

13:1E-9

LEGISLATIVE HISTORY CHECKLIST  
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(Solid waste  
facilities--enable  
DEP to curtail)

LAWS OF: 1990

CHAPTER: 70

Bill No: A2869

Sponsor(s): McEnroe and others

Date Introduced: January 22, 1990

Committee: Assembly: Waste Management, Planning and Recycling

Senate: Land Use Management and Regional Affairs

Amended during passage: Yes Amendments during passage  
denoted by asterisks.

Date of Passage: Assembly: April 2, 1990

Senate: June 18, 1990

Date of Approval: July 17, 1990

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

See newspaper clippings--attached:

KBG/SLJ

[FIRST REPRINT]  
ASSEMBLY, No. 2869

STATE OF NEW JERSEY

INTRODUCED JANUARY 22, 1990

By Assemblymen McENROE, DUCH, Randall and Spodoro

1 AN ACT concerning illegal solid waste facilities, and amending  
2 and supplementing P.L.1970, c.39.

3

4 BE IT ENACTED *by the Senate and General Assembly of the*  
5 *State of New Jersey:*

6 1. Section 9 of P.L.1970, c.39 (C.13:1E-9) is amended to read  
7 as follows:

8 9. a. All codes, rules and regulations adopted by the  
9 department related to solid waste collection and disposal shall  
10 have the force and effect of law. [Such] These codes, rules and  
11 regulations shall be observed throughout the State and shall be  
12 enforced by the department and by every local board of health, or  
13 county health department, as the case may be.

14 The department and the local board of health, or the county  
15 health department, as the case may be, shall have the right to  
16 enter a solid waste facility at any time in order to determine  
17 compliance with the registration statement and engineering  
18 design required pursuant to section 5 of P.L.1970, c.39  
19 (C.13:1E-5), and with the provisions of all applicable laws or rules  
20 and regulations adopted pursuant thereto.

21 The municipal attorney or an attorney retained by a  
22 municipality in which a violation of such laws or rules and  
23 regulations adopted pursuant thereto is alleged to have occurred  
24 shall act as counsel to a local board of health.

25 The county counsel or an attorney retained by a county in  
26 which a violation of such laws or rules and regulations adopted  
27 pursuant thereto is alleged to have occurred shall act as counsel  
28 to the county health department.

29 Any county health department may charge and collect from the  
30 owner or operator of any sanitary landfill facility within its  
31 jurisdiction such fees for enforcement activities as may be  
32 established by ordinance or resolution adopted by the governing  
33 body of any such county. [Such] The fees shall be established in  
34 accordance with a fee schedule regulation [to be] adopted by the  
35 department, pursuant to law, [within 60 days of the effective  
36 date of this amendatory act] and shall be utilized exclusively to  
37 fund such enforcement activities.

38 All enforcement activities undertaken by county health  
39 departments pursuant to this subsection shall conform to all

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:  
1 Assembly floor amendments adopted March 8, 1990.

1 applicable performance and administrative standards adopted  
2 pursuant to section 10 of the "County Environmental Health  
3 Act," P.L.1977, c.443 (C.26:3A2-28).

4 b. Whenever the commissioner finds that a person has violated  
5 any provision of P.L.1970, c.39 (C.13:1E-1 et seq.), or any rule or  
6 regulation adopted, permit issued, or district solid waste  
7 management plan adopted pursuant to P.L.1970, c.39, he shall:

8 (1) Issue an order requiring the person found to be in violation  
9 to comply in accordance with subsection c. of this section;

10 (2) Bring a civil action in accordance with subsection d. of this  
11 section;

12 (3) Levy a civil administrative penalty in accordance with  
13 subsection e. of this section;

14 (4) Bring an action for a civil penalty in accordance with  
15 subsection f. of this section; or

16 (5) Petition the Attorney General to bring a criminal action in  
17 accordance with subsection g. of this section.

18 [Pursuit of any of the remedies specified under this section  
19 shall not preclude the seeking of any other remedy specified.]

20 c. Whenever the commissioner finds that a person has violated  
21 any provision of P.L.1970, c.39, or any rule or regulation adopted,  
22 permit issued, or district solid waste management plan adopted  
23 pursuant to P.L.1970, c.39, he may issue an order specifying the  
24 provision or provisions of P.L.1970, c.39, or the rule, regulation,  
25 permit or district solid waste management plan of which the  
26 person is in violation, citing the action which constituted the  
27 violation, ordering abatement of the violation, and giving notice  
28 to the person of his right to a hearing on the matters contained in  
29 the order. The ordered party shall have 20 calendar days from  
30 receipt of the order within which to deliver to the commissioner  
31 a written request for a hearing. [After the hearing and upon  
32 finding that a violation has occurred, the commissioner may issue  
33 a final order. If no hearing is requested, then the order shall  
34 become final after the expiration of the 20-day period.] Such  
35 order shall be effective upon receipt and any person to whom  
36 such order is directed shall comply with the order immediately. A  
37 request for hearing shall not automatically stay the effect of the  
38 order.

39 d. The commissioner, a local board of health or county health  
40 department may institute an action or proceeding in the Superior  
41 Court for injunctive and other relief, including the appointment  
42 of a receiver for any violation of this act, or of any code, rule or  
43 regulation [promulgated] adopted, permit issued [or] , district  
44 solid waste management plan adopted or order issued pursuant to  
45 this act and said court may proceed in the action in a summary  
46 manner. In any such proceeding the court may grant temporary  
47 or interlocutory relief, notwithstanding the provisions of  
48 R.S.48:2-24.

1 Such relief may include, singly or in combination:

2 (1) A temporary or permanent injunction;

3 (2) Assessment of the violator for the costs of any  
4 investigation, inspection, or monitoring survey which led to the  
5 establishment of the violation, and for the reasonable costs of  
6 preparing and litigating the case under this subsection;

7 (3) Assessment of the violator for any cost incurred by the  
8 State in removing, correcting or terminating the adverse effects  
9 upon water and air quality resulting from any violation of any  
10 provision of this act or any rule, regulation or condition of  
11 approval for which the action under this subsection may have  
12 been brought;

13 (4) Assessment against the violator of compensatory damages  
14 for any loss or destruction of wildlife, fish or aquatic life, and for  
15 any other actual damages caused by any violation of this act or  
16 any rule, regulation or condition of approval established pursuant  
17 to this act for which the action under this subsection may have  
18 been brought. Assessments under this subsection shall be paid to  
19 the State Treasurer, or to the local board of health, or to the  
20 county health department, as the case may be, except that  
21 compensatory damages may be paid by specific order of the court  
22 to any persons who have been aggrieved by the violation.

23 If a proceeding is instituted by a local board of health or  
24 county health department, notice thereof shall be served upon the  
25 commissioner in the same manner as if the commissioner were a  
26 named party to the action or proceeding. The department may  
27 intervene as a matter of right in any proceeding brought by a  
28 local board of health or county health department.

29 e. The commissioner is authorized to assess a civil  
30 administrative penalty of not more than \$50,000.00 for each  
31 violation provided that each day during which the violation  
32 continues shall constitute an additional, separate and distinct  
33 offense. The commission shall not assess a civil administrative  
34 penalty in excess of \$25,000.00 for a single violation, or in excess  
35 of \$2,500.00 for each day during which a violation continues, until  
36 the department has adopted, pursuant to the "Administrative  
37 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), regulations  
38 requiring the commissioner, in assessing a civil administrative  
39 penalty, to consider the operational history of the solid waste  
40 facility at which the violation occurred, the severity of the  
41 violation, the measures taken to mitigate or prevent further  
42 violations, and whether the penalty will maintain an appropriate  
43 deterrent. No assessment shall be levied pursuant to this section  
44 until after the violator has been notified by certified mail or  
45 personal service. The notice shall include a reference to the  
46 section of the statute, rule, regulation, order, permit condition or  
47 district solid waste management plan violated, a concise  
48 statement of the facts alleged to constitute a violation, a

1 statement of the amount of the civil administrative penalties to  
2 be imposed, and a statement of the party's right to a hearing.  
3 The ordered party shall have 20 calendar days from receipt of the  
4 notice within which to deliver to the commissioner a written  
5 request for a hearing. After the hearing and upon finding that a  
6 violation has occurred, the commissioner may issue a final order  
7 after assessing the amount of the fine specified in the notice. If  
8 no hearing is requested, the notice shall become a final order  
9 after the expiration of the 20-day period. Payment of the  
10 assessment is due when a final order is issued or the notice  
11 becomes a final order. The authority to levy a civil  
12 administrative penalty is in addition to all other enforcement  
13 provisions in P.L.1970, c.39, and the payment of any assessment  
14 shall not be deemed to affect the availability of any other  
15 enforcement provisions in connection with the violation for which  
16 the assessment is levied. The department may compromise any  
17 civil administrative penalty assessed under this section in an  
18 amount the department determines appropriate.

19 f. Any person who violates the provisions of [this act]  
20 P.L.1970, c.39, or any code, rule or regulation [promulgated]  
21 adopted pursuant [to this act] thereto shall be liable to a penalty  
22 of not more than \$50,000.00 per day, to be collected in a civil  
23 action commenced by a local board of health, a county health  
24 department, or the commissioner.

25 Any person who violates an administrative order issued  
26 pursuant to subsection c. of this section, or a court order issued  
27 pursuant to subsection d. of this section, or who fails to pay an  
28 administrative assessment in full pursuant to subsection e. of this  
29 section is subject upon order of a court to a civil penalty not to  
30 exceed \$100,000.00 per day of such violations.

31 Of the penalty imposed pursuant to this subsection, 10% or  
32 \$250.00, whichever is greater, shall be paid to the department  
33 from the General Fund if the Attorney General determines that a  
34 person is entitled to a reward pursuant to section 2 of P.L.1987,  
35 c.158 (C.13:1E-9.2).

36 Any penalty imposed pursuant to this subsection may be  
37 collected with costs in a summary proceeding pursuant to "the  
38 penalty enforcement law" (N.J.S.2A:58-1 et seq.). The Superior  
39 Court and the municipal court shall have jurisdiction to enforce  
40 the provisions of "the penalty enforcement law" in connection  
41 with this act.

42 g. Any person who knowingly:

43 (1) Transports any hazardous waste to a facility or any other  
44 place which does not have authorization from the department to  
45 accept such waste;

46 (2) Generates and causes or permits to be transported any  
47 hazardous waste to a facility or any other place which does not  
48 have authorization from the department to accept such waste;

- 1 (3) Disposes, treats, stores or transports hazardous waste  
2 without authorization from the department;
- 3 (4) Makes any false or misleading statement to any person who  
4 prepares any hazardous waste application, label, manifest,  
5 record, report, design or other document required to be submitted  
6 to the department; or
- 7 (5) Makes any false or misleading statement on any hazardous  
8 waste application, label, manifest, record, report, design or other  
9 document required to be submitted to the department shall, upon  
10 conviction, be guilty of a crime of the third degree and,  
11 notwithstanding the provisions of N.J.S.2C:43-3, shall be subject  
12 to a fine of not more than \$50,000.00 for the first offense and not  
13 more than \$100,000.00 for the second and each subsequent  
14 offense and restitution, in addition to any other appropriate  
15 disposition authorized by subsection b. of N.J.S.2C:43-2.
- 16 h. Any person who recklessly:
- 17 (1) Transports any hazardous waste to a facility or any other  
18 place which does not have authorization from the department to  
19 accept such waste;
- 20 (2) Generates and causes or permits to be transported any  
21 hazardous waste to a facility or any other place which does not  
22 have authorization from the department to accept such waste;
- 23 (3) Disposes, treats, stores or transports hazardous waste  
24 without authorization from the department;
- 25 (4) Makes any false or misleading statement to any person who  
26 prepares any hazardous waste application, label, manifest,  
27 record, report, design or other document required to be submitted  
28 to the department; or
- 29 (5) Makes any false or misleading statement on any hazardous  
30 waste application, label, manifest, record, report, design or other  
31 document required to be submitted to the department, shall, upon  
32 conviction, be guilty of a crime of the fourth degree.
- 33 i. Any person who, regardless of intent, generates and causes  
34 or permits any hazardous waste to be transported, transports, or  
35 receives transported hazardous waste without completing and  
36 submitting to the department a hazardous waste manifest in  
37 accordance with the provisions of this act or any rule or  
38 regulation adopted pursuant hereto shall, upon conviction, be  
39 guilty of a crime of the fourth degree.
- 40 j. All conveyances used or intended for use in the willful  
41 discharge, in violation of the provisions of P.L.1970, c.39  
42 (C.13:1E-1 et seq.), of any solid waste, or hazardous waste as  
43 defined in P.L.1976, c.99 (C.13:1E-38 et seq.) are subject to  
44 forfeiture to the State pursuant to the provisions of P.L.1981,  
45 c.387 (C.13:1K-1 et seq.).
- 46 k. The provisions of N.J.S.2C:1-6 to the contrary  
47 notwithstanding, a prosecution for a violation of the provisions of  
48 subsection g., subsection h. or subsection i. of this section shall

1 be commenced within five years of the date of discovery of the  
2 violation.

3 1. Pursuit of any remedy specified in this section shall not  
4 preclude the pursuit of any other remedy provided by any other  
5 law. Administrative and judicial remedies provided in this section  
6 may be pursued simultaneously.

7 (cf: P.L.1987, c.158, s.1)

8 2. (New section) a. If the commissioner determines that any  
9 activity occurring at a solid waste facility, recycling center, or  
10 any other site at which solid waste is placed, processed, stored,  
11 or disposed of presents an imminent threat to the environment or  
12 public health and safety, the commissioner may issue an  
13 emergency order to the owner or operator of the solid waste  
14 facility, recycling center or other site, which order shall include:

15 (1) The specific activity or activities occurring at the solid  
16 waste facility, recycling center, or other site which present an  
17 imminent threat to the environment or public health and safety;

18 (2) A description of the specific threats to the environment or  
19 public health and safety which the activity or activities present;

20 (3) The specific measures which the owner or operator of the  
21 solid waste facility, recycling center or other site is directed to  
22 undertake immediately to abate or eliminate the imminent threat  
23 to the environment or public health and safety; and

24 (4) The actions which the department will take upon the  
25 signing of the emergency order, or at any time thereafter, which  
26 may include, but need not be limited to, the immediate  
27 revocation or suspension of a registration statement in the case  
28 of a solid waste facility, or a license in the case of a recycling  
29 center, or the limitation of physical access to, or egress from,  
30 the solid waste facility, recycling center, or other site by  
31 vehicles or persons.

32 b. An emergency order issued pursuant to this section shall  
33 take effect upon the signing of the emergency order by the  
34 commissioner, and the person to whom the emergency order is  
35 directed shall comply with the emergency order immediately  
36 upon receipt thereof.

37 c. Any action brought by a person seeking a temporary or  
38 permanent stay of an emergency order issued pursuant to this  
39 section shall be brought in the Superior Court. Any person  
40 bringing such an action shall have the burden of demonstrating,  
41 by clear and convincing evidence, that the activity or activities  
42 specified in the emergency order as presenting an imminent  
43 threat to the environment or public health and safety do not  
44 present an imminent threat to the environment or public health  
45 and safety.

46 3. This act shall take effect upon the enactment of P.L. ,  
47 c. (C. ) (now before the Legislature as Senate Bill No.  
48 12262<sup>1</sup> of 1990).

WASTE MANAGEMENT

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Provides additional enforcement powers to DEP to curb the activities of illegal solid waste facilities operating under the guise of recycling centers.



## STATEMENT

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3 This bill would correct certain abuses in the solid waste  
4 disposal and recycling industries as manifested by the recent  
5 "Hub Recycling" tragedy. The additional enforcement powers  
6 granted to the Department of Environmental Protection by this  
7 bill would provide the State with several much needed  
8 enforcement tools to curb the activities of illegal solid waste  
9 facilities operating under the guise of recycling centers.

10 Specifically, if the Commissioner of DEP determines that any  
11 activity occurring at a solid waste facility, recycling center, or  
12 any other site at which solid waste is placed, processed, stored,  
13 or disposed of presents an imminent threat to the environment or  
14 public health and safety, the commissioner may issue an  
15 emergency order to the owner or operator of the affected  
16 premises, and the person to whom the emergency order is  
17 directed must comply with the emergency order immediately  
18 upon receipt thereof. Any such order must include: (1) the  
19 specific activity or activities occurring at the site which present  
20 an imminent threat to the environment or public health and  
21 safety; (2) a description of the specific threats to the  
22 environment or public health and safety which the activity or  
23 activities present; (3) the specific measures which the owner or  
24 operator of the site is directed to undertake immediately to  
25 abate or eliminate the imminent threat to the environment or  
26 public health and safety; and (4) the actions which the order, or  
27 at any time thereafter, including, but not limited to, the  
28 immediate revocation or suspension of a registration statement in  
29 the case of a solid waste facility, or a license in the case of a  
30 recycling center, or the limitation of physical access to, or egress  
31 from, the site by vehicles or persons.

32 Any action brought by a person seeking a temporary or  
33 permanent stay of an emergency order issued by the  
34 commissioner must be brought in the Superior Court. Any person  
35 bringing such an action shall have the burden of demonstrating,  
36 by clear and convincing evidence, that the activity or activities  
37 specified in the emergency order as presenting an imminent  
38 threat to the environment or public health and safety do not  
39 present an imminent threat to the environment or public health  
40 and safety.

## WASTE MANAGEMENT

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45 Provides additional enforcement powers to DEP to curb the  
46 activities of illegal solid waste facilities operating under the  
47 guise of recycling centers.

ASSEMBLY WASTE MANAGEMENT, PLANNING  
AND RECYCLING COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2869

STATE OF NEW JERSEY

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DATED: MARCH 1, 1990

The Assembly Waste Management, Planning and Recycling Committee favorably reports Assembly Bill No. 2869.

The Committee finds that Assembly Bill No. 2869 is intended to correct certain abuses in the solid waste disposal and recycling industries as manifested by the 1989 "Hub Recycling" tragedy. The additional enforcement powers granted to the Department of Environmental Protection by this bill would provide the State with several much needed enforcement tools to curb the activities of illegal solid waste facilities operating under the guise of recycling centers.

Specifically, Assembly Bill No. 2869 provides that if the Commissioner of DEP determines that any activity occurring at a solid waste facility, recycling center, or any other site at which solid waste is placed, processed, stored, or disposed of presents an imminent threat to the environment or public health and safety, the commissioner may issue an emergency order to the owner or operator of the affected premises, and the person to whom the emergency order is directed must comply with the emergency order immediately upon receipt thereof.

Any such emergency order must include:

(1) the specific activity or activities occurring at the site which present an imminent threat to the environment or public health and safety;

(2) a description of the specific threats to the environment or public health and safety which the activity or activities present;

(3) the specific measures which the owner or operator of the site is directed to undertake immediately to abate or eliminate the imminent threat to the environment or public health and safety; and

(4) the actions which the department will take upon the signing of the emergency order, or at any time thereafter, including, but not limited to, the immediate revocation or suspension of a registration statement in the case of a solid waste facility, or a license in the case of a recycling center, or the limitation of physical access to, or egress from, the site by vehicles or persons.

Any action brought by a person seeking a temporary or permanent stay of an emergency order issued by the commissioner must be brought in the Superior Court. Any person bringing such an action shall have the burden of demonstrating, by clear and convincing evidence, that the activity or activities specified in the emergency order as presenting an imminent threat to the

environment or public health and safety do not present an imminent threat to the environment or public health and safety.

Assembly Bill No. 2869 would take effect upon the enactment of Senate Bill No. 2262, a companion measure providing for the licensing of certain recycling centers.

SENATE LAND USE MANAGEMENT  
AND REGIONAL AFFAIRS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 2869

STATE OF NEW JERSEY

DATED: MAY 21, 1990

The Senate Land Use Management and Regional Affairs Committee favorably reports Assembly Bill No. 2869 (1R).

Assembly Bill No. 2869 (1R) provides that if the Commissioner of the Department of Environmental Protection determines that any activity occurring at a solid waste facility, recycling center, or any other site at which solid waste is placed, processed, stored, or disposed of presents an imminent threat to the environment or public health and safety, the commissioner may issue an emergency order to the owner or operator of the affected premises, and the person to whom the emergency order is directed must comply with the emergency order immediately upon receipt thereof.

Any such emergency order must include:

(1) the specific activity or activities occurring at the site which present an imminent threat to the environment or public health and safety;

(2) a description of the specific threats to the environment or public health and safety which the activity or activities present;

(3) the specific measures which the owner or operator of the site is directed to undertake immediately to abate or eliminate the imminent threat to the environment or public health and safety; and

(4) the actions which the department will take upon the signing of the emergency order, or at any time thereafter, including, but not limited to, the immediate revocation or suspension of a registration statement in the case of a solid waste facility, or a license in the case of a recycling center, or the limitation of physical access to, or egress from, the site by vehicles or persons.

Any action brought by a person seeking a temporary or permanent stay of an emergency order issued by the commissioner must be brought in the Superior Court. Any person bringing such an action shall have the burden of demonstrating, by clear and convincing evidence, that the activity or activities specified in the emergency order as presenting an imminent threat to the environment or public health and safety do not present an imminent threat to the environment or public health and safety.

The Committee finds that Assembly Bill No. 2869 1R is intended to correct certain abuses in the solid waste disposal and recycling industries as manifested by the 1989 "Hub Recycling" tragedy. The additional enforcement powers granted to the Department of

Environmental Protection by this bill would provide the State with several much needed enforcement tools to curb the activities of illegal solid waste facilities operating under the guise of recycling centers.

Assembly Bill No. 2869 would take effect upon the enactment of Senate Bill No. 2262, a companion measure providing for the licensing of certain recycling centers.