

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 911 Session of
2005

INTRODUCED BY BOSCOLA, FONTANA, RHOADES, O'PAKE AND RAFFERTY,
OCTOBER 11, 2005

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, OCTOBER 11, 2005

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," defining "affected municipality";
16 further providing for powers and duties of the Department of
17 Health and for host municipality benefit fee; authorizing an
18 affected municipality benefit fee; further providing for
19 unlawful conduct; and making editorial changes.

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

22 Section 1. The title of the act of July 28, 1988 (P.L.556,
23 No.101), known as the Municipal Waste Planning, Recycling and
24 Waste Reduction Act, is amended to read:

25 AN ACT

26 Providing for planning for the processing and disposal of

1 municipal waste; requiring counties to submit plans for
2 municipal waste management systems within their boundaries;
3 authorizing grants to counties and municipalities for
4 planning, resource recovery and recycling; imposing and
5 collecting fees; establishing certain rights for host
6 municipalities; requiring municipalities to implement
7 recycling programs; requiring Commonwealth agencies to
8 procure recycled materials; imposing duties; granting powers
9 to counties and municipalities; authorizing the Environmental
10 Quality Board to adopt regulations; authorizing the
11 Department of Environmental [Resources] Protection to
12 implement this act; providing remedies; prescribing
13 penalties; establishing a fund; and making repeals.

14 Section 2. The definitions of "department" and "secretary"
15 in section 103 of the act are amended and the section is amended
16 by adding a definition to read:

17 Section 103. Definitions.

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

21 * * *

22 "Affected municipality." A municipality within one mile of
23 the proposed facility, that is on an approach route to a
24 facility regulated by this act or that is otherwise adversely
25 impacted by a facility.

26 * * *

27 "Department." The Department of Environmental [Resources]
28 Protection of the Commonwealth and its authorized
29 representatives.

30 * * *

1 "Secretary." The Secretary of Environmental [Resources]
2 Protection of the Commonwealth.

3 * * *

4 Section 3. Section 510 of the act is amended by adding
5 subsections to read:

6 Section 510. Permit requirements.

7 * * *

8 (c) Community health risks study.--The department may not
9 issue an approval or permit under this act or the Solid Waste
10 Management Act relating to the siting, operation or expansion of
11 a municipal waste landfill until a community health risks study
12 has been performed and submitted to the department. A community
13 health risks study shall be conducted at all existing facilities
14 by the department in conjunction with the Department of Health
15 and paid for by the applicant or operator within one year of the
16 effective date of this subsection. The department shall consider
17 the study when reviewing new permit applications, applications
18 for permit renewals and permits for the expansion of existing
19 facilities. The study shall examine, measure and report on the
20 health risks to the residents of the host municipalities and
21 affected municipalities.

22 (d) Term of permits.--

23 (1) A permit issued pursuant to this act shall be issued
24 for a fixed term consistent with the approved operation and
25 design plans of the municipal waste landfill, and may not
26 exceed ten years. No municipal waste may be disposed of or
27 processed at a municipal waste landfill after the expiration
28 of its permit term. Expiration of the permit term does not
29 limit the operator's responsibility for complying with
30 requirements under this act, the other environmental

1 protection acts, regulations thereunder or the terms or
2 conditions of the department's permit.

3 (2) The department shall from time to time, but at
4 intervals not to exceed two years, review a permit issued
5 under this act. In its review, the department shall evaluate
6 the permit to determine whether it reflects currently
7 applicable operating requirements as well as current
8 technology and management practices. The department may
9 require modification, suspension or revocation of the permit
10 when necessary to carry out the purposes of this act or the
11 environmental protection acts.

12 Section 4. Section 511(a) of the act is amended to read:

13 Section 511. Site limitation.

14 (a) General rule.--The department shall not issue a permit
15 for, nor allow the operation of, a new municipal waste landfill,
16 a new commercial residual waste treatment facility or a new
17 resource recovery facility within 300 yards of any occupied
18 dwelling or a building which is owned by a school district or a
19 parochial school and used for instructional purposes, parks or
20 playgrounds existing prior to the date the department has
21 received an administratively complete application for a permit
22 for such facilities. This subsection shall not affect any
23 modification, extension, addition or renewal of existing
24 permitted facilities.

25 * * *

26 Section 5. The act is amended by adding a section to read:

27 Section 514. Public participation in expansion of existing
28 facilities.

29 (a) General rule.--Upon receiving an application to operate,
30 an application to modify a permit or an application to expand an

1 existing municipal waste landfill, the department, in
2 conjunction with the county, the host municipality and any
3 affected municipality, shall conduct not fewer than three public
4 hearings for the purpose of receiving information on the permit
5 modification. At least 30 days prior to conducting such public
6 hearings, the department shall publish notice of the hearing in
7 a newspaper of general circulation in the host municipality and
8 affected municipalities.

9 (b) Places of public hearings.--Public hearings shall be
10 conducted in the following areas:

11 (1) One in the host municipality.

12 (2) One in at least one affected municipality.

13 (3) One in one other appropriate location in the county.

14 (c) Purpose of public hearings.--The public hearings shall
15 solicit information from members of the public and local
16 officials regarding:

17 (1) Odor control.

18 (2) Community health risks.

19 (3) Traffic patterns and traffic volume as a result of
20 increased waste hauling in the host municipality and affected
21 municipalities.

22 (4) Emergency planning and response mechanisms for the
23 host municipalities and affected municipalities.

24 (5) Infrastructure support for the host municipalities
25 and affected municipalities.

26 (d) Summary of hearings.--After a hearing, the department
27 shall prepare a summary of the written and oral comments
28 submitted at the hearings, the department's responses to the
29 comments and the reasons therefor. The department shall provide
30 copies of this summary to the governing bodies of the host

1 municipalities, affected municipalities, any persons who
2 submitted comments and to other persons who request a copy.

3 (e) Construction with regulation or policy.--The public
4 hearings authorized by this section shall supplement but shall
5 not supersede the hearings and comment periods authorized by any
6 department regulation or policy.

7 Section 6. Section 1111(b) and (d) of the act are amended to
8 read:

9 Section 1111. Protection of capacity.

10 * * *

11 (b) Determination.--The permit condition shall be determined
12 in the following manner:

13 (1) The applicant shall notify the host county [and],
14 host municipality and any affected municipality upon filing
15 an application for permit pursuant to subsection (a). Within
16 60 days after receiving written notice from the applicant
17 that an application has been filed with the department, the
18 host county [and], host municipality and affected
19 municipality shall provide written notice to the applicant
20 and the department if it intends to negotiate with the
21 applicant. If the host county [and], host municipality and
22 affected municipality do not provide such notice and, if the
23 permit is issued, the permit condition shall state that no
24 waste capacity is reserved for the host county [and], host
25 municipality and affected municipality. The negotiation
26 period shall commence upon the date of receipt of the written
27 notice to the applicant from the host county and host
28 municipality and shall continue for 30 days. The issues to be
29 considered in negotiations shall include, but not be limited
30 to, the weight or volume of capacity reserved to a host

1 county [and], host municipality and affected municipality and
2 an increase in the average volume of waste up to the amount
3 of capacity set aside for municipal waste generated within
4 the host county [and], host municipality and affected
5 municipality.

6 (2) If the host county [and], host municipality,
7 affected municipality and the applicant agree to a weight or
8 volume of waste capacity to be reserved for the host county
9 [and], host municipality and affected municipality, they
10 shall notify the department in writing.

11 (3) If the host county [and], host municipality,
12 affected municipality and the applicant have failed to reach
13 an agreement within the 30-day negotiation period, then
14 either party to the dispute, after written notice to the
15 other party containing specifications of the issue or issues
16 in dispute, may request the appointment of a board of
17 arbitration pursuant to paragraph (7). Such notice shall be
18 made in writing to the other party within five days of the
19 end of the negotiation period. In making the decision as to
20 the terms of the agreement, the board shall consider among
21 other things the availability of disposal alternatives to the
22 host county [and], host municipality and affected
23 municipality. Should the host county [and], host municipality
24 and affected municipality fail to request arbitration within
25 five days, then the permit condition shall state that no
26 waste capacity is reserved for the host county [and], host
27 municipality and affected municipality.

28 (4) If the county and municipality elect to negotiate
29 with the applicant pursuant to this section, any agreement or
30 arbitration award shall provide, unless the host county

1 [and], host municipality, affected municipality and applicant
2 agree otherwise, that the county and [municipality]
3 municipalities shall utilize the capacity reserved in an
4 agreed-upon time frame.

5 (5) Should the applicant and the host county [and], host
6 municipality and affected municipality be unable to agree to
7 the terms of the agreement governing such utilization within
8 30 days of an agreement or an arbitration award as to the
9 weight or volume of waste capacity to be reserved in the
10 facility, either party can request the appointment of an
11 arbitration board pursuant to paragraph (7). In making the
12 decision as to the terms of the agreement for utilization,
13 the board shall consider, among other things, the weight or
14 volume of capacity reserved to a host county [and], host
15 municipality and affected municipality under any permit
16 issued pursuant to this section, an increase in the average
17 volume of waste in an amount up to the amount of capacity set
18 aside for municipal waste generated within the host county
19 [and], host municipality and affected municipality, the
20 financial viability of the facility and the terms, including
21 the rates per ton for disposal, of the contracts entered into
22 by the applicant for use of the facility by other than the
23 host county and host municipality.

24 (6) Except as provided in paragraph (1), the department
25 shall not issue any permit under this section unless it has
26 received written notice of an agreement between the applicant
27 and host county [and], host municipality and affected
28 municipality as to the weight or volume of capacity to be
29 reserved for the host county and host municipality as
30 provided in paragraph (2) or unless it has received written

1 notice that a Board of Arbitration appointed pursuant to
2 paragraph (7) has settled all issues in dispute between the
3 host county [and], host municipality, the affected
4 municipality and the applicant. The department shall include
5 a permit condition reserving such capacity provided for in
6 such agreements or arbitration awards.

7 (7) The board of arbitration shall be composed of three
8 persons, one appointed by the applicant, one appointed by the
9 host county and host municipality and a third member to be
10 agreed upon by the applicant and such host county and host
11 municipality. The members of the board representing the
12 applicant and the host county and host municipality shall be
13 named within five days from the date of the request for the
14 appointment of such board. If, after a period of ten days
15 from the date of the appointment of the two arbitrators
16 appointed by the host county and host municipality and the
17 applicant, the third arbitrator has not been selected by
18 them, then either arbitrator may request the American
19 Arbitration Association, or its successor in function, to
20 furnish a list of three members of said association who are
21 residents of Pennsylvania from which the third arbitrator
22 shall be selected. The arbitrator appointed by the applicant
23 shall eliminate one name from the list within five days after
24 publication of the list, following which the arbitrator
25 appointed by the host county and host municipality shall
26 eliminate one name from the list within five days thereafter.
27 The individual whose name remains on the list shall be the
28 third arbitrator and shall act as chairman of the board of
29 arbitration. The board of arbitration thus established shall
30 commence the arbitration proceedings within ten days after

1 the third arbitrator is selected and shall make its
2 determination within 30 days after the appointment of the
3 third arbitrator.

4 * * *

5 (d) Consultation.--The host county shall consult with the
6 host municipality and any affected municipality as part of the
7 procedure set forth under this section.

8 * * *

9 Section 7. The heading of Chapter 13 of the act is amended
10 to read:

11 CHAPTER 13

12 [HOST MUNICIPALITY] BENEFIT [FEE] FEES

13 Section 8. Sections 1301, 1302, 1303, 1304, 1305 and 1510(f)
14 of the act are amended to read:

15 Section 1301. Host municipality and affected municipality
16 benefit fee.

17 (a) Imposition.--There is imposed a host municipality
18 benefit fee and an affected municipality benefit fee upon the
19 operator of each municipal waste landfill or resource recovery
20 facility that has a valid permit on the effective date of this
21 act or receives a new permit or permit that results in
22 additional capacity from the department under the Solid Waste
23 Management Act after the effective date of this act. The fee
24 shall be paid to the host municipality and affected
25 municipality. If the host municipality owns or operates the
26 landfill or facility, the fee shall not be imposed for waste
27 generated within such municipality. If the landfill or facility
28 is located within more than one host municipality, the fee shall
29 be apportioned among them according to the percentage of the
30 permitted area located in each municipality.

1 (b) Amount.--The host municipality fee is \$1 per ton of
2 weighed solid waste or \$1 per three cubic yards of volume-
3 measured solid waste for all solid waste received at a landfill
4 or facility. The affected municipality fee is 50¢ per ton of
5 weighted solid waste or 50¢ per three cubic yards of volume-
6 measured solid waste for all solid waste received at a landfill
7 or facility. Any amounts paid by an operator to a host
8 municipality or affected municipality pursuant to a preexisting
9 agreement shall serve as a credit against the fee amount imposed
10 by this section.

11 (c) Municipal options.--Nothing in this section or section
12 1302 shall prevent a host municipality or affected municipality
13 from receiving a higher fee or receiving the fee in a different
14 form or at different times than provided in this section and
15 section 1302, if the host municipality or affected municipality
16 and the operator of the municipal waste landfill or resource
17 recovery facility agree in writing.

18 (d) Supersede.--The fee imposed by this section shall
19 preempt and supersede any tax imposed on each municipal waste
20 landfill or resource recovery facility under the act of December
21 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling
22 Act, which is in excess of the amount imposed on or before
23 December 31, 1987.

24 (e) County options.--Nothing in this act shall prevent a
25 host county from negotiating a fee or fee in a different form,
26 if the host county and the operator of the municipal waste
27 landfill or resource recovery agree in writing. Any county which
28 has negotiated a fee as of the effective date of this act may
29 require that the fee be continued.

30 Section 1302. Form and timing of host municipality benefit fee

1 payment.

2 (a) Quarterly payment.--Each operator subject to section
3 1301 shall make the host municipality benefit fee payment and
4 the affected municipality benefit fee payment quarterly. The fee
5 shall be paid on or before the 20th day of April, July, October
6 and January for the three months ending the last day of March,
7 June, September and December.

8 (b) Quarterly reports.--Each host municipality benefit fee
9 payment and affected municipality benefit fee payment shall be
10 accompanied by a form prepared and furnished by the department
11 and completed by the operator. The form shall state the weight
12 or volume of solid waste received by the landfill or facility
13 during the payment period and provide any other information
14 deemed necessary by the department to carry out the purposes of
15 this act. The form shall be signed by the operator. A copy of
16 the form shall be sent to the department at the same time that
17 the fee and form are sent to the host municipality and affected
18 municipality.

19 (c) Timeliness of payment.--An operator shall be deemed to
20 have made a timely payment of the host municipality benefit fee
21 if all of the following are met:

22 (1) The enclosed payment is for the full amount owed
23 pursuant to this section, and no further host municipality or
24 affected municipality action is required for collection.

25 (2) The payment is accompanied by the required form and
26 such form is complete and accurate.

27 (3) The letter transmitting the payment that is received
28 by the host municipality and affected municipality is
29 postmarked by the United States Postal Service on or prior to
30 the final day on which the payment is to be received.

1 (d) Discount.--Any operator that makes a timely payment of
2 the host municipality benefit fee and the affected municipality
3 benefit fee as provided in this section shall be entitled to
4 credit and apply against the fee payable by him a discount of 1%
5 of the amount of the fee collected by him.

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

10 Section 1303. Collection and enforcement of fee.

11 (a) Interest.--If an operator fails to make a timely payment
12 of the host municipality benefit fee or the affected
13 municipality benefit fee, the operator shall pay interest on the
14 unpaid amount due at the rate established pursuant to section
15 806 of the act of April 9, 1929 (P.L.343, No.176), known as The
16 Fiscal Code, from the last day for timely payment to the date
17 paid.

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

27 (c) Assessment notices.--If the host municipality determines
28 that any operator of a municipal waste landfill or resource
29 recovery facility has not made a timely payment of the host
30 municipality benefit fee or the affected municipality benefit

1 fee, it will send a written notice for the amount of the
2 deficiency to such operator within 30 days from the date of
3 determining such deficiency. When the operator has not provided
4 a complete and accurate statement of the weight or volume of
5 solid waste received at the landfill or facility for the payment
6 period, the host municipality may estimate the weight or volume
7 in its deficiency notice.

8 (d) Constructive trust.--All host municipality benefit fees
9 or affected municipality benefit fees collected by an operator
10 and held by such operator prior to payment to the host
11 municipality or affected municipality shall constitute a trust
12 fund for the host municipality and the affected municipality,
13 and such trust shall be enforceable against such operator, its
14 representatives and any person receiving any part of such fund
15 without consideration or with knowledge that the operator is
16 committing a breach of the trust. However, any person receiving
17 payment of lawful obligation of the operator from such fund
18 shall be presumed to have received the same in good faith and
19 without any knowledge of the breach of trust.

20 (e) Manner of collection.--The amount due and owing under
21 section 1301 shall be collectible by the host municipality or
22 the affected municipality in the manner provided in section
23 1709.

24 (f) Remedies cumulative.--The remedies provided to host
25 municipalities or the affected municipalities in this section
26 are in addition to any other remedies provided at law or in
27 equity.

28 Section 1304. Records.

29 Each operator that is required to pay the host municipality
30 benefit fee or the affected municipality benefit fee shall keep

1 daily records of all deliveries of solid waste to the landfill
2 or facility, as required by the host municipality, including,
3 but not limited to, the name and address of the hauler, the
4 source of the waste, the kind of waste received and the weight
5 or volume of the waste. Such records shall be maintained in
6 Pennsylvania by the operator for no less than five years and
7 shall be made available to the host municipality for inspection
8 upon request.

9 Section 1305. Surcharge.

10 The provisions of any law to the contrary notwithstanding,
11 the operator of any municipal waste landfill or resource
12 recovery facility subject to section 1301 may collect the host
13 municipality benefit fee and the affected municipality benefit
14 fee as a surcharge on any fee schedule established pursuant to
15 law, ordinance, resolution or contract for solid waste disposal
16 or processing operations at the landfill or facility. In
17 addition, any person who collects or transports solid waste
18 subject to the host municipality benefit fee and the affected
19 municipality benefit fee to a municipal waste landfill or
20 resource recovery facility subject to section 1301 may impose a
21 surcharge on any fee schedule established pursuant to law,
22 ordinance, resolution or contract for the collection or
23 transportation of solid waste to the landfill or facility. The
24 surcharge shall be equal to the increase in processing or
25 disposal fees at the landfill or facility attributable to the
26 host municipality benefit fee. However, interest and penalties
27 on the fee under section 1303(a) and (b) may not be collected as
28 a surcharge.

29 Section 1510. Lead acid batteries.

30 * * *

1 (f) Enforcement.--The Department of Environmental
2 [Resources] Protection shall enforce this section.

3 Section 9. The act is amended by adding a section to read:
4 Section 1716. Multiple violations.

5 (a) General rule.--Any operator of a municipal waste
6 landfill that is found to have engaged in a significant
7 violation of the provisions of this act or the Solid Waste
8 Management Act on three separate occasions within a five-year
9 period shall not be granted any new permit, permit expansion or
10 permit modification by the department for a period of five
11 years. Prior to the adjudication of a third violation, the
12 department shall notify the operator of its intention to proceed
13 pursuant to this section before the Environmental Hearing Board.

14 (b) Notice.--No action may be commenced under this section
15 prior to 60 days after the department has given notice of the
16 third violation to the host municipality, to any affected
17 municipality and to any alleged violator of this act, of any
18 other environmental protection act or of the regulations or
19 orders of the department which have allegedly been violated.

20 (c) Definition.--As used in this section, the term
21 "significant violation" means a violation that may harm or
22 threaten to seriously harm the environment, harm or threaten to
23 seriously harm public health or safety, or interfere with or
24 jeopardize the integrity of the monitoring system used by an
25 agency.

26 Section 10. Section 1901 of the act is amended to read:
27 Section 1901. Report to General Assembly.

28 The Secretary of Environmental [Resources] Protection shall
29 prepare a report to the General Assembly concerning the
30 implementation of this act and the success of county and

1 municipal recycling programs. This report shall be transmitted
2 to the General Assembly no later than April 1, 1991, and shall
3 be revised, and modified if necessary, at least once every three
4 years thereafter.

5 Section 11. The amendment of sections 1111(b) and (d), 1301,
6 1302, 1303, 1304 and 1305 of the act shall only be applicable to
7 the siting of new municipal waste landfills which are issued
8 permits for operation after the effective date of this section.

9 Section 12. This act shall take effect in 60 days.