

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**SENATE BILL**

**No. 305**      Session of  
2007

INTRODUCED BY RAFFERTY, O'PAKE, STOUT, GORDNER, KITCHEN,  
FONTANA, MUSTO, RHOADES AND FERLO, MARCH 9, 2007

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, MARCH 9, 2007

AN ACT

1 Amending the act of July 7, 1980 (P.L.380, No.97), entitled "An  
2 act providing for the planning and regulation of solid waste  
3 storage, collection, transportation, processing, treatment,  
4 and disposal; requiring municipalities to submit plans for  
5 municipal waste management systems in their jurisdictions;  
6 authorizing grants to municipalities; providing regulation of  
7 the management of municipal, residual and hazardous waste;  
8 requiring permits for operating hazardous waste and solid  
9 waste storage, processing, treatment, and disposal  
10 facilities; and licenses for transportation of hazardous  
11 waste; imposing duties on persons and municipalities;  
12 granting powers to municipalities; authorizing the  
13 Environmental Quality Board and the Department of  
14 Environmental Resources to adopt rules, regulations,  
15 standards and procedures; granting powers to and imposing  
16 duties upon county health departments; providing remedies;  
17 prescribing penalties; and establishing a fund," further  
18 providing for permit and license application requirements and  
19 for enforcement orders; and providing for repeat violations.

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

22 Section 1. Section 502 of the act of July 7, 1980 (P.L.380,  
23 No.97), known as the Solid Waste Management Act, is amended to  
24 read:

25 Section 502. Permit and license application requirements.

26 (a) Application for any permit or license shall be in

1 writing, shall be made on forms provided by the department and  
2 shall be accompanied by such plans, designs and relevant data as  
3 the department may require. Such plans, designs and data shall  
4 be prepared by a registered professional engineer.

5 (b) The application for a permit to operate a hazardous  
6 waste storage, treatment or disposal facility shall also be  
7 accompanied by a form, prepared and furnished by the department,  
8 containing the written consent of the landowner to entry upon  
9 any land to be affected by the proposed facility by the  
10 Commonwealth and by any of its authorized agents prior to and  
11 during operation of the facility and for 20 years after closure  
12 of the facility, for the purpose of inspection and for the  
13 purpose of any such pollution abatement or pollution prevention  
14 activities as the department deems necessary. Such forms shall  
15 be deemed to be recordable documents and prior to the initiation  
16 of operations under the permit, such forms shall be recorded and  
17 entered into the deed book (d.b.v.) indexing system at the  
18 office of the recorder of deeds in the counties in which the  
19 area to be affected under the permit is situated.

20 (c) All records, reports, or information contained in the  
21 hazardous waste storage, treatment or disposal facility permit  
22 application submitted to the department under this section shall  
23 be available to the public; except that the department shall  
24 consider a record, report or information or particular portion  
25 thereof, confidential in the administration of this act if the  
26 applicant can show cause that the records, reports or  
27 information, or a particular portion thereof (but not emission  
28 or discharge data or information concerning solid waste which is  
29 potentially toxic in the environment), if made public, would  
30 divulge production or sales figures or methods, processes or

1 production unique to such applicant or would otherwise tend to  
2 affect adversely the competitive position of such applicant by  
3 revealing trade secrets. Nothing herein shall be construed to  
4 prevent disclosure of such report, record or information to the  
5 Federal Government or other State agencies as may be necessary  
6 for purposes of administration of any Federal or State law.

7 (d) The application for a permit shall set forth the manner  
8 in which the operator plans to comply with the requirements of  
9 the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean  
10 Streams Law," the act of May 31, 1945 (P.L.1198, No.418), known  
11 as the "Surface Mining Conservation and Reclamation Act," the  
12 act of January 8, 1960 (1959 P.L.2119, No.787), known as the  
13 "Air Pollution Control Act," and the act of November 26, 1978  
14 (P.L.1375, No.325), known as the "Dam Safety and Encroachments  
15 Act," as applicable. No approval shall be granted unless the  
16 plan provides for compliance with the statutes hereinabove  
17 enumerated, and failure to comply with the statutes hereinabove  
18 enumerated during construction and operation or thereafter shall  
19 render the operator liable to the sanctions and penalties  
20 provided in this act for violations of this act and to the  
21 sanctions and penalties provided in the statutes hereinabove  
22 enumerated for violations of such statutes. Such failure to  
23 comply shall be cause for revocation of any approval or permit  
24 issued by the department to the operator. Compliance with the  
25 provisions of this subsection and with the provisions of this  
26 act and the provisions of the statutes hereinabove enumerated  
27 shall not relieve the operator of the responsibility for  
28 complying with the provisions of all other applicable statutes,  
29 including, but not limited to the act of July 17, 1961 (P.L.659,  
30 No.339), known as the "Pennsylvania Bituminous Coal Mine Act,"

1 the act of November 10, 1965 (P.L.721, No.346), known as the  
2 "Pennsylvania Anthracite Coal Mine Act," and the act of July 9,  
3 1976 (P.L.931, No.178), entitled "An act providing emergency  
4 medical personnel; employment of emergency medical personnel and  
5 emergency communications in coal mines."

6 (e) The application for a permit shall certify that the  
7 operator has in force, or will, prior to the initiation of  
8 operations under the permit have in force, an ordinary public  
9 liability insurance policy in an amount to be prescribed by  
10 rules and regulations promulgated hereunder.

11 (e.1) (1) The application for a new permit or a permit  
12 modification that would result in an increased average or  
13 maximum daily waste volume, increased disposal capacity or  
14 expansion of the permit area shall certify that the applicant  
15 does not have any outstanding violations of this act at the  
16 facility that is the subject of the application and that have  
17 not been corrected as of the date of filing of the  
18 application. The permit application shall also certify that  
19 the applicant has complied with any enforcement orders issued  
20 by the department. The department shall not accept an  
21 application for review until it verifies that the application  
22 contains the certification required by this section. Failure  
23 to so certify shall be grounds to return the application to  
24 the applicant without action. Submission of a false  
25 certification shall be cause for denial of the application  
26 and may constitute cause for the revocation or modification  
27 of any approval or permit issued by the department to the  
28 applicant in reliance on the false certification.

29 (2) A violation is outstanding within the meaning of  
30 this section if the department has issued an enforcement

1 order under section 602, the violation cited in the  
2 enforcement order is not corrected as of the date of the  
3 filing of the application and the enforcement order has not  
4 been appealed to the Environmental Hearing Board.

5 (3) A violation is not outstanding within the meaning of  
6 this section if the applicant has entered into an agreement  
7 with the department addressing the violation and is in  
8 compliance with the agreement as of the date of the filing of  
9 the application.

10 (f) The department may require such other information, and  
11 impose such other terms and conditions, as it deems necessary or  
12 proper to achieve the goals and purposes of this act.

13 (g) The department, upon receipt of an application for a  
14 permit, shall give written notice to each and every municipality  
15 in which the proposed hazardous waste facility will be located.

16 Section 2. Section 602(b) of the act, amended July 11, 1989  
17 (P.L.331, No.55), is amended to read:

18 Section 602. Enforcement orders.

19 \* \* \*

20 (b) If the department finds that the storage, collection,  
21 transportation, processing, treatment, beneficial use or  
22 disposal of solid waste is causing pollution of the air, water,  
23 land or other natural resources of the Commonwealth or is  
24 creating a public nuisance, the department [may] shall either  
25 institute an action under section 604 or order the person or the  
26 municipality to alter its storage, collection, transportation,  
27 processing, treatment, beneficial use or disposal systems to  
28 provide such storage, collection, transportation, processing,  
29 treatment, beneficial use or disposal systems as will prevent  
30 pollution and public nuisances. Such order shall specify the

1 length of time after receipt of the order within which the  
2 facility or area shall be repaired, altered, constructed or  
3 reconstructed.

4 \* \* \*

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

6 Section 607.1. Repeat violations.

7 (a) The department may impose an additional penalty of up to  
8 \$50,000 per violation upon any person or municipality that  
9 demonstrates a pattern of multiple violations of a single  
10 regulation occurring at a single facility. A pattern of multiple  
11 violations exists when three or more notices of violation are  
12 issued for the same regulation for a single facility within a  
13 period of 90 days.

14 (b) In determining the amount of a penalty to be assessed  
15 under this section, the department shall consider the severity  
16 of the violations, the duration of the violations and the  
17 culpability of the person or municipality.

18 (c) An assessment of a penalty under this section is final  
19 and appealable.

20 (d) Penalties imposed by the department under this section  
21 upon any person or municipality that demonstrates a pattern of  
22 multiple violations of section 610 shall not be waived by the  
23 department. Nothing in this section shall be construed to limit  
24 or otherwise restrict the department in settling claims against  
25 violators under this section or section 602.

26 (e) This section shall not preclude the department from  
27 approving a community environmental project in lieu of all or  
28 part of a penalty assessed under this section.

29 Section 4. This act shall take effect in 60 days.