
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1437 Session of
2001

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TRELLO AND YUDICHAK, APRIL 25, 2001

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
APRIL 25, 2001

AN ACT

1 Requiring host municipality agreements for certain municipal and
2 residual waste facilities.

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15 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. Short title.

3 This act shall be known and may be cited as the Solid Waste
4 Host Municipality Agreement Act.

5 Section 2. Legislative findings and declaration of policy.

6 (a) Legislative findings.--The General Assembly hereby
7 determines, declares and finds that:

8 (1) Improper solid waste practices create public health
9 hazards, environmental pollution and nuisances and cause
10 irreparable harm to the public health, safety and welfare.

11 (2) All aspects of solid waste management, particularly
12 the disposition of solid waste, pose a critical threat to the
13 health, safety and welfare of the residents of this
14 Commonwealth when solid waste is improperly managed.

15 (3) The Commonwealth is responsible for the protection
16 of the health, safety and welfare of its residents concerning
17 solid waste management.

18 (4) The construction and expansion of commercial solid
19 waste landfills and resource recovery facilities usually
20 consumes natural lands, thereby impinging upon wildlife
21 habitat and the public's use and enjoyment of the natural
22 resources, including air, water and natural scenic, historic
23 and esthetic values of the environment.

24 (5) Communities in the areas located near and along the
25 approach routes to commercial solid waste landfills and
26 resource recovery facilities experience traffic problems,
27 litter, odors, noise, dust and other nuisances resulting from
28 the operation of the facilities and from the transportation
29 of waste to the facilities.

30 (6) Commercial solid waste landfills tend to locate in

1 rural and sparsely populated areas.

2 (b) Purposes and goals.--The purposes and goals of this act
3 are to:

4 (1) Enhance the protection of the public health, safety
5 and welfare from the short-term and long-term dangers
6 associated with the disposal of solid waste.

7 (2) Implement section 27 of Article I of the
8 Constitution of Pennsylvania.

9 (3) Conserve the environment and the natural resources
10 of this Commonwealth.

11 (4) Limit the magnitude of environmental problems in and
12 around communities which host commercial solid waste
13 landfills or resource recovery facilities.

14 (5) Provide for greater local input from affected
15 residents and communities in the planning of commercial solid
16 waste landfills and resource recovery facilities.

17 (6) Protect residents of the communities affected by
18 commercial solid waste landfills and resource recovery
19 facilities from unnecessary traffic problems, litter, odors,
20 noise, dust and other nuisances which may result from the
21 operation of the facilities and from the transportation of
22 waste to the facilities.

23 Section 3. Definitions.

24 (a) General rule.--Unless specifically defined in this
25 section, the terms in this act have the same meaning as provided
26 in the act of July 7, 1980 (P.L.380, No.97), known as the Solid
27 Waste Management Act, or the act of July 28, 1988 (P.L.556,
28 No.101), known as the Municipal Waste Planning, Recycling and
29 Waste Reduction Act, or regulations of the Department of
30 Environmental Protection promulgated thereunder.

1 (b) Definitions.--As used in this section, the following
2 words and phrases shall have the meanings given to them in this
3 subsection:

4 "Commercial solid waste landfill." A landfill permitted or
5 proposed for permitting under the act of July 7, 1980 (P.L.380,
6 No.97), known as the Solid Waste Management Act, for the
7 disposal of municipal waste, residual waste or mixed municipal
8 and residual waste, including mixed municipal or residual waste
9 and construction and demolition debris. The term does not
10 include a landfill used for the exclusive disposal of
11 construction and demolition waste or debris or a captive
12 residual waste facility.

13 "Department." The Department of Environmental Protection of
14 the Commonwealth and its authorized representatives.

15 "Expansion modification." An application for permit
16 modification filed by an owner or operator of a commercial solid
17 waste landfill or resource recovery facility which requests an
18 expansion, either laterally or vertically, of a permit area.

19 "Host municipality." A municipality other than the county
20 within which a commercial solid waste landfill or resource
21 recovery facility or any portion of a permit area is located or
22 is proposed to be located.

23 "Host municipality agreement." A written, legally binding
24 document or documents executed by authorized officials of each
25 host municipality and an owner or operator of a commercial solid
26 waste landfill or resource recovery facility.

27 "Municipal Waste Planning, Recycling and Waste Reduction
28 Act." The act of July 28, 1988 (P.L.556, No.101), known as the
29 Municipal Waste Planning, Recycling and Waste Reduction Act.

30 "Pennsylvania Municipalities Planning Code." The act of July

1 31, 1968 (P.L.805, No.247), known as the Pennsylvania
2 Municipalities Planning Code.

3 "Permit." A permit issued pursuant to the act of July 7,
4 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

5 "Secretary." The Secretary of Environmental Protection of
6 the Commonwealth.

7 "Solid Waste Management Act." The act of July 7, 1980
8 (P.L.380, No.97), known as the Solid Waste Management Act.

9 "Volume modification." An application for permit
10 modification filed by an owner or operator of a commercial solid
11 waste landfill or resource recovery facility which requests an
12 increased in average or maximum daily waste volume.

13 Section 4. Construction of act.

14 (a) Liberal construction.--This act shall be liberally
15 construed so as best to achieve and effectuate the goals and
16 purposes of this act.

17 (b) Pari materia.--This act shall be construed in pari
18 materia with the Solid Waste Management Act, the Municipal Waste
19 Planning, Recycling and Waste Reduction Act and sections 1935-A
20 and 1936-A of the act of April 9, 1929 (P.L.177, No.175), known
21 as The Administrative Code of 1929.

22 Section 5. Host municipality agreements.

23 (a) Requirement for host municipality agreement.--

24 (1) A commercial solid waste landfill or resource
25 recovery facility shall develop a new or supplemental host
26 municipality agreement in accordance with this section as
27 follows:

28 (i) For a commercial solid waste landfill or
29 resource recovery facility for which a host municipality
30 agreement was executed prior to or on the effective date

1 of this act, except as provided in subparagraphs (ii),
2 (iii) and (iv), a new or supplemental host municipality
3 agreement shall be:

4 (A) executed by the owner or operator and the
5 host municipality or municipalities on the date the
6 existing host municipality agreement expires or five
7 years after the effective date of this act, whichever
8 occurs first; and

9 (B) submitted to the department for approval
10 within 30 days of execution.

11 (ii) For a commercial solid waste landfill or
12 resource recovery facility for which:

13 (A) no host municipality agreement has been
14 executed as of the effective date of this act; or

15 (B) a host municipality agreement was executed
16 on or before the effective date of this act but which
17 agreement expires within two years of the effective
18 date of this act,

19 a host municipality agreement shall be executed by the
20 owner or operator and the host municipality or
21 municipalities within two years of the effective date of
22 this act and submitted to the department for approval
23 within 30 days of execution. The owner or operator of
24 such a facility shall provide notice to the host
25 municipality or municipalities pursuant to subsection
26 (f)(1) within 60 calendar days of the effective date of
27 this act.

28 (iii) For any commercial solid waste landfill or
29 resource recovery facility for which a permit under the
30 Solid Waste Management Act, within 18 months prior to the

1 effective date of this act:

2 (A) has expired;

3 (B) has expired but has been extended beyond its
4 expiration date; or

5 (C) has expired but has been reinstated; and
6 for which a host municipality agreement was executed
7 prior to the effective date of this act, a new or
8 supplemental host municipality agreement shall be
9 executed by the owner or operator and the host
10 municipality or municipalities within two years of the
11 effective date of this act and submitted to the
12 department for approval within 30 days of execution. The
13 owner or operator of such a facility shall provide notice
14 to the host municipality or municipalities pursuant to
15 subsection (f)(1) within 60 calendar days of the
16 effective date of this act. Notwithstanding the
17 provisions of subsection (b)(3), for any such facility,
18 no permit or permit modification shall be issued by the
19 department until a new or supplemental agreement has been
20 executed in compliance with this section by the owner or
21 operator and each host municipality, whether the
22 application for such permit or permit modification was
23 submitted on, before or after the effective date of this
24 act.

25 (iv) For any commercial solid waste landfill or
26 resource recovery facility for which a host municipality
27 agreement was executed prior to or on the effective date
28 of this act but which has not begun to accept solid waste
29 as of the effective date of this act, a new or
30 supplemental host municipality agreement shall be

1 executed by the owner or operator and the host
2 municipality or municipalities within two years of the
3 effective date of this act and submitted to the
4 department for approval within 30 days of execution. The
5 owner or operator of such a facility shall provide notice
6 to the host municipality or municipalities pursuant to
7 subsection (f)(1) within 60 calendar days of the
8 effective date of this act.

9 (2) A new or supplemental host municipality agreement
10 for each host municipality shall be executed in accordance
11 with this section and submitted to the department for
12 approval for any expansion modification or volume
13 modification filed by an owner or operator of a commercial
14 solid waste landfill or resource recovery facility after the
15 effective date of this act unless the existing host
16 municipality agreement contemplates and addresses the subject
17 of the modification.

18 (3) A host municipality agreement shall be executed in
19 accordance with this section by an owner or operator and the
20 host municipality or municipalities and shall be submitted to
21 the department for approval for any new commercial solid
22 waste landfill or resource recovery facility.

23 (b) Relationship to permit applications.--

24 (1) An application for a permit, volume modification or
25 expansion modification for a commercial solid waste landfill
26 or resource recovery facility which is submitted to the
27 department for review after the effective date of this act
28 shall only be accepted as administratively complete under
29 section 512(a) of the Municipal Waste Planning, Recycling and
30 Waste Reduction Act and the regulations promulgated

1 thereunder if it includes written evidence that the applicant
2 is in compliance with the requirements of this section. Such
3 written evidence shall be contained as part of the
4 application and shall include evidence that a host
5 municipality agreement that complies with this section is in
6 effect or proof of written notice to the host municipality or
7 municipalities pursuant to subsection (f)(1).

8 (2) The department's processing and review of a permit
9 application shall proceed concurrently with the period of
10 negotiation, mediation and arbitration of the host
11 municipality agreement. Negotiation, mediation and
12 arbitration of a host municipality agreement also may proceed
13 prior to the submission of a permit or major permit
14 modification application to the department.

15 (3) An application for a permit, volume modification or
16 expansion modification for a commercial solid waste landfill
17 or resource recovery facility which is submitted to the
18 department for review after the effective date of this act
19 shall be issued by the department only if a host municipality
20 agreement that complies with this section has been executed
21 by the applicant and each host municipality. For any
22 application which was submitted to the department on or
23 before the effective date of this act, the department shall
24 not withhold issuance of the permit or permit modification
25 provided the applicant executed a host municipality agreement
26 prior to the effective date of this act or the applicant
27 provided notice to the host municipality or municipalities
28 pursuant to subsection (f)(1) and is proceeding with the
29 requirements of this section to execute a host municipality
30 agreement.

1 (c) Public notice and public involvement requirements.--

2 (1) Within 30 calendar days from the date of receipt of
3 a written notice of intent to develop a host municipality
4 agreement pursuant to subsection (f)(1), each host
5 municipality shall publish notice that discussions for
6 developing a host municipality agreement with the commercial
7 solid waste landfill or resource recovery facility have
8 begun. The notice also shall describe the public involvement
9 process that the host municipality will use to develop the
10 agreement. The notice shall be published once a week for
11 three consecutive weeks in a newspaper of general circulation
12 in the area where the facility or proposed facility is
13 located. The public involvement process shall include the
14 following:

15 (i) A special public hearing at which a draft
16 agreement is presented to the public and at which the
17 public is provided an opportunity to provide oral and
18 written testimony. The hearing shall be scheduled by the
19 host municipality with a minimum of 30 calendar days'
20 public notice prior to the hearing date. A public comment
21 period of no less than 30 calendar days shall be provided
22 after the public hearing to accept written comments on
23 the draft agreement.

24 (ii) A special public meeting at which revisions to
25 the draft agreement are presented to the public by the
26 municipality, including changes to the draft agreement
27 that were adopted after the public hearing and public
28 comment period. The public shall be provided a reasonable
29 opportunity to ask questions to the host municipality on
30 the host municipality agreement and to provide public

1 comment. The meeting shall be scheduled by the host
2 municipality with a minimum of 30 calendar days' public
3 notice prior to the meeting date.

4 (iii) The host municipality shall publish the
5 decision on adopting or rejecting the final agreement
6 within 30 calendar days of acting.

7 (2) The public involvement process may contain
8 additional public notice in a manner determined by the
9 municipality to best inform the residents of the host
10 municipality.

11 (d) Contents of agreement.--

12 (1) A host municipality agreement agreed to and executed
13 by the parties pursuant to the negotiation and mediation
14 process shall address the following:

15 (i) The nature of the proposed facility.

16 (ii) The site of the proposed facility or expansion
17 of the existing facility.

18 (iii) Measures to alleviate local issues, such as
19 haul routes, traffic problems, litter, odors, noise, dust
20 and any other nuisances that might result from the
21 operation of the facility. Such local issues shall be
22 identified by the host municipality during negotiation of
23 the host municipality agreement.

24 (iv) The host benefit fee to be paid by the owner or
25 operator of the facility to the host municipality, which
26 fee shall not be less than the statutory minimum fee
27 established under the Municipal Waste Planning, Recycling
28 and Waste Reduction Act and any other financial and in-
29 kind contributions.

30 (v) The maximum and daily average waste volume to be

1 received at the facility.

2 (vi) The days and hours of operation of the
3 facility.

4 (vii) The availability of capacity at the facility
5 for the disposal of solid waste generated within the host
6 municipality.

7 (viii) Activities to promote recycling, waste
8 reduction and the proper management and disposal of solid
9 waste generated within the host municipality.

10 (ix) The process for resolution in a cooperative and
11 nonbinding manner of complaints and other grievances
12 concerning the construction and operation of the
13 facility.

14 (x) Provision for access to the facility and its
15 records by the host municipality inspector.

16 (2) A host municipality agreement agreed to and executed
17 by the parties pursuant to the negotiation and mediation
18 process may address the following:

19 (i) The geographic origin of solid waste disposed at
20 the facility and the amount of solid waste accepted for
21 disposal based upon the geographic origin of the solid
22 waste.

23 (ii) Any applicable zoning or land development
24 requirements or approvals pursuant to the provisions of
25 the Municipalities Planning Code and implementing
26 ordinances.

27 (iii) Any other terms or conditions to which the
28 parties agree should be included in the agreement.

29 (3) The host municipality agreement may not address the
30 specifications or requirements for cover and revegetation,

1 storm water management, water quality protection and
2 monitoring, liners and leachate management or gas management.

3 (e) Department review of host municipality agreements.--

4 (1) For all host municipality agreements submitted to
5 the department for approval under this section, the
6 department shall review each executed host municipality
7 agreement to ensure that the agreement addresses the
8 requirements of subsection (d)(1) or that an agreement has
9 been executed as a result of binding arbitration pursuant to
10 subsection (f)(7), whichever is applicable, and also to
11 ensure that there has been compliance with the public notice
12 and public comment requirements of subsection (c).

13 (2) The department shall review the terms and conditions
14 of the host municipality agreement that address subsection
15 (d)(1)(iii), (v), (vi), (vii) and (viii) to ensure the terms
16 and conditions of the host municipality agreement are not in
17 conflict with the terms and conditions of the existing or
18 proposed permit and applicable regulations. Where the
19 department determines there is a conflict between the terms
20 and conditions of the host municipality agreement and the
21 terms and conditions of the regulations or existing or
22 proposed permit, the more stringent or restrictive
23 requirement or condition shall apply. The department shall
24 modify the permit to incorporate any such term or condition,
25 including any term or condition that is not addressed in the
26 proposed or existing permit.

27 (f) Process for negotiation and dispute resolution.--

28 (1) The owner or operator of a commercial solid waste
29 landfill or resource recovery facility shall provide written
30 notice to each host municipality of its intent to develop a

1 host municipality agreement pursuant to the requirements of
2 this section. For a maximum period of 180 calendar days from
3 the date of receipt of the written notice of intent to
4 develop a host municipality agreement, the owner or operator
5 of the commercial solid waste landfill or resource recovery
6 facility and the host municipality or municipalities shall
7 engage in good faith negotiations to arrive at a host
8 municipality agreement.

9 (2) (i) If the parties are unable to reach an agreement
10 on all of the required terms and provisions of a host
11 municipality agreement, the parties shall engage in good
12 faith mediation, with a neutral mediator to be mutually
13 agreed upon and selected by the parties, for a period of
14 no more than 90 calendar days from the end of the
15 negotiation period with regard to the terms and
16 provisions on which an agreement cannot be reached.

17 (ii) The mediator shall act as a facilitator and
18 shall not have the ability or authority to legally bind
19 either party.

20 (iii) The costs of the mediator shall be borne
21 equally by the parties. If the parties cannot agree upon
22 a mediator within 20 calendar days after the expiration
23 of the negotiation period, the mediation period shall
24 immediately terminate.

25 (3) If a host municipality agreement is not executed
26 within the combined negotiation period and mediation period,
27 then the parties shall set forth in writing to each other,
28 within 20 calendar days of the expiration or termination of
29 the mediation period, the issues, terms and provisions on
30 which agreement has been reached and the issues, terms and

1 provisions that remain in dispute, and the disputed issues
2 shall be submitted for binding arbitration.

3 (4) The arbitration shall be heard by an arbitration
4 board to consist of three persons: one appointed by the
5 municipality, one appointed by the owner or operator of the
6 facility and one to be agreed upon by the municipality and
7 the owner or operator of the facility. The arbitration board
8 members selected individually by the municipality and the
9 owner or operator shall be named within 30 calendar days from
10 the date of the parties' exchange of written statements of
11 issues in dispute. The remaining arbitrator shall be mutually
12 selected by the parties within 15 calendar days after the
13 appointment of the two arbitrators by the municipality and
14 the owner or operator.

15 (5) If the third arbitrator cannot be agreed upon by the
16 parties within the prescribed time period, then the selected
17 arbitrators shall request the American Arbitration
18 Association or any successor in function to furnish a list of
19 three members of said association who are residents of this
20 Commonwealth from which the third arbitrator shall be
21 selected by the selected arbitrators. The arbitrator
22 appointed by the owner or operator shall eliminate one of the
23 three suggested arbitrators within ten calendar days of
24 receipt of the recommendations and, thereafter, the
25 arbitrator appointed by the municipality shall eliminate one
26 of the three suggested arbitrators within ten calendar days
27 thereafter. The individual whose name remains on the list
28 shall be the third arbitrator and shall act as the chairman
29 of the board of arbitration.

30 (6) The board of arbitration shall commence arbitration

1 proceedings within 60 calendar days after the date of
2 appointment of the final board member and shall conclude the
3 arbitration proceedings within 120 calendar days after the
4 date the third arbitrator is selected. The board of
5 arbitrators shall render its determination on all issues
6 before it within 30 calendar days after the conclusion of the
7 arbitration proceedings.

8 (7) The determination of the board of arbitration shall
9 be final and binding on the parties and, together with the
10 issues, terms and provisions mutually agreed to by the
11 parties during the exchange of mutual statements, shall
12 constitute the host municipality agreement, and each party
13 shall execute the agreement.

14 (8) The final determination of the board of arbitration
15 may be appealed only in accordance with and subject to 42
16 Pa.C.S. §§ 7314 (relating to vacating award by court) and
17 7315 (relating to modification or correction of award by
18 court).

19 (9) Each party shall bear the costs of the arbitrator
20 selected by that party and the costs of presenting the
21 party's position to the board of arbitration. The parties
22 shall bear equally the costs of the third arbitrator and all
23 other costs of arbitration.

24 (10) In reaching its decision, the board of arbitration
25 shall consider the following factors:

26 (i) The effect of the commercial solid waste
27 landfill or resource recovery facility on surrounding
28 land uses and the community.

29 (ii) The effect of the commercial solid waste
30 landfill or resource recovery facility traffic on use and

1 safety of local roads and the existence of alternative
2 routes to the landfill.

3 (iii) Measures to be taken by the commercial solid
4 waste landfill or resource recovery facility to mitigate
5 its effects on surrounding uses and the community and, in
6 the case of existing facilities, any past mitigation
7 measures.

8 (iv) Needs of the host municipality for commercial
9 solid waste landfill or resource recovery facility
10 capacity, the cost to the landfill to reserve capacity,
11 the nature of local waste and limitations on the ability
12 of the landfill to accept that waste.

13 (v) The extent to which the issues raised by the
14 host municipality are addressed by existing regulations
15 or guidance of the department, other applicable law or
16 the conditions of a permit, if any.

17 (vi) The burden on the owner or operator to
18 administer any matter requested by the host municipality,
19 including the burden of undertaking activities to promote
20 recycling, waste reduction and waste management in the
21 host municipality.

22 (11) Only the following components of the host
23 municipality agreement shall be subject to determination by
24 the board of arbitration:

25 (i) Measures to alleviate local issues such as haul
26 routes, traffic problems, litter, odors, noise, dust and
27 any other nuisances that might result from the operation
28 of the facility.

29 (ii) The host benefit fee to be paid by the owner or
30 operator of the facility to the host municipality. The

1 fee determined by the board of arbitration shall not be
2 less than the statutory minimum fee established under the
3 Municipal Waste Planning, Recycling and Waste Reduction
4 Act and shall not exceed 125% of the average fee paid by
5 similar facilities within the same geographical region,
6 taking into consideration the size and nature of the
7 facility. For purposes of this subparagraph, the term
8 "same geographical region" means the area defined by a
9 circle drawn around the facility in question with a
10 radius of 75 miles.

11 (iii) The days and hours of operation of the
12 facility.

13 (iv) The availability of capacity at the facility
14 for the disposal of solid waste generated within the host
15 municipality.

16 (v) Activities to promote recycling, waste reduction
17 and the proper management and disposal of solid waste
18 within the host municipality.

19 (vi) The process for resolution in a cooperative and
20 nonbinding manner of complaints and other grievances
21 concerning the construction and operation of the
22 facility.

23 (12) The parties at any time during the negotiation or
24 mediation periods may by mutual written consent agree to
25 terminate negotiations and proceed directly to arbitration.

26 (g) Enforcement.--The terms of a host municipality agreement
27 shall be enforceable by the parties to the agreement. The courts
28 of common pleas are hereby given jurisdiction over disputes
29 between the host municipality and the facility owner or operator
30 regarding the implementation or enforcement of a host

1 municipality agreement.

2 (h) Reimbursement of host municipality costs.--At the
3 request of a host municipality, the department may reimburse the
4 host municipality for costs incurred in negotiating, mediating
5 and arbitrating a host municipality agreement under this
6 section. Costs covered shall be limited to costs incurred for
7 professional fees for lawyers, mediators, arbitrators, engineers
8 and other professionals used in the efforts to reach an
9 agreement. Any reimbursement shall be provided from funds in the
10 recycling fund established by section 706 of the Municipal Waste
11 Planning, Recycling and Waste Reduction Act or in the Solid
12 Waste Abatement Fund established under section 701 of the Solid
13 Waste Management Act, upon approval by the Governor.
14 Reimbursement shall not exceed \$50,000 for each host
15 municipality agreement. The combined total reimbursement from
16 the two funds shall not exceed \$750,000 annually or \$2,500,000
17 over a five-year period from the effective date of this act.

18 (i) Relationship to other laws.--

19 (1) The terms of a host municipality agreement shall
20 supersede and replace any existing ordinance adopted pursuant
21 to section 304(b) of the Municipal Waste Planning, Recycling
22 and Waste Reduction Act and concerning:

23 (i) the hours and days during which vehicles may
24 deliver waste to the commercial solid waste facility or
25 resource recovery facility; or

26 (ii) the routing of traffic to and from the
27 commercial solid waste landfill or resource recovery
28 facility,

29 to the extent the ordinance is inconsistent or in conflict
30 with the terms of the host municipality agreement.

1 (2) Host municipality agreements shall be executed by
2 the parties in the manner provided for in this act and shall
3 not be subject to competitive bidding or other competitive
4 procurement requirements.

5 (3) The provisions of section 1305 of the Municipal
6 Waste Planning, Recycling and Waste Reduction Act shall be
7 applicable to any host benefit fee set forth in any host
8 municipality agreement executed pursuant to this act. and
9 enforcing this section.

10 Section 6. Enforcement.

11 (a) Orders.--

12 (1) The department may issue orders to persons and
13 municipalities as it deems necessary to aid in the
14 enforcement of this act. These orders may include, but shall
15 not be limited to, orders to enforce the terms of a host
16 municipality agreement, orders modifying, suspending or
17 revoking written authorizations and orders requiring persons
18 and municipalities to cease unlawful activities or operations
19 of a commercial solid waste landfill or resource recovery
20 facility or transportation vehicle which in the course of its
21 operation is in violation of any provision of this act, any
22 rule or regulation of the department or any terms and
23 conditions of a written authorization issued under this act,
24 a host municipality agreement or a permit. An order issued
25 under this act shall take effect upon notice unless the order
26 specifies otherwise.

27 (2) An appeal to the Environmental Hearing Board shall
28 not act as a supersedeas.

29 (3) The power of the department to issue an order under
30 this act is in addition to any other remedy which may be

1 afforded to the department pursuant to this act or any other
2 act.

3 (b) Duty to comply with orders of department.--It shall be
4 the duty of any person and municipality to proceed diligently to
5 comply with any order issued pursuant to this section. If the
6 person or municipality fails to proceed diligently or fails to
7 comply with the order within the time, if any, as may be
8 specified, the person or municipality shall be guilty of
9 contempt and shall be punished by the court in an appropriate
10 manner and, for this purpose, application may be made by the
11 department to the court.

12 Section 7. Civil penalties.

13 (a) Authority.--

14 (1) In addition to proceeding under any other remedy
15 available at law or in equity for a violation of any
16 provision of this act, any provision of a host municipality
17 agreement, any rule or regulation of the department or order
18 of the department or any term or condition of any written
19 authorization issued by the department, the department may
20 assess a civil penalty upon a person for the violation. The
21 penalty may be assessed whether or not the violation was
22 willful or negligent.

23 (2) In determining the amount of the penalty, the
24 department shall consider the willfulness of the violation,
25 damage to air, water, land or other natural resources of this
26 Commonwealth or their uses, cost or restoration and
27 abatement, savings resulting to the person in consequence of
28 the violation and other relevant factors.

29 (3) The maximum civil penalty that may be assessed
30 pursuant to this section is \$25,000 per offense. Each

1 violation for each separate day and each violation of any
2 provision of this act, any rule or regulation under this act,
3 any order of the department or any term or condition of a
4 permit or permits shall constitute a separate and distinct
5 offense under this section.

6 (b) Procedure.--

7 (1) When the department proposes to assess a civil
8 penalty, it shall inform the person of the proposed amount of
9 the penalty. The person charged with the penalty shall then
10 have 30 calendar days to pay the proposed penalty in full or,
11 if the person wishes to contest the amount of the penalty or
12 the fact of the violation to the extent not already
13 established, the person shall forward the proposed amount of
14 the penalty to the Environmental Hearing Board within the 30-
15 calendar day period for placement in an escrow account with
16 the State Treasurer or any Commonwealth bank or post an
17 appeal bond to the hearing board within 30 calendar days in
18 the amount of the proposed penalty if the bond is executed by
19 a surety licensed to do business in this Commonwealth and is
20 satisfactory to the department.

21 (2) If through administrative or final judicial review
22 of the proposed penalty it is determined that no violation
23 occurred or that the amount of the penalty shall be reduced,
24 the hearing board shall within 30 calendar days remit the
25 appropriate amount to the person with any interest
26 accumulated by the escrow deposit.

27 (3) Failure to forward the money or the appeal bond at
28 the time of the appeal shall result in a waiver of all legal
29 rights to contest the violation or the amount of the civil
30 penalty unless the appellant alleges financial inability to

1 prepay the penalty or to post the appeal bond. The hearing
2 board shall conduct a hearing to consider the appellant's
3 alleged inability to pay within 30 calendar days of the date
4 of the appeal.

5 (4) The hearing board may waive the requirement to
6 prepay the civil penalty or to post an appeal bond if the
7 appellant demonstrates and the hearing board finds that the
8 appellant is financially unable to pay. The hearing board
9 shall issue an order within 30 calendar days of the date of
10 the hearing to consider the appellant's alleged inability to
11 pay.

12 (5) The amount assessed after administrative hearing or
13 after waiver of administrative hearing shall be payable to
14 the Commonwealth and shall be collectible in any manner
15 provided by law for the collection of debts, including the
16 collection of interest at the legal rate, which shall run
17 from the date of assessment of the penalty.

18 (6) If any person liable to pay a penalty neglects or
19 refuses to pay the same after demand, the amount, together
20 with interest and any costs that may accrue, shall constitute
21 a debt of the person, as may be appropriate, to the Solid
22 Waste Abatement Fund. The debt shall constitute a lien on all
23 property owned by the person when a notice of lien
24 incorporating a description of the property of the person
25 subject to the action is filed with the prothonotary of the
26 court of common pleas where the property is located.

27 (7) The prothonotary shall promptly enter upon the civil
28 judgment or order docket, at no cost to the department, the
29 name and address of the person, as may be appropriate, and
30 the amount of the lien as set forth in the notice of lien.

1 Upon entry by the prothonotary, the lien shall attach to the
2 revenues and all real and personal property of the person,
3 whether or not the person is solvent.

4 (8) The notice of lien, filed pursuant to this
5 subsection, which affects the property of the person shall
6 create a lien with priority over all subsequent claims or
7 liens which are filed against the person, but it shall not
8 affect any valid lien, right or interest in the property
9 filed in accordance with established procedure prior to the
10 filing of a notice of lien under this subsection.

11 Section 8. Regulations.

12 The Environmental Quality Board shall have the power and its
13 duty shall be to adopt the regulations of the department to
14 accomplish the purposes and to carry out the provisions of this
15 act.

16 Section 9. Severability.

17 The provisions of this act are severable. If any provision of
18 this act or its application to any person or circumstance is
19 held invalid, the invalidity shall not affect other provisions
20 or applications of this act which can be given effect without
21 the invalid provision or application.

22 Section 10. Repeals.

23 All acts and parts of acts are repealed insofar as they are
24 inconsistent with this act.

25 Section 11. Effective date.

26 This act shall take effect immediately.