establish a timetable in which the department shall review and
4 approve or deny any permit application for a municipal waste
5 landfill or resource recovery facility. The department shall
6 establish a reasonable timetable for the approval or denial of
7 the permit application in consultation with the permit applicant
8 and the governing body of any county and other municipality
9 within which the facility is located and shall publish a notice
10 regarding the timetable in the Pennsylvania Bulletin.

11 Section 603. Bid preference.

12 The Department of General Services shall not apply a
13 preference equal to 5% of the bid amount as provided for in
14 section 1505(b) to highway construction materials and highway
15 safety or maintenance materials which had been identified as
16 materials acceptable to Commonwealth agencies, or set forth in
17 the specification of Commonwealth agencies as acceptable highway
18 construction materials or highway safety or maintenance
19 materials, at any time prior to September 28, 1988.

20 Section 3. Section 1102 of the act, repealed in part July
21 11, 1996 (P.L.619, No.105), is amended to read:

22 Section 1102. Joint inspections with host municipalities.

23 (a) Training of inspectors.--

24 (1) The department shall establish and conduct a
25 training program to certify host municipality inspectors for
26 municipal waste landfills, transfer facilities and resource
27 recovery facilities. This program will be available to no
28 more than two persons who have been designated in writing by
29 the host municipality. The department shall hold training
30 programs at least twice a year. The department shall certify

1 host municipality inspectors upon completion of the training
2 program and satisfactory performance in an examination
3 administered by the department.

4 (2) Certified municipal inspectors are authorized to
5 enter property, inspect only those records required by the
6 department, take samples and conduct inspections in
7 accordance with department regulations as applicable to
8 department inspectors. However, certified municipal
9 inspectors may not issue orders except as provided in this
10 subsection. A certified municipal inspector may order the
11 operator of a facility to cease any operation or activity at
12 the facility which constitutes an immediate threat to public
13 health and safety and which represents a violation of the
14 Solid Waste Management Act, the regulations promulgated under
15 that act, any order issued under that act or the terms or
16 conditions of a permit issued under that act. The order shall
17 expire within two hours unless the inspector notifies the
18 department and the governing body of the host municipality.
19 The department may, after conducting an inspection, supersede
20 the inspector's order by issuing an order of its own which
21 vacates or modifies the terms of the inspector's order. If
22 the department does not supersede the order, the order shall
23 expire after 24 hours unless otherwise extended, continued or
24 modified by a court pursuant to section 1703(b).

25 (4) The department may decertify host municipality
26 inspectors pursuant to regulations promulgated by the
27 Environmental Quality Board.

28 (a.1) Payments for certain inspectors.--

29 (1) The Department of Environmental Protection is
30 authorized to pay for the host inspection training program

1 and to pay 50% of the approved cost of employing a certified
2 host municipality inspector.

3 (2) The Department of Environmental Protection shall
4 reimburse host municipalities for 50% of the approved cost of
5 employing certified host municipality inspectors, as provided
6 under section 304 of the act of October 18, 1988 (P.L.756,
7 No.108), known as the Hazardous Sites Cleanup Act.

8 (b) Departmental information.--

9 (1) Whenever any host municipality presents information
10 to the department which gives the department reason to
11 believe that any municipal waste landfill, transfer facility
12 or resource recovery facility is in violation of any
13 requirement of the act of June 22, 1937 (P.L.1987, No.394),
14 known as The Clean Streams Law, the act of January 8, 1960
15 (1959 P.L.2119, No.787), known as the Air Pollution Control
16 Act, the act of November 26, 1978 (P.L.1375, No.325), known
17 as the Dam Safety and Encroachments Act, the Solid Waste
18 Management Act, any regulation promulgated pursuant thereto,
19 any order issued pursuant thereto or the condition of any
20 permit issued pursuant thereto, the department will promptly
21 conduct an inspection of such facility.

22 (2) The department will notify the host municipality of
23 this inspection and will allow a certified municipal
24 inspector from the host municipality to accompany the
25 inspector during the inspection.

26 (3) If there is not sufficient information to give the
27 department reasons to believe that there is a violation, the
28 department will provide a written explanation to the host
29 municipality of its decision not to conduct an inspection
30 within 30 days of the request for inspection.

1 (4) Upon written request of a host municipality to the
2 department, the department will allow a certified inspector
3 of such municipality to accompany department inspectors on
4 routine inspections of municipal waste landfills, transfer
5 facilities and resource recovery facilities.

6 (c) County involvement.--If the host municipality owns or
7 operates the municipal waste landfill, transfer facility or
8 resource recovery facility, the training and inspection
9 requirements of this section shall be available to the county
10 within which the landfill, transfer facility or resource
11 recovery facility is located instead of the host municipality.

12 Section 4. Sections 1704 and 1705 of the act are amended to
13 read:

14 Section 1704. Civil penalties.

15 (a) Assessment.--In addition to proceeding under any other
16 remedy available at law or in equity for a violation of any
17 provision of this act, the regulations promulgated hereunder,
18 any order of the department issued hereunder or any term or
19 condition of an approved municipal waste management plan, the
20 department may assess a civil penalty upon a person for such
21 violation. Such a penalty may be assessed whether or not the
22 violation was willful or negligent. In determining the amount of
23 the penalty, the department shall consider the willfulness of
24 the violation; the effect on the municipal waste planning
25 process; damage to air, water, land or other natural resources
26 of this Commonwealth or their uses; cost of restoration and
27 abatement; savings resulting to the person in consequence of
28 such violation; deterrence of future violations; and other
29 relevant factors. If the violation leads to issuance of a
30 cessation order, a civil penalty shall be assessed.

1 (b) Escrow.--When the department assesses a civil penalty,
2 it shall inform the person of the amount of the penalty. The
3 person charged with the penalty shall then have 30 days to pay
4 the penalty in full or, if the person wishes to contest either
5 the amount of the penalty or the fact of the violation, either
6 to forward the proposed amount to the department for placement
7 in an escrow account with the State Treasurer or with a bank in
8 this Commonwealth or to post an appeal bond in the amount of the
9 penalty. The bond must be executed by a surety licensed to do
10 business in this Commonwealth and must be satisfactory to the
11 department. If, through administrative or judicial review of the
12 proposed penalty, it is determined that no violation occurred or
13 that the amount of the penalty shall be reduced, the department
14 shall, within 30 days, remit the appropriate amount to the
15 person, with an interest accumulated by the escrow deposit.
16 Failure to forward the money or the appeal bond to the
17 department within 30 days shall result in a waiver of all legal
18 rights to contest the violation or the amount of the penalty.

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

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

30 Section 1705. Criminal penalties.

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

10 (b) Misdemeanor offense.--Any person, other than a municipal
11 official exercising his official duties, who violates any
12 provision of this act, any regulation promulgated hereunder, any
13 order issued hereunder or the terms or conditions of any
14 approved municipal waste management plan commits a misdemeanor
15 of the third degree and shall, upon conviction, be sentenced to
16 pay a fine of not less than [\$1,000] \$2,500 but not more than
17 [\$10,000] \$20,000 per day for each violation or to imprisonment
18 for a period of not more than one year, or both.

19 (c) Second or subsequent offense.--Any person, other than a
20 municipal official exercising his official duties, who, within
21 two years after a conviction of a misdemeanor for any violation
22 of this act, violates any provision of this act, any regulation
23 promulgated hereunder, any order issued hereunder or the terms
24 or conditions of any approved municipal waste management plan
25 commits a misdemeanor of the second degree and shall, upon
26 conviction, be sentenced to pay a fine of not less than [\$2,500]
27 \$5,000 nor more than [\$25,000] \$50,000 for each violation or to
28 imprisonment for a period of not more than two years, or both.

29 (d) Violations to be separate offense.--Each violation for
30 each separate day and each violation of any provision of this

1 act, any regulation promulgated hereunder, any order issued
2 hereunder or the terms or conditions of any approved municipal
3 waste management plan shall constitute a separate offense under
4 subsections (a), (b) and (c).

5 Section 5. This act shall take effect in 60 days.