

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 803 Session of 2009

INTRODUCED BY BOSCOLA, FONTANA AND RAFFERTY, APRIL 23, 2009

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, APRIL 23, 2009

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," adding
 18 definitions; and further providing for submission of plans
 19 and permits, for permits and licenses required, for granting
 20 of permits and licenses and for bonds.

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

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

26 Section 103. Definitions.

27 The following words and phrases when used in this act shall

1 have, unless the context clearly indicates otherwise, the
2 meanings given to them in this section:

3 * * *

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

8 * * *

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

12 * * *

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

15 Section 502. Permit and license application requirements.

16 * * *

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

22 * * *

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

25 * * *

26 (b.1) No permit shall be issued for the siting of a new
27 municipal waste landfill or the expansion of an existing
28 municipal waste landfill in a municipality where a referendum
29 has been conducted pursuant to section 504.1 and the electorate
30 has voted against the siting of a new municipal waste landfill

1 or the expansion of an existing municipal waste landfill.

2 * * *

3 (c.1) In carrying out the provisions of this act, the
4 department may deny, suspend, modify or revoke any permit or
5 license if it finds that the applicant, permittee or licensee
6 has failed or continues to fail to comply with the provisions of
7 75 Pa.C.S. Pt. IV (relating to vehicle characteristics).

8 * * *

9 (f) (1) Any permit issued under this act for the operation
10 of a municipal waste landfill shall be issued for a fixed
11 term consistent with the approved operation and design plans
12 of a municipal waste landfill and may not exceed ten years.
13 No municipal waste may be disposed of or processed at such a
14 landfill after the expiration of the permit term. Expiration
15 of the permit term shall not limit the operator's
16 responsibility for complying with the provisions under this
17 act, the environmental protection acts, regulations
18 thereunder or the terms or conditions of the permit.

19 (2) The department shall, from time to time, but at
20 intervals not to exceed two years, review a permit issued to
21 a municipal waste landfill under this act. In its review, the
22 department shall evaluate the permit to determine whether it
23 reflects currently applicable operating requirements as well
24 as current technology and management practices. The
25 department may require modification, suspension or revocation
26 of the permit when necessary to carry out the purposes of
27 this act or the environmental protection acts.

28 Section 3. The act is amended by adding a section to read:
29 Section 504.1. Referendum on siting of municipal waste
30 landfills or expansion of existing municipal waste

1 landfills.

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

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

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

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

23 Section 4. Section 505(a), (b) and (e) of the act are
24 amended and the section is amended by adding a subsection to
25 read:

26 Section 505. Bonds.

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

1 waste storage, treatment or disposal facility for which a permit
2 is required by this section shall file with the department a
3 bond for the land affected by such facility on a form prescribed
4 and furnished by the department. Such bond shall be payable to
5 the Commonwealth and conditioned so that the operator shall
6 comply with the requirements of this act, the act of June 22,
7 1937 (P.L.1987, No.394), known as "The Clean Streams Law," the
8 act of May 31, 1945 (P.L.1198, No.418), known as the "Surface
9 Mining Conservation and Reclamation Act," the act of January 8,
10 1960 (1959 P.L.2119, No.787), known as the "Air Pollution
11 Control Act," and the act of November 26, 1978 (P.L.1375,
12 No.325), known as the "Dam Safety and Encroachments Act." The
13 department may require additional bond amounts for the permitted
14 areas should such an increase be determined by the department to
15 be necessary to meet the requirements of this act. The amount of
16 the bond required shall be in an amount determined by the
17 secretary based upon the total estimated cost to the
18 Commonwealth of completing final closure according to the permit
19 granted to such facility and such measures as are necessary to
20 prevent adverse effects upon the environment; such measures
21 include but are not limited to satisfactory monitoring, post-
22 closure care, and remedial measures. The bond amount shall
23 reflect the additional cost to the Commonwealth which may be
24 entailed by being required to bring personnel and equipment to
25 the site. All permits shall be bonded for at least [\$10,000]
26 \$50,000. Liability under such bond shall be for the duration of
27 the operation, and for a period of up to [ten] 15 full years
28 after final closure of the permit site. Such bond shall be
29 executed by the operator and a corporate surety licensed to do
30 business in the Commonwealth and approved by the secretary:

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

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

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

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

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

11 * * *

12 (e) Prior to the issuance of any license for the
13 transportation of hazardous waste, the applicant for a license
14 shall file with the department a collateral bond on a form
15 prescribed and furnished by the department. Such bond shall be
16 payable to the Commonwealth and conditioned upon compliance by
17 the licensee with every requirement of this act, rule and
18 regulation of the department, order of the department and term
19 and condition of the license. The amount of the bond required
20 shall be in an amount determined by the secretary, but in an
21 amount no less than [~~\$10,000~~] \$50,000. The department may
22 require additional bond amounts if the department determines
23 such additional amounts are necessary to guarantee compliance
24 with this act. The licensee may elect to deposit cash or
25 automatically renewable irrevocable letters of credit which are
26 terminable only upon 90 days written notice to the operator and
27 the department, or negotiable bonds of the United States
28 Government or the Commonwealth of Pennsylvania, the Pennsylvania
29 Turnpike Commission, the General State Authority, the State
30 Public School Building Authority, or any municipality within the

1 Commonwealth. No corporate surety bond is authorized by this
2 subsection. The cash amount of such deposit, irrevocable letters
3 of credit, or market value of such securities shall be equal at
4 least to the sum of the bond. The secretary shall, upon receipt
5 of any such deposit of cash or negotiable bonds, immediately
6 place the same with the State Treasurer, whose duty it shall be
7 to receive and hold the same in the name of the Commonwealth, in
8 trust, for the purposes for which such deposit is made. The
9 State Treasurer shall at all times be responsible for the
10 custody and safekeeping of such deposits. The licensee making
11 the deposit shall be entitled from time to time to demand and
12 receive from the State Treasurer, on the written order of the
13 secretary, the whole or any portion of any collateral so
14 deposited, upon depositing with him, in lieu thereof, other
15 collateral of the classes herein specified having a market value
16 at least equal to the sum of the bond, also to demand, receive
17 and recover the interest and income from said negotiable bonds
18 as the same becomes due and payable: Provided, however, That
19 where negotiable bonds, deposited as aforesaid, mature or are
20 called, the State Treasurer, at the request of the licensee,
21 shall convert such negotiable bonds into such other negotiable
22 bonds of the classes herein specified as may be designated by
23 the licensee: And provided further, That where notice of intent
24 to terminate a letter of credit is given, the department shall,
25 after 30 days written notice to the licensee and in the absence
26 of a replacement of such letter of credit within such 30-day
27 period by the licensee with other acceptable bond guarantees
28 provided herein, draw upon and convert such letter of credit
29 into cash and hold it as a collateral bond guarantee. Liability
30 under such bond shall be for the duration of the license and for

1 a period of one year after the expiration of the license.

2 * * *

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