

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1768 Session of 2009

INTRODUCED BY WANSACZ, GOODMAN, EACHUS, CONKLIN, WILLIAMS, MUNDY, SIPTROTH, CARROLL AND PASHINSKI, JUNE 24, 2009

SENATOR M. WHITE, ENVIRONMENTAL RESOURCES AND ENERGY, IN SENATE, AS AMENDED, SEPTEMBER 30, 2009

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," further providing for definitions,
16 and further providing for powers and duties of municipalities
17 other than counties, for site limitation, for records, AND
18 FOR RECYCLING FEE FOR MUNICIPAL WASTE LANDFILLS AND RESOURCE
19 RECOVERY FACILITIES; PROVIDING FOR USED TIRE PILE
20 REMEDIATION; AND FURTHER PROVIDING for information provided
21 to host municipalities, for joint inspections with host
22 municipalities, for claims resulting from pollution
23 occurrences, for independent evaluation of permit
24 applications, AND for host municipality benefit fee and for
25 records.

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

28 Section 1. Section 103 of the act of July 28, 1988 (P.L.556,

1 No.101), known as the Municipal Waste Planning, Recycling and
2 Waste Reduction Act, is amended by adding a definition to read:
3 Section 103. Definitions.

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

7 * * *

8 "Adjacent municipality." A municipality other than a county
9 that:

10 (1) is located within one mile of the footprint of a
11 permit area of a proposed new municipal waste landfill or
12 resource recovery facility, or of a proposed expansion of a
13 municipal waste landfill or resource recovery facility; and

14 (2) has notified the department in writing of its
15 intention to be considered an adjacent municipality under
16 this act.

17 * * *

18 ~~Section 2. Sections 304(b), 511(a), 704 and 1101 of the act~~ ←
19 ~~are amended to read:~~

20 ~~Section 304. Powers and duties of municipalities other than~~
21 ~~counties.~~

22 * * *

23 ~~(b) Ordinances.~~

24 ~~(1) In carrying out its duties under this section, a~~
25 ~~municipality other than a county may adopt resolutions,~~
26 ~~ordinances, regulations and standards for the recycling,~~
27 ~~transportation, storage and collection of municipal wastes or~~
28 ~~source separated recyclable materials, which shall not be~~
29 ~~less stringent than, and not in violation of or inconsistent~~
30 ~~with, the provisions and purposes of the Solid Waste~~

1 ~~Management Act, this act and the regulations promulgated~~
2 ~~pursuant thereto.~~

3 ~~(2) The host municipality shall have the authority to~~
4 ~~adopt reasonable ordinances concerning the hours and days~~
5 ~~during which vehicles may deliver waste to the facility and~~
6 ~~the routing of traffic on public roads to the facility. An~~
7 ~~adjacent municipality shall have the authority to adopt~~
8 ~~reasonable ordinances concerning the hours and days during~~
9 ~~which vehicles delivering waste to the facility may travel on~~
10 ~~public roads within the adjacent municipality and concerning~~
11 ~~the routing of traffic within the adjacent municipality. Such~~
12 ~~ordinances may be in addition to, but not less stringent~~
13 ~~than, not inconsistent with and not in violation of, any~~
14 ~~provision of the Solid Waste Management Act, any regulation~~
15 ~~promulgated pursuant to that act, any order issued under that~~
16 ~~act, or any permit issued pursuant to that act. Such~~
17 ~~ordinances found to be inconsistent and not in substantial~~
18 ~~conformity with this paragraph shall be superseded. Appeals~~
19 ~~under this paragraph may be brought before a court of~~
20 ~~competent jurisdiction.~~

21 ~~* * *~~

22 ~~Section 511. Site limitation.~~

23 ~~(a) General rule. The department shall not issue a permit~~
24 ~~for, nor allow the operation of, a new municipal waste landfill,~~
25 ~~a new commercial residual waste treatment facility or a new~~
26 ~~resource recovery facility within 300 yards of a building which~~
27 ~~is owned by a school district or a parochial school and used for~~
28 ~~instructional purposes, parks or playgrounds existing prior to~~
29 ~~the date the department has received an administratively~~
30 ~~complete application for a permit for such facilities. A new~~

~~1 municipal waste, residual waste or construction and demolition
2 waste landfill may not be permitted to operate within one mile
3 of a reservoir that serves as a water source for a community
4 water system, as defined in section 3 of the act of May 1, 1984
5 (P.L.206, No.43), known as the Pennsylvania Safe Drinking Water
6 Act. This subsection shall not affect any modification,
7 extension, addition or renewal of existing permitted facilities.~~

8 * * *

9 Section 704. Records.

10 Each operator shall keep daily records of all deliveries of
11 solid waste to the facility as required by the department,
12 including, but not limited to, the name and address of the
13 hauler, the source of the waste, the kind of waste received and
14 the weight or volume of the waste. A copy of these records shall
15 be maintained at the site by the operator for no less than five
16 years and shall be made available to the department [and], the
17 host municipality and any adjacent municipality for inspection,
18 upon request.

19 SECTION 2. SECTION 701(D) OF THE ACT, AMENDED NOVEMBER 9, ←
20 2006 (P.L.1347, NO.140), IS AMENDED TO READ:

21 SECTION 701. RECYCLING FEE FOR MUNICIPAL WASTE LANDFILLS AND
22 RESOURCE RECOVERY FACILITIES.

23 * * *

24 (D) SUNSET FOR FEE.--NO FEE SHALL BE IMPOSED UNDER THIS
25 SECTION ON AND AFTER JANUARY 1, [2012] 2020.

26 SECTION 3. THE ACT IS AMENDED BY ADDING A SECTION TO READ:

27 SECTION 707. USED TIRE PILE REMEDIATION.

28 (A) FUNDING TRANSFER.--BEGINNING IN FISCAL YEAR 2009-2010,
29 THROUGH AND INCLUDING FISCAL YEAR 2012-2013, \$1,250,000 SHALL BE
30 TRANSFERRED FROM THE RECYCLING FUND CREATED UNDER SECTION 706 TO

1 THE USED TIRE PILE REMEDIATION RESTRICTED ACCOUNT ESTABLISHED
2 UNDER SECTION 110 OF THE ACT OF DECEMBER 19, 1996 (P.L.1478,
3 NO.190), ENTITLED "AN ACT RELATING TO THE RECYCLING AND REUSE OF
4 WASTE TIRES; PROVIDING FOR THE PROPER DISPOSAL OF WASTE TIRES
5 AND THE CLEANUP OF STOCKPILED TIRES; AUTHORIZING INVESTMENT TAX
6 CREDITS FOR UTILIZING WASTE TIRES; PROVIDING REMEDIATION GRANTS
7 FOR THE CLEANUP OF TIRE PILES AND FOR POLLUTION PREVENTION
8 PROGRAMS FOR SMALL BUSINESS AND HOUSEHOLDS; ESTABLISHING THE
9 SMALL BUSINESS AND HOUSEHOLD POLLUTION PREVENTION PROGRAM AND
10 MANAGEMENT STANDARDS FOR SMALL BUSINESS HAZARDOUS WASTE;
11 PROVIDING FOR A HOUSEHOLD HAZARDOUS WASTE PROGRAM AND FOR GRANT
12 PROGRAMS; MAKING APPROPRIATIONS; AND MAKING REPEALS."

13 (B) USE OF FUNDING.--FOR FISCAL YEAR 2009-2010 THROUGH
14 FISCAL YEAR 2012-2013 MONEYS IN THE ACCOUNT SHALL BE USED FOR
15 THE FOLLOWING PURPOSES:

16 (1) THE REMEDIATION OF WASTE TIRE PILES ON THE PRIORITY
17 ENFORCEMENT LIST MAINTAINED BY THE DEPARTMENT PURSUANT TO
18 SECTION 107(A) AND (B) OF THE ACT OF DECEMBER 19, 1996
19 (P.L.1478, NO.190).

20 (2) THE REMEDIATION OF WASTE TIRE PILES ON THE LIST OF
21 ADDITIONAL WASTE TIRE SITES MAINTAINED BY THE DEPARTMENT
22 PURSUANT TO SECTION 107(D) OF THE ACT OF DECEMBER 19, 1996
23 (P.L.1478, NO.190).

24 (3) FOR THE AWARD OF GRANTS PURSUANT TO SECTION 111 OF
25 THE ACT OF DECEMBER 19, 1996 (P.L.1478, NO.190) FOR
26 REMEDICATION OF WASTE TIRE PILES AS PROVIDED IN THIS
27 SUBSECTION OR FOR ACTIVITIES AUTHORIZED UNDER THAT SECTION
28 WHICH THE DEPARTMENT DETERMINES WILL ASSIST WITH THE
29 REMEDICATION OF WASTE TIRE PILES AS PROVIDED IN THIS
30 SUBSECTION.

1 (C) ANNUAL REPORT BY DEPARTMENT.--NO LATER THAN DECEMBER 31,
2 2010, AND NO LATER THAN EACH DECEMBER 31 THEREAFTER, THE
3 DEPARTMENT SHALL PROVIDE A REPORT TO THE ENVIRONMENTAL RESOURCES
4 AND ENERGY COMMITTEE OF THE SENATE, THE APPROPRIATIONS COMMITTEE
5 OF THE SENATE, THE ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE
6 OF THE HOUSE OF REPRESENTATIVES AND THE APPROPRIATIONS COMMITTEE
7 OF THE HOUSE OF REPRESENTATIVES ON THE USED TIRE PILE
8 REMEDICATION RESTRICTED ACCOUNT AND THE REMEDIATION OF USED TIRE
9 PILES. THE LAST REPORT TO BE SUBMITTED BY THE DEPARTMENT
10 PURSUANT TO THIS SUBSECTION SHALL BE SUBMITTED NO LATER THAN
11 DECEMBER 31, 2014. WITHIN SEVEN DAYS FOLLOWING SUBMISSION OF
12 EACH REPORT TO THE SENATE AND HOUSE COMMITTEES, THE DEPARTMENT
13 SHALL POST THE REPORT ON THE DEPARTMENT'S PUBLICLY ACCESSIBLE
14 INTERNET WEBSITE. THE REPORT SHALL INCLUDE:

15 (1) THE CURRENT BALANCE OF THE ACCOUNT AND THE PROJECTED
16 BALANCE OF THE ACCOUNT AT THE END OF THE FISCAL YEAR FOR
17 WHICH THE DEPARTMENT'S BUDGET IS BEING SUBMITTED.

18 (2) A LISTING OF WASTE TIRE PILES REMEDIATED OR TO BE
19 REMEDIED PURSUANT TO SUBSECTION (B) DURING THE PRIOR FISCAL
20 YEAR AND CUMULATIVELY SINCE THE EFFECTIVE DATE OF THIS
21 SUBSECTION.

22 (3) THOSE WASTE TIRE PILES WHICH THE DEPARTMENT EXPECTS
23 TO REMEDIATE PURSUANT TO SUBSECTION (B) DURING THE FISCAL
24 YEAR FOR WHICH ITS BUDGET IS BEING SUBMITTED AND THE
25 PROJECTED COST FOR REMEDIATION OF THOSE WASTE TIRE PILES.

26 (4) THOSE WASTE TIRE PILES WHICH WILL REMAIN TO BE
27 REMEDIED PURSUANT TO SUBSECTION (B) AND THE PROJECTED COST
28 FOR REMEDIATION OF THOSE WASTE TIRE PILES.

29 SECTION 4. SECTION 1101 OF THE ACT IS AMENDED TO READ:
30 Section 1101. Information provided to host municipalities and

1 adjacent municipalities.

2 (a) Departmental information.--The department will provide
3 all of the following information to the governing body of host
4 municipalities and adjacent municipalities for municipal waste
5 landfills and resource recovery facilities:

6 (1) Copies of each department inspection report for such
7 facilities under the Solid Waste Management Act, the act of
8 June 22, 1937 (P.L.1987, No.394), known as The Clean Streams
9 Law, the act of January 8, 1960 (1959 P.L.2119, No.787),
10 known as the Air Pollution Control Act, and the act of
11 November 26, 1978 (P.L.1375, No.325), known as the Dam Safety
12 and Encroachments Act, within five working days after the
13 preparation of such reports.

14 (2) Prompt notification of all department enforcement or
15 emergency actions for such facilities, including, but not
16 limited to, abatement orders, cessation orders, proposed and
17 final civil penalty assessments, and notices of violation.

18 (3) Copies of all air and water quality monitoring data
19 collected by the department at such facilities, within five
20 working days after complete laboratory analysis of such data
21 becomes available to the department.

22 (b) Operator information.--Every operator of a municipal
23 waste landfill or resource recovery facility shall provide to
24 the host municipality and adjacent municipalities copies of all
25 air and water quality monitoring data, as required by the
26 department for the facility, conducted by or on behalf of the
27 operator, within five days after such data becomes available to
28 the operator.

29 (c) Public information.--All information provided to the
30 host municipality and adjacent municipalities under this section

1 shall be made available to the public for review upon request.

2 (d) Information to county.--If the host municipality owns or
3 operates the municipal waste landfill or resource recovery
4 facility, or proposes to own or operate such landfill or
5 facility, the information required by this section shall be
6 provided to the county within which the landfill or facility is
7 located or proposed to be located and to adjacent municipalities
8 instead of the host municipality.

9 (e) Sign on vehicle.--A vehicle or conveyance used for the
10 transporting of solid waste shall bear the name and business
11 address of the person or municipality which owns the vehicle or
12 conveyance and the specific type of solid waste transported by
13 the vehicle or conveyance. All signs shall have lettering which
14 is at least six inches in height.

15 Section 3 5. Section 1102 of the act, repealed in part July ←
16 11, 1996 (P.L.619, No.105), is amended to read:

17 Section 1102. Joint inspections with host municipalities and
18 adjacent municipalities.

19 (a) Training of inspectors.--

20 (1) The department shall establish and conduct a
21 training program to certify host municipality and adjacent
22 municipality inspectors for municipal waste landfills and
23 resource recovery facilities. This program will be available
24 to no more than two persons who have been designated in
25 writing by the host municipality or adjacent municipality.
26 The department shall [hold] offer training programs at least
27 twice a year. The department shall certify host municipality
28 and adjacent municipality inspectors upon completion of the
29 training program and satisfactory performance in an
30 examination administered by the department.

1 (2) Certified host municipal inspectors and adjacent
2 municipal inspectors are authorized to enter property,
3 inspect only those records required by the department, take
4 samples and conduct inspections in accordance with department
5 regulations as applicable to department inspectors. However,
6 certified host municipal inspectors and adjacent municipal
7 inspectors may not issue orders except as provided in this
8 subsection. A certified host municipal inspector or adjacent
9 municipal inspector may order the operator of a facility to
10 cease any operation or activity at the facility which
11 constitutes an immediate threat to public health and safety
12 and which represents a violation of the Solid Waste
13 Management Act, the regulations promulgated under that act,
14 any order issued under that act or the terms or conditions of
15 a permit issued under that act. The order shall expire within
16 two hours unless the inspector notifies the department and
17 the governing body of the host municipality and adjacent
18 municipality. The department may, after conducting an
19 inspection, supersede the inspector's order by issuing an
20 order of its own which vacates or modifies the terms of the
21 inspector's order. If the department does not supersede the
22 order, the order shall expire after 24 hours unless otherwise
23 extended, continued or modified by a court pursuant to
24 section 1703(b).

25 (4) The department may decertify host municipality or
26 adjacent municipality inspectors pursuant to regulations
27 promulgated by the Environmental Quality Board.

28 (b) Departmental information.--

29 (1) Whenever any host municipality or adjacent
30 municipality presents information to the department which

1 gives the department reason to believe that any municipal
2 waste landfill or resource recovery facility is in violation
3 of any requirement of the act of June 22, 1937 (P.L.1987,
4 No.394), known as The Clean Streams Law, the act of January
5 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution
6 Control Act, the act of November 26, 1978 (P.L.1375, No.325),
7 known as the Dam Safety and Encroachments Act, the Solid
8 Waste Management Act, any regulation promulgated pursuant
9 thereto, any order issued pursuant thereto or the condition
10 of any permit issued pursuant thereto, the department will
11 promptly conduct an inspection of such facility.

12 (2) The department will notify the host municipality and
13 adjacent municipality of this inspection and will allow a
14 certified municipal inspector from the host municipality and
15 adjacent municipality to accompany the inspector during the
16 inspection.

17 (3) If there is not sufficient information to give the
18 department reasons to believe that there is a violation, the
19 department will provide a written explanation to the host
20 municipality and adjacent municipality of its decision not to
21 conduct an inspection within 30 days of the request for
22 inspection.

23 (4) Upon written request of a host municipality or
24 adjacent municipality to the department, the department will
25 allow a certified inspector of such municipality to accompany
26 department inspectors on routine inspections of municipal
27 waste landfills and resource recovery facilities.

28 (c) County involvement.--If the host municipality owns or
29 operates the municipal waste landfill or resource recovery
30 facility, the training and inspection requirements of this

1 section shall be available to the county within which the
2 landfill or facility is located and to adjacent municipalities
3 instead of the host municipality.

4 Section 4 6. Sections 1107(c) and 1110 of the act are ←
5 amended to read:

6 Section 1107. Claims resulting from pollution occurrences.

7 * * *

8 (c) Liability limited.--A host municipality [or], adjacent
9 municipality, county or municipality within the planning area
10 may not be held liable for bodily injury or property damage
11 resulting from pollution occurrences solely by reasons of
12 participation in the preparation or adoption of a county or
13 municipal solid waste plan. Nothing herein shall be construed to
14 prevent any host municipality, adjacent municipality, county or
15 municipality within the planning area from obtaining or giving
16 such indemnities as may be appropriate in connection with the
17 ownership, operation or control of a municipal solid waste
18 facility.

19 * * *

20 Section 1110. Independent evaluation of permit applications.

21 At the request of a host municipality or adjacent
22 municipality, the department may reimburse a host municipality
23 or adjacent municipality for costs incurred for an independent
24 permit application review, by a professional engineer who is
25 licensed in this Commonwealth and who has previous experience in
26 preparing such permit applications, of an application under the
27 Solid Waste Management Act, for a new municipal waste landfill
28 or resource recovery facility or that would result in additional
29 capacity for a municipal waste landfill or resource recovery
30 facility. Reimbursement shall not exceed \$10,000 per complete

1 application. AN ADJACENT MUNICIPALITY WHICH CHOOSES TO CONDUCT ←
2 AN INDEPENDENT EVALUATION OF A PERMIT APPLICATION MUST DO SO
3 WITHIN 60 DAYS OF THE DEPARTMENT'S RECEIPT OF THE PERMIT
4 APPLICATION. NOTWITHSTANDING THE PROVISIONS OF THIS SUBSECTION,
5 AN ADJACENT MUNICIPALITY AFFECTED BY AN APPLICATION ALREADY
6 RECEIVED BY THE DEPARTMENT AS OF THE EFFECTIVE DATE OF THIS
7 SECTION SHALL HAVE 60 DAYS TO CONDUCT AN INDEPENDENT EVALUATION.
8 NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO ALTER AN
9 EXISTING PERMIT REVIEW TIMEFRAME THAT WAS NEGOTIATED PRIOR TO
10 THE EFFECTIVE DATE OF THIS SECTION.

11 Section 5 7. Chapter 13 heading of the act is amended to ←
12 read:

13 CHAPTER 13

14 [HOST MUNICIPALITY] BENEFIT FEE

15 Section 6. ~~Sections 1301 and 1304 of the act are~~ 8. SECTION ←
16 1301 OF THE ACT IS amended to read:

17 Section 1301. [Host municipality benefit] Benefit fee.

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

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

7 (c) Municipal options.--Nothing in this section or section
8 1302 shall prevent a host municipality from receiving a higher
9 fee or receiving the fee in a different form or at different
10 times than provided in this section and section 1302, if the
11 host municipality and the operator of the municipal waste
12 landfill or resource recovery facility agree in writing.

13 (d) Supersede.--The fee imposed by this section shall
14 preempt and supersede any tax imposed on each municipal waste
15 landfill or resource recovery facility under the act of December
16 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling
17 Act, which is in excess of the amount imposed on or before
18 December 31, 1987.

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

25 (f) Adjacent municipality options.--Nothing in this act may
26 prevent an adjacent municipality from negotiating a fee or fee
27 in a different form if the adjacent municipality and the
28 operator of the municipal waste landfill or resource recovery
29 facility agree in writing. Any adjacent municipality which has
30 negotiated a fee as of the effective date of this act may

1 require that the fee be continued.

2 ~~Section 1304. Records.~~ ←

3 ~~Each operator that is required to pay the host municipality~~
4 ~~benefit fee shall keep daily records of all deliveries of solid~~
5 ~~waste to the landfill or facility, as required by the host~~
6 ~~municipality, including, but not limited to, the name and~~
7 ~~address of the hauler, the source of the waste, the kind of~~
8 ~~waste received and the weight or volume of the waste. Such~~
9 ~~records shall be maintained in Pennsylvania by the operator for~~
10 ~~no less than five years and shall be made available to the host~~
11 ~~municipality and adjacent municipalities for inspection upon~~
12 ~~request.~~

13 ~~Section 7 9. This act shall take effect in 60 days~~ ←

14 IMMEDIATELY. ←