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THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1835 Session of 2003

INTRODUCED BY GRUCELA, BIANCUCCI, COY, DALEY, DALLY, DeLUCA, EACHUS, FABRIZIO, FREEMAN, GEORGE, GERGELY, JOSEPHS, LAUGHLIN, LEVDANSKY, McCALL, ROONEY, SHANER, SURRA, TANGRETTI, WALKO, WANSACZ, YOUNGBLOOD AND YUDICHAK, JULY 9, 2003

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY, JULY 9, 2003

AN ACT

Amending the act of July 7, 1980 (P.L.380, No.97), entitled "An act providing for the planning and regulation of solid waste storage, collection, transportation, processing, treatment, and disposal; requiring municipalities to submit plans for municipal waste management systems in their jurisdictions; authorizing grants to municipalities; providing regulation of the management of municipal, residual and hazardous waste; requiring permits for operating hazardous waste and solid waste storage, processing, treatment, and disposal facilities; and licenses for transportation of hazardous waste; imposing duties on persons and municipalities; granting powers to municipalities; authorizing the Environmental Quality Board and the Department of Environmental Resources to adopt rules, regulations, standards and procedures; granting powers to and imposing duties upon county health departments; providing remedies; prescribing penalties; and establishing a fund," adding definitions; and further providing for submission of plans and permits, for permits and licenses required, for granting of permits and licenses and for bonds.

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

Section 1. Section 103 of the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, is amended by adding definitions to read:

Section 103. Definitions.

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

* * *

"Affected municipality." A municipality within one mile of a proposed municipal waste landfill, that is on an approach route to a municipal waste landfill regulated by this act, or that is otherwise adversely impacted by a facility.

* * *

"Host municipality." The municipality other than the county within which a municipal waste landfill is located or is proposed to be located.

* * *

Section 2. Sections 502 and 503 of the act are amended by adding subsections to read:

Section 502. Permit and license application requirements.

* * *

(d.1) The application shall include all records, reports, information and dispositions relating to violations of 75 Pa.C.S. Pt. IV (relating to vehicle characteristics). Such information shall be considered by the department when considering an application under this section.

* * *

Section 503. Granting, denying, renewing, modifying, revoking and suspending permits and licenses.

* * *

(b.1) No permit shall be issued for the siting of a new municipal waste landfill or the expansion of an existing municipal waste landfill in a municipality where a referendum

has been conducted pursuant to section 504.1 and the electorate has voted against the siting of a new municipal waste landfill or the expansion of an existing municipal waste landfill.

* * *

(c.1) In carrying out the provisions of this act, the department may deny, suspend, modify, or revoke any permit or license if it finds that the applicant, permittee or licensee has failed or continues to fail to comply with the provisions of 75 Pa.C.S. Pt. IV (relating to vehicle characteristics).

* * *

(f) Any permit issued under this act for the operation of a municipal waste landfill will be issued for a fixed term consistent with the approved operation and design plans of a municipal waste landfill and not to exceed ten years. No municipal waste may be disposed of or processed at such a landfill after the expiration of its permit term. Expiration of the permit term shall not limit the operator's responsibility for complying with requirements under this act, the environmental protection acts, regulations thereunder or the terms or conditions of its permits. The department shall, from time to time, but at intervals not to exceed two years, review a permit issued to a municipal waste landfill under this act. In its review, the department shall evaluate the permit to determine whether it reflects currently applicable operating requirements as well as current technology and management practices. The department may require modification, suspension or revocation of the permit when necessary to carry out the purposes of this act or the environmental protection acts.

Section 3. The act is amended by adding a section to read:

Section 504.1. Referendum on siting of municipal waste

landfills or expansion of existing municipal waste landfills.

(a) Prior to the approval of an application for a permit to operate a municipal waste landfill or a permit to expand an existing municipal waste landfill's capacity by the governing body or the department, the county board of elections shall conduct a binding referendum in the host municipality and all affected municipalities. The department shall not issue such a permit if a majority of the municipalities participating in the referendum reject the proposed siting or expansion by a majority vote of the electors in each municipality.

(b) The binding referendum shall be conducted at the first primary, municipal or general election occurring at least 60 days after the department has notified the host county that it has received an application for a permit to operate a municipal waste landfill or to expand the capacity of an existing facility.

(c) The results of the binding referendum shall be transmitted to the department, the governing body of the county, the host municipality and all affected municipalities.

(d) Procedures under this section shall be in accordance with the act of June 3, 1937 (P.L.1333, No.320), known as the "Pennsylvania Election Code."

Section 4. Section 505 of the act, amended July 11, 1990 (P.L.450, No.109), is amended to read:

Section 505. Bonds.

(a) With the exception of municipalities operating landfills solely for municipal waste not classified hazardous, prior to the commencement of operations, the operator of a municipal or residual waste processing or disposal facility or of a hazardous

waste storage, treatment or disposal facility for which a permit is required by this section shall file with the department a bond for the land affected by such facility on a form prescribed and furnished by the department. Such bond shall be payable to the Commonwealth and conditioned so that the operator shall comply with the requirements of this act, the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," the act of January 8, 1960 (1959 P.L.2119, No.787), known as the "Air Pollution Control Act," and the act of November 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and Encroachments Act." The department may require additional bond amounts for the permitted areas should such an increase be determined by the department to be necessary to meet the requirements of this act. The amount of the bond required shall be in an amount determined by the secretary based upon the total estimated cost to the Commonwealth of completing final closure according to the permit granted to such facility and such measures as are necessary to prevent adverse effects upon the environment; such measures include but are not limited to satisfactory monitoring, post-closure care, and remedial measures. The bond amount shall reflect the additional cost to the Commonwealth which may be entailed by being required to bring personnel and equipment to the site. All permits shall be bonded for at least [$10,000] $50,000. Liability under such bond shall be for the duration of the operation, and for a period of up to [ten] 15 full years after final closure of the permit site. Such bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth and approved by the secretary:

Provided, however, That the operator may elect to deposit cash, certificates of deposit, automatically renewable irrevocable letters of credit which are terminable only upon 90 days written notice to the operator and the department, or negotiable bonds of the United States Government or the Commonwealth of Pennsylvania, the Pennsylvania Turnpike Commission, the General State Authority, the State Public School Building Authority, or any municipality within the Commonwealth, with the department in lieu of a corporate surety. The cash amount of such deposit, irrevocable letters of credit or market value of such securities shall be equal at least to the sum of the bond. The secretary shall, upon receipt of any such deposit of cash or negotiable bonds, immediately place the same with the State Treasurer, whose duty it shall be to receive and hold the same in the name of the Commonwealth, in trust, for the purposes for which such deposit is made. The State Treasurer shall at all times be responsible for the custody and safekeeping of such deposits. The operator making the deposit shall be entitled from time to time to demand and receive from the State Treasurer, on the written order of the secretary, the whole or any portion of any collateral so deposited, upon depositing with him, in lieu thereof, other collateral of the classes herein specified having a market value at least equal to the sum of the bond, also to demand, receive and recover the interest and income from said negotiable bonds as the same becomes due and payable: Provided, however, That where negotiable bonds, deposited as aforesaid, mature or are called, the State Treasurer, at the request of the permittee, shall convert such negotiable bonds into such other negotiable bonds of the classes herein specified as may be designated by the permittee: And provided further, That where

notice of intent to terminate a letter of credit is given, the department shall, after 30 days written notice to the operator and in the absence of a replacement of such letter of credit within such 30-day period by the operator with other acceptable bond guarantees provided herein, draw upon and convert such letter of credit into cash and hold it as a collateral bond guarantee. In addition to criteria contained in department regulations governing the adjustment of bond or trust amounts and bond forfeiture, the department may require an operator to deposit additional bond or trust amounts based on the compliance history of the facility.

(a.1) The department may provide by regulation that the amount of the bond required also reflect the potential liabilities and costs associated with the transportation of solid waste to a facility.

(b) In the case of applications for permits where the department determines that the operations are reasonably anticipated to continue for a period of at least ten years from the date of application, the operator may elect to deposit collateral and file a collateral bond as provided in subsection (a) according to the following phase deposit schedule. The operator shall, prior to commencing operations, deposit [$10,000] $50,000 or [25%] 50% of the amount of the bond determined under subsection (a), whichever is greater. The operator shall, thereafter, annually deposit 10% of the remaining bond amount for a period of ten years. Interest accumulated by such collateral shall become a part of the bond. The department may require additional bonding at any time to meet the intent of subsection (a). The collateral shall be deposited in trust, with the State Treasurer as provided in

subsection (a) or with a bank, selected by the department, which shall act as trustee for the benefit of the Commonwealth, according to rules and regulations promulgated hereunder, to guarantee the operator's compliance with this act and the statutes enumerated in subsection (a). The operator shall be required to pay all costs of the trust. The collateral deposit, or part thereof, shall be released of liability and returned to the operator, together with a proportional share of accumulated interest, upon the conditions of and pursuant to the schedule and criteria for release provided in this act.

(c) The operator shall, prior to commencing operations on any additional land exceeding the estimate made in the application for a permit, file an additional application and bond. Upon receipt of such additional application and related documents and information as would have been required for the additional land had it been included in the original application for a permit and should all the requirements of this act be met as were necessary to secure the permit, the secretary shall promptly issue an amended permit covering the additional acreage covered by such application, and shall determine the additional bond requirement therefor.

(d) If the operator abandons the operation of a municipal or residual waste processing or disposal facility or a hazardous waste storage, treatment or disposal facility for which a permit is required by this section or if the permittee fails or refuses to comply with the requirements of this act in any respect for which liability has been charged on the bond, the secretary shall declare the bond forfeited and shall certify the same to the Department of Justice which shall proceed to enforce and collect the amount of liability forfeited thereon, and where the

operation has deposited cash or securities as collateral in lieu of a corporate surety, the secretary shall declare said collateral forfeited and shall direct the State Treasurer to pay said funds into the Waste Abatement Fund. Should any corporate surety fail to promptly pay, in full, forfeited bond, it shall be disqualified from writing any further surety bonds under this act.

(e) Prior to the issuance of any license for the transportation of hazardous waste, the applicant for a license shall file with the department a collateral bond on a form prescribed and furnished by the department. Such bond shall be payable to the Commonwealth and conditioned upon compliance by the licensee with every requirement of this act, rule and regulation of the department, order of the department and term and condition of the license. The amount of the bond required shall be in an amount determined by the secretary, but in an amount no less than [$10,000] <u>$50,000</u>. The department may require additional bond amounts if the department determines such additional amounts are necessary to guarantee compliance with this act. The licensee may elect to deposit cash or automatically renewable irrevocable letters of credit which are terminable only upon 90 days written notice to the operator and the department, or negotiable bonds of the United States Government or the Commonwealth of Pennsylvania, the Pennsylvania Turnpike Commission, the General State Authority, the State Public School Building Authority, or any municipality within the Commonwealth. No corporate surety bond is authorized by this subsection. The cash amount of such deposit, irrevocable letters of credit, or market value of such securities shall be equal at least to the sum of the bond. The secretary shall, upon receipt

of any such deposit of cash or negotiable bonds, immediately place the same with the State Treasurer, whose duty it shall be to receive and hold the same in the name of the Commonwealth, in trust, for the purposes for which such deposit is made. The State Treasurer shall at all times be responsible for the custody and safekeeping of such deposits. The licensee making the deposit shall be entitled from time to time to demand and receive from the State Treasurer, on the written order of the secretary, the whole or any portion of any collateral so deposited, upon depositing with him, in lieu thereof, other collateral of the classes herein specified having a market value at least equal to the sum of the bond, also to demand, receive and recover the interest and income from said negotiable bonds as the same becomes due and payable: Provided, however, That where negotiable bonds, deposited as aforesaid, mature or are called, the State Treasurer, at the request of the licensee, shall convert such negotiable bonds into such other negotiable bonds of the classes herein specified as may be designated by the licensee: And provided further, That where notice of intent to terminate a letter of credit is given, the department shall, after 30 days written notice to the licensee and in the absence of a replacement of such letter of credit within such 30-day period by the licensee with other acceptable bond guarantees provided herein, draw upon and convert such letter of credit into cash and hold it as a collateral bond guarantee. Liability under such bond shall be for the duration of the license and for a period of one year after the expiration of the license.

(f) Notwithstanding any other provisions of this act, when an application for the land application of sewage sludge is made by a municipality or a municipal authority, the filing of a bond

with the department shall not be required as a condition for issuance of a permit to the municipality or municipal authority for the application of the sewage sludge for land reclamation or agricultural utilization purposes.

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