

No. 1988-93

AN ACT

HB 1387

Requiring the development of the Pennsylvania Infectious and Chemotherapeutic Wastes Plan prior to the issuance of permits for infectious and chemotherapeutic wastes incinerators and disposal facilities; and providing penalties.

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

Section 1. Findings.

The General Assembly finds that the legitimate public health concerns of the Commonwealth require the review and adoption of regulations providing standards for the collection, transportation, processing, storage and incineration or other disposal of infectious and chemotherapeutic wastes. The public health, safety and welfare will be served by the development and implementation of a comprehensive, Statewide plan and regulation addressing the present and future needs of this Commonwealth with regard to the incineration and disposal of infectious and chemotherapeutic wastes as well as by the acknowledgment of the public's need for medical treatment and diagnosis at hospitals and supporting clinical testing laboratories, which necessarily generate infectious and chemotherapeutic wastes while furnishing such needed service. The General Assembly also finds that the future construction and operation of facilities proposed to be used for the incineration and disposal of infectious or chemotherapeutic wastes should comply and conform with the aforementioned regulations and Statewide plan. The General Assembly further finds that infectious and chemotherapeutic wastes by their very nature cannot be recycled and that such wastes are best managed at the place of generation with a minimum of transportation through this Commonwealth and exposure to the public and that such wastes are best managed, processed and disposed of and rendered harmless by means of current state-of-the-art high-temperature incineration.

Section 2. Duties and responsibilities of the Department of Environmental Resources.

(a) Comprehensive plan.—The Department of Environmental Resources, over a period of not less than one year, shall conduct a thorough study and an investigation of infectious and chemotherapeutic wastes and prepare a Pennsylvania Infectious and Chemotherapeutic Wastes Plan addressing the following issues:

- (1) The determination of present and projected volumes of infectious and chemotherapeutic wastes which will be produced in this Commonwealth as well as the market and demand for importation of such wastes from neighboring states and facilities for the treatment, storage and disposal of such wastes.

(2) The adequacy of the present number of facilities in this Commonwealth for the incineration or other disposal of infectious or chemotherapeutic wastes and the projected need for additional commercial facilities, including commercial incinerators.

(3) The geographical distribution of existing and currently, or subsequently, proposed commercial facilities for the incineration or other disposal of infectious or chemotherapeutic wastes, based on factors such as economic feasibility, transportation concerns and the proximity of other waste disposal facilities.

(4) The policy criteria required for siting of commercial facilities for the incineration or other disposal of infectious or chemotherapeutic wastes, including material demand, transportation access and an enforcement strategy addressing both the in-State and out-of-State sources.

(b) Regulations and standards.—In addition to preparing a comprehensive plan as provided for in subsection (a), the Department of Environmental Resources shall review and revise existing regulations and standards, under section 4, relating to infectious and chemotherapeutic wastes within one year of the effective date of this act and shall propose, under the authority of the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act, or the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, such additional regulations as may be necessary or appropriate to accomplish the purposes of this act. They shall include, but not be limited to:

(1) Regulations governing the collection, transportation, processing, storage and incineration and disposal of infectious and chemotherapeutic wastes and the siting of commercial infectious and chemotherapeutic waste management facilities.

(2) The best available technology standards for air quality control of emissions from new onsite facilities and commercial facilities and reasonably available technology control standards for air quality control of emissions from existing onsite facilities and commercial facilities to be used for the incineration of infectious or chemotherapeutic wastes.

(3) Regulations governing liability insurance requirements and emergency planning.

(c) Manifest system.—It is unlawful under the Solid Waste Management Act and this act for a person or municipality who generates, transports, stores, processes or disposes of infectious or chemotherapeutic wastes to fail to use a manifest system required by the department to assure that all infectious and chemotherapeutic wastes generated are designated for processing, storage or disposal facilities approved by the department. The transporter of infectious or chemotherapeutic wastes shall transport the waste to a facility permitted to receive the waste or to an out-of-State facility designated on the manifest.

(d) License for transporters.—It is unlawful under the Solid Waste Management Act and this act for a person or municipality to transport infectious or chemotherapeutic waste unless such person or municipality has first obtained a license from the department. The department may, by regulation,

exempt persons or municipalities transporting small quantities of infectious or chemotherapeutic waste from the requirements of this subsection.

(e) *Development of plan.*—Within 14 months of the effective date of this act, the Department of Environmental Resources shall present the comprehensive plan referred to in subsection (a) to the Environmental Quality Board. This comprehensive plan shall be prepared only after the Department of Environmental Resources has conducted at least one public hearing on the issues to be addressed in the plan.

Section 3. Permitting process.

(a) *Compliance with plan.*—Except as provided in subsection (b), the issuance of any permit under the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act, or the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, for the construction or operation of any commercial facility for the incineration or disposal of infectious or chemotherapeutic wastes by the Department of Environmental Resources shall take place only after the adoption of and shall be consistent with the Pennsylvania Infectious and Chemotherapeutic Wastes Plan.

(b) *Interim permits.*—After the effective date of this act and prior to the adoption of a plan by the Environmental Quality Board as provided for in section 4, the Department of Environmental Resources shall have the authority to issue or reissue any required permit or permits for the following purposes:

(1) The operation of any facility for the incineration of infectious or chemotherapeutic wastes, provided that the facility for which the permit or permits are issued or reissued was in existence and had been in operation on or before the effective date of this act or that the facility for which the permit or permits are issued or reissued is or will be an onsite facility managing wastes generated by that facility.

(2) An onsite incineration facility for infectious or chemotherapeutic wastes for which permits deemed complete by the department have been filed on the effective date of this act.

Section 4. Powers and duties of the Environmental Quality Board.

(a) *Plan.*—Within 90 days of the receipt of the comprehensive plan from the Department of Environmental Resources, the Environmental Quality Board shall have the power and its duty shall be to adopt a Pennsylvania Infectious and Chemotherapeutic Wastes Plan. The Environmental Quality Board shall conduct at least one public hearing prior to the adoption of a plan.

(b) *Regulations.*—The Environmental Quality Board shall have the power and its duty shall be to adopt any rules and regulations of the Department of Environmental Resources to accomplish the purposes and to carry out the provisions of this act.

Section 5. Civil penalties.

For a violation of a provision of this act, a regulation or order of the Department of Environmental Resources or a term or condition of a permit issued by the department, the department may assess a civil penalty upon a

person or municipality. A penalty may be assessed whether or not the violation was willful or negligent. In determining the amount of the penalty, the department shall consider the willfulness of the violation; damage to air, water, land or other natural resources of this Commonwealth or their uses; cost of restoration and abatement; savings resulting to the person in consequence of the violation; and other relevant factors. When the department proposes to assess a civil penalty, it shall inform the person or municipality of the proposed amount of the penalty. The person or municipality charged with the penalty shall then have 30 days to pay the proposed penalty in full or, if the person or municipality wishes to contest either the amount of the penalty or the fact of the violation, the person or municipality must, within the 30-day period, file an appeal of the action with the Environmental Hearing Board. Failure to appeal within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty. The maximum civil penalty which may be assessed under this section is \$25,000 per offense. Each violation for each separate day shall constitute a separate and distinct offense under this section.

Section 6. Criminal penalties.

(a) **Municipalities.**—A municipality which violates a provision of this act, the regulations of the Department of Environmental Resources, an order of the department, or a term or condition of a permit commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$100 nor more than \$1,000 and costs.

(b) **Persons.**—Any person, other than a municipal official exercising official duties, who violates a provision of this act, a regulation of the department, an order of the department, or a term or condition of a permit commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than \$1,000 nor more than \$25,000 per day for each violation or to imprisonment for not more than one year, or both. Any person other than a municipal officer exercising official duties who, within two years after being convicted of or pleading guilty or no contest to a misdemeanor under this subsection, violates a provision of this act, a regulation of the department, an order of the department, or a term or condition of a permit commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than \$2,500 nor more than \$50,000 for each violation or to imprisonment for not more than two years, or both.

(c) **Knowing violations.**—

(1) A person or municipality commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than \$1,000 nor more than \$25,000 per day for each violation if the person or municipality knowingly does any of the following:

(i) Transports infectious or chemotherapeutic waste to a facility which does not have a permit under this act to accept such waste for storage, treatment or disposal.

(ii) Makes a false statement or representation in an application label, manifest, record, report, permit or other document relating to

infectious or chemotherapeutic waste generation, storage, transportation, treatment or disposal, which is filed, submitted, maintained or used for purposes of compliance with this act.

(2) A municipality which knowingly stores, treats or disposes of any hazardous waste without having obtained a permit for such storage, treatment or disposal commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than \$1,000 nor more than \$25,000 per day for each violation.

(3) A person or municipality that, within two years after being convicted of or pleading guilty or no contest to a misdemeanor for violation of this act, violates this subsection commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than \$2,500 nor more than \$50,000 for each violation or to imprisonment for not less than two years nor more than 20 years, or both.

Section 7. Effective date.

This act shall take effect immediately.

APPROVED—The 13th day of July, A. D. 1988.

ROBERT P. CASEY