
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 373 Session of
2003

INTRODUCED BY O'PAKE, KASUNIC, RHOADES, C. WILLIAMS AND BOSCOLA,
MARCH 3, 2003

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, MARCH 3, 2003

AN ACT

1 Establishing a landfill impact fee and fund to compensate owners
2 of residential property near a landfill for loss in property
3 value and to provide grants to certain political subdivisions
4 for traffic improvement and safety projects.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the Landfill
9 Impact Fee Act.

10 Section 2. Fee imposed.

11 A fee of 25¢ is hereby imposed on each ton of weighed waste
12 or 25¢ per three cubic yards of volume-measured waste of any
13 type deposited in any landfill located in this Commonwealth.

14 This fee shall be paid by the operator and shall be collected by
15 the Department of Environmental Protection. All of these fees
16 shall be deposited in the Landfill Impact Fee Fund established
17 in section 6.

18 Section 3. Form and timing of fee payment.

19 (a) Quarterly payments.--Each operator of a waste landfill

1 shall make the fee payment quarterly. The fee shall be paid on
2 or before the 20th day of April, July, October and January for
3 the three months ending the last day of March, June, September
4 and December.

5 (b) Quarterly reports.--Each fee payment shall be
6 accompanied by a form prepared and furnished by the Department
7 of Environmental Protection and completed by the operator. The
8 form shall state the total weight or volume of waste received by
9 the facility during the payment period and provide any other
10 aggregate information deemed necessary by the department to
11 carry out the purposes of this act. The form shall be signed by
12 the operator.

13 (c) Timeliness of payment.--The operator shall be deemed to
14 have made a timely payment of the fee if the operator complies
15 with all of the following:

16 (1) The enclosed payment is for the full amount owed
17 pursuant to this section and no further departmental action
18 is required for collection.

19 (2) The payment is accompanied by the required form, and
20 such form is complete and accurate.

21 (3) The letter transmitting the payment that is received
22 by the department is postmarked by the United States Postal
23 Service on or prior to the final day on which the payment is
24 to be received.

25 (d) Refunds.--Any operator who believes he has overpaid the
26 fee may file a petition for refund to the department. If the
27 department determines the operator has overpaid the fee, it
28 shall refund the amount due, together with interest at a rate
29 established pursuant to section 806.1 of the act of April 9,
30 1929 (P.L.343, No.176), known as The Fiscal Code, from the date

1 of overpayment. No refund shall be made unless the petition is
2 filed with the department within six months of the overpayment.

3 (e) Alternative proof of payment.--For purposes of this
4 section, presentation of a receipt indicating that the payment
5 was mailed by registered or certified mail on or before the due
6 date shall be evidence of timely payment.

7 Section 4. Collection and enforcement of fee.

8 (a) Interest.--If an operator fails to make a timely payment
9 of the fee, the operator shall pay interest on the unpaid amount
10 due at the rate established pursuant to section 806 of the act
11 of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code,
12 from the last day for timely payment to the date paid.

13 (b) Additional penalty.--In addition to the interest
14 provided in subsection (a), if an operator fails to make timely
15 payment of the fee, there shall be added to the amount of fee
16 actually due 5% of the amount of such fee, if the failure to
17 file a timely payment is for not more than one month, with an
18 additional 5% for each additional month, or fraction thereof,
19 during which such failure continues, not exceeding 25% in the
20 aggregate.

21 (c) Assessment notices.--

22 (1) If the Department of Environmental Protection
23 determines that any operator has not made a timely payment of
24 the fee, it will send the operator a written notice of the
25 amount of the deficiency within 30 days of determining such
26 deficiency. When the operator has not provided a complete and
27 accurate statement of the weight or volume of waste received
28 at the facility for the payment period, the department may
29 estimate the weight or volume in its notice.

30 (2) The operator shall have 30 days to pay the

1 deficiency in full or, if the operator wishes to contest the
2 deficiency, to forward the amount of the deficiency to the
3 department for placement in an escrow account with the State
4 Treasurer or any Pennsylvania bank, or post an appeal bond in
5 the amount of the deficiency. Such bond shall be executed by
6 a surety licensed to do business in this Commonwealth and be
7 satisfactory to the department. Failure to forward the money
8 or the appeal bond to the department within 30 days shall
9 result in a waiver of all legal rights to contest the
10 deficiency.

11 (3) If, through administrative or judicial review of the
12 deficiency, it is determined that the amount of deficiency
13 shall be reduced, the department shall within 30 days remit
14 the appropriate amount to the operator, with any interest
15 accumulated by the escrow deposit.

16 (4) The amount determined after administrative hearing
17 or after waiver of administrative hearing shall be payable to
18 the Commonwealth and shall be collectible in the manner
19 provided in section 1709 of the act of July 28, 1988
20 (P.L.556, No.101), known as the Municipal Waste Planning,
21 Recycling and Waste Reduction Act.

22 (5) Any other provision of law to the contrary
23 notwithstanding, there shall be a statute of limitations of
24 five years upon actions brought by the Commonwealth pursuant
25 to this section.

26 (6) If any amount due hereunder remains unpaid 30 days
27 after receipt of notice thereof, the department may order the
28 operator to cease receiving any waste until the deficiency is
29 completely paid.

30 (d) Filing of appeals.--Notwithstanding any other provision

1 of law, all appeals of final department actions concerning the
2 fee, including, but not limited to, petitions for refunds, shall
3 be filed with the Environmental Hearing Board.

4 (e) Constructive trust.--All fees collected by an operator
5 and held by such operator prior to payment to the department
6 shall constitute a trust fund for the Commonwealth, and such
7 trust shall be enforceable against such operator, its
8 representatives and any person receiving any part of such fund
9 without consideration or with knowledge that the operator is
10 committing a breach of the trust. However, any person receiving
11 payment of lawful obligation of the operator from such fund
12 shall be presumed to have received the same in good faith and
13 without any knowledge of the breach of trust.

14 (f) Remedies cumulative.--The remedies provided to the
15 department in this section are in addition to any other remedies
16 provided at law or in equity.

17 Section 5. Surcharge.

18 The provisions of any law to the contrary notwithstanding,
19 the operator may collect the fee imposed by this section as a
20 surcharge on any fee schedule established pursuant to law,
21 ordinance, resolution or contract for waste disposal at the
22 facility. In addition, any person who collects or transports
23 waste subject to the fee to a landfill may impose a surcharge on
24 any fee schedule established pursuant to law, ordinance,
25 resolution or contract for the collection or transportation of
26 waste to the facility. The surcharge shall be equal to the
27 increase in disposal fees at the facility attributable to the
28 fee. However, interest and penalties on the fee under section
29 4(a) and (b) may not be collected as a surcharge.

30 Section 6. Landfill Impact Fee Fund.

1 The Landfill Impact Fee Fund is established as a restricted
2 receipts account in the General Fund. The Landfill Impact Fee
3 Fund shall be used to compensate all eligible residential
4 property owners and to provide funds for traffic improvement and
5 safety grants to eligible political subdivisions. The fund shall
6 include a reserve in an amount determined by the Auditor General
7 to be necessary to maintain its actuarial soundness in the view
8 of outstanding and reasonably foreseeable claims. Moneys raised
9 by the fee in excess of the reserve shall be directed to the
10 Department of Transportation at the beginning of the next fiscal
11 year and shall be allocated for providing grants to host and
12 neighboring municipalities for traffic and safety improvements
13 in accordance with section 8.

14 Section 7. Eligible residential property owners.

15 A person is an eligible residential property owner if he owns
16 and lives in a residential dwelling within one mile of the
17 boundary of any landfill which was granted a permit to open or
18 to physically expand since July 1, 1998, and as a result of the
19 opening or expansion he suffered a decrease in the property
20 value of his residential dwelling.

21 Section 8. Eligible political subdivision.

22 Any political subdivision wherein a landfill is located or
23 through which passes a public road within ten miles of the
24 entrance of the landfill which is regularly used as an access
25 road to the landfill is eligible for a traffic improvement and
26 safety grant provided for under this act.

27 Section 9. Landfill impact compensation.

28 All homeowners who make application to the Department of
29 Environmental Protection and are determined to be eligible for
30 compensation shall be awarded full compensation within one year

1 of the final determination of such eligibility by the
2 department.

3 Section 10. Traffic improvement and safety grants.

4 The Department of Transportation may award traffic
5 improvement and safety grants in accordance with the provisions
6 of section 6.

7 Section 11. Administrative costs.

8 (a) Department of Environmental Protection costs.--The
9 Department of Environmental Protection may retain an amount of
10 money not to exceed 5% of the total amount of money in the
11 Landfill Impact Fee Fund for its expenses directly related to
12 the administration of this act.

13 (b) Department of Transportation costs.--The Department of
14 Transportation may retain an amount of money not to exceed 5% of
15 the total amount of traffic improvement and safety grants for
16 its expenses directly related to the administration of this act.

17 Section 12. Regulations.

18 The Department of Environmental Protection and the Department
19 of Transportation shall promulgate regulations in order to carry
20 out their duties under this act.

21 Section 13. Reports.

22 The Department of Environmental Protection shall report
23 annually to the General Assembly by depositing copies of the
24 report with the Secretary of the Senate and the Chief Clerk of
25 the House of Representatives. The report shall indicate all
26 collections to and payments from the Landfill Impact Fee Fund,
27 including any recommendations for any increase in the fee.

28 Section 14. Effective date.

29 This act shall take effect in 60 days.