
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 419 Session of
2003

INTRODUCED BY GEORGE, ALLEN, BARD, BEBKO-JONES, BELARDI, BROWNE,
CASORIO, CAWLEY, COY, CRUZ, CURRY, DAILEY, DALLY, DeLUCA,
DeWEESE, EACHUS, FREEMAN, GOODMAN, GORDNER, GRUCELA, HARHAI,
HENNESSEY, HORSEY, JOSEPHS, KIRKLAND, LaGROTTA, LAUGHLIN,
LEVANSKY, MANDERINO, McILHATTAN, MELIO, MUNDY, PETRARCA,
PRESTON, ROONEY, SANTONI, SHANER, STURLA, SURRA, TANGRETTI,
THOMAS, WALKO, WANSACZ, WOJNAROSKI, YOUNGBLOOD AND YUDICHAK,
FEBRUARY 24, 2003

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
FEBRUARY 24, 2003

AN ACT

1 Establishing a moratorium on the issuance of certain permits
2 relating to municipal waste landfills; providing for
3 rescission of unused capacity, for municipal control and for
4 rebuttable presumptions and defenses; authorizing grants for
5 municipal recycling improvements; and prescribing penalties.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Municipal
10 Solid Waste Control Act.

11 Section 2. Purpose.

12 The General Assembly declares the purposes of this act as
13 follows:

14 (1) To provide municipalities across this Commonwealth
15 with the ability to control the disposal of solid waste in
16 their communities.

(2) To ensure the protection of public health and safety.

(3) To provide a means of reconciling the amount of solid waste that is disposed of in this Commonwealth with the amount of solid waste that is permitted to be disposed of in this Commonwealth.

(4) To provide municipalities with the ability to impose restrictions upon solid waste disposal facilities within their borders.

(5) To preserve and extend the existing solid waste disposal capacity within this Commonwealth.

Section 3. Definitions.

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

"Daily volume." The amount of solid waste actually disposed of each day at a facility.

"Department." The Department of Environmental Protection of the Commonwealth.

"Facility." A municipal waste landfill, construction/demolition waste landfill, resource recovery facility or commercial residual waste disposal facility.

"Gross vehicle weight." The combined weight of a vehicle or combination of vehicles and its load, excluding the driver's weight.

"Host municipality." A city, borough, incorporated town, township or home rule municipality within which a facility is located or proposed to be located or has been permitted but not constructed.

"Municipal Waste Planning, Recycling and Waste Reduction

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

3 "Permitted daily volume." The amount of solid waste
4 permitted by the Department of Environmental Protection to be
5 disposed of at a facility each day.

6 "Region." The geographical area designated by the Department
7 of Environmental Protection for each of its regional field
8 operations.

9 "Secretary." The Secretary of Environmental Protection of
10 the Commonwealth.

11 "Solid waste." Solid waste as defined in the act of July 7,
12 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

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

15 "Transporter." The owner of a semitrailer used for the
16 transportation of municipal or residual waste.

17 Section 4. Moratorium.

18 (a) General rule.--For a period of one year from the
19 effective date of this section, and subject to continuation of
20 such period under subsection (b):

21 (1) The department may not accept an application for a
22 permit modification nor issue a permit or permit modification
23 under the Solid Waste Management Act for the construction,
24 expansion or operation of a facility.

25 (2) The department may not accept for review nor issue a
26 permit modification that would result in an increase in
27 average daily volume or maximum daily volume at a facility.

28 (b) Review of Statewide landfill capacity and usage.--Ninety
29 days before the expiration of the one-year moratorium period set
30 forth in subsection (a), the secretary shall review Statewide

1 landfill capacity and usage. If the secretary determines that
2 unused Statewide landfill capacity continues to be equal or more
3 than six years of unused landfill capacity remains, then the
4 moratorium shall continue for one additional year beyond the
5 original ending date of the moratorium and the secretary shall
6 publish notice of such continuation as a notice in the
7 Pennsylvania Bulletin.

8 Section 5. Rescission of unused capacity.

9 (a) Duty of secretary.--The secretary shall rescind
10 permitted daily volume amounts which exceed the actual daily
11 volume amounts as calculated by the department in accordance
12 with subsection (b).

13 (b) Calculations by department.--The department shall
14 calculate actual daily volume amounts by averaging the disposal
15 of actual daily volume at each facility for the preceding 12-
16 month period. Any amount of daily volume in excess of the
17 determined actual daily volume shall be subject to the
18 rescission under subsection (a).

19 Section 6. Municipality control.

20 (a) Denial of permits.--The governing body of a host
21 municipality may deny any permit or permit modification for a
22 facility located in the municipality, except as provided in
23 subsection (b).

24 (b) Exception for public need.--

25 (1) The host municipality may not deny a permit or
26 permit modification of a facility located in the municipality
27 if the department determines that there is a public need for
28 the additional capacity contained within that permit or
29 permit modification. The public need for additional capacity
30 shall be determined by the department, at least every three

1 years, by totaling the available disposal capacity within
2 that region. If the total disposal capacity within that
3 region is at or below the two-year capacity, the department
4 may issue a certificate of public need which shall override
5 any host municipality denials of permits or permit
6 modifications.

7 (2) The department may issue permits and permit
8 modifications within that region until such time as the
9 permitted capacity within that region reaches the seven-year
10 capacity.

11 (c) Public hearing.--

12 (1) If the department determines to issue a certificate
13 of public need under subsection (b), the department shall
14 conduct at least one public hearing in the host municipality
15 before the permit or permit modification is approved. The
16 public hearing shall be scheduled with a minimum of 30 days'
17 public notice prior to the hearing date. A comment period of
18 not less than 60 days shall be provided to accept written
19 comments on the permit or permit modification.

20 (2) At the public hearing, the department shall present
21 information, including, but not limited to:

22 (i) The nature of the proposed facility.

23 (ii) The site of the proposed facility or expansion
24 of existing facility.

25 (iii) The potential generators of waste.

26 (iv) The life expectancy of the proposed facility or
27 expansion of existing facility.

28 (v) An explanation of the host municipality's rights
29 with regard to abatement of nuisances at the facility,
30 including, but not limited to, traffic problems, litter,

odors, noise, dust or other nuisances that may emanate from the facility or that may increase daily volume at the facility.

Section 7. Rebuttable presumption and defenses.

(a) Liability of facility operator.--It shall be rebuttably presumed, as a matter of law, that a facility operator is liable without proof of fault, negligence or causation for all pollution or diminution of public or private water supplies within 2,500 linear feet of the boundaries of the facility.

(b) Defenses limited.--There shall only be five defenses to the rebuttable presumption of liability provided for in subsection (a). A facility operator must affirmatively prove by a preponderance of evidence that one of the following conditions exists:

(1) The landowner is not within 2,500 linear feet of the facility boundary.

(2) The landowner or water supply company refused to allow the facility operator access to conduct a survey prior to commencing operations.

(3) The pollution or diminution existed prior to facility operation as determined by a survey conducted prior to commencing facility operations.

(4) The pollution or diminution occurred as a result of some cause other than the facility operation.

(5) The landowner, water supply user or water company refused to allow the facility operator access to determine the cause of pollution or diminution or to replace or restore the water supply.

Section 8. Grants for municipal recycling improvements.

(a) Authorization.--The department shall pay \$5,000,000 in

1 fiscal year 2003-2004 from the Recycling Fund to municipalities
2 that propose to significantly increase their recycling efforts.
3 The department shall pay an additional \$5,000,000 from the
4 Recycling Fund in each of the two following fiscal years to
5 municipalities that propose to significantly increase their
6 recycling efforts. For the fiscal year 2002-2003 and the two
7 following fiscal years, the department shall continue to award
8 other recycling grants under the Municipal Waste Planning,
9 Recycling and Waste Reduction Act at or above the current level
10 of funding. For the purposes of this section, a significant
11 increase in recycling efforts is defined as a 10% or more
12 increase in recycling percentage or recycling tonnage.

13 (b) Application and use of grant funds.--

14 (1) On an application form approved by the department,
15 each municipality shall detail its plans to significantly
16 improve recycling percentage or tonnage. A municipality that
17 is awarded a grant under this section shall spend those grant
18 funds only for the purposes and programs detailed on its
19 grant application and approved by the department in its grant
20 award.

21 (2) A municipality awarded a State grant under this
22 program must agree to maintain its level of municipal funding
23 for recycling programs at or above the level of the previous
24 year. No municipality may receive more than \$1,000,000 a year
25 from this grant program.

26 (c) Regulations.--In the second and third year of this
27 program, the department shall promulgate regulations to
28 implement this section.

29 Section 9. Proximity to State parks.

30 (a) General rule.--A new municipal waste or residual waste

1 landfill or resource recovery facility may not be permitted to
2 operate within 2,500 feet of a Pennsylvania State park.

3 (b) Definition.--As used in this section, the terms
4 "municipal waste," "residual waste" and "resource recovery
5 facility" shall have the meanings given those terms in section
6 103 of the act of July 28, 1988 (P.L.556, No.101), known as the
7 Municipal Waste Planning, Recycling and Waste Reduction Act.

8 Section 10. Regulations.

9 Within 120 days of the effective date of this section, the
10 department shall promulgate rules and regulations to administer
11 the provisions of this act.

12 Section 11. Repeal.

13 All acts and parts of acts are repealed insofar as they are
14 inconsistent with this act.

15 Section 12. Effective date.

16 This act shall take effect as follows:

17 (1) Sections 3 and 4 shall take effect immediately.

18 (2) This section shall take effect immediately.

19 (3) The remainder of this act shall take effect in 60
20 days.