

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: Yes

NEWSPAPER ARTICLES: Yes

974.90 P777 2013

Public hearing before Senate energy and environment committee: testimony on issues surrounding the operation and closure of Fenimore Landfill in Roxbury Township, Morris County: May 30, 2013, 10:00 a.m., Trenton, New Jersey / Hearing recorded and transcribed by the Office of Legislative Services, Public Information Office, Hearing Unit. By New Jersey Legislature, Senate Committee on Energy and Environment.

<http://hdl.handle.net/10929/27048>

"Christie signs law, and DEP promptly seizes Morris landfill," The Star-Ledger, 6-27-13

"DEP seizes control of landfill," Daily Record, 6-27-13

"Law lets state take over odorous landfill," The Press of Atlantic City, 6-27-13

"Christie Signs Bucco Bill to Close Hazardous Fenimore Landfill," <http://www.senatenj.com>, 6-26-13

"Assembly follows Senate and passes bill designed to close Fenimore Landfill in Roxbury, nj.com, 6-24-13

"Toxic fumes from Roxbury landfill reach and all-time high, report says," nj.com, 6-18-13

LAW/KR

§§1-9 -
C.13:1E-125.1 to
13:1E-125.9
§3 - Note to
40:55D-41
§10 - Note

P.L.2013, CHAPTER 69, *approved June 26, 2013*
Senate, No. 2861 (*Second Reprint*)

1 AN ACT concerning certain landfills, and supplementing Title 13 of
2 the Revised Statutes.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. As used in this act:

8 ²“Closed sanitary landfill facility” means a sanitary landfill
9 facility, or a portion of a sanitary landfill facility, for which
10 performance is complete with respect to all activities associated
11 with the design, installation, purchase, or construction of all
12 measures, structures, or equipment required by the Department of
13 Environmental Protection, pursuant to law, in order to prevent,
14 minimize, or monitor pollution or health hazards resulting from a
15 sanitary landfill facility subsequent to the termination of operations
16 at any portion thereof, including, but not necessarily limited to, the
17 placement of earthen or vegetative cover, and the installation of
18 methane gas vents, monitors, and air pollution control devices and
19 leachate monitoring wells or collection systems at the site of any
20 sanitary landfill facility;²

21 "Closure" ²or closure costs² means ²**[all]**² activities ²and costs²
22 associated with the design, purchase, reuse, construction, or
23 maintenance of all measures ²**[required or authorized]** deemed
24 necessary² by the Department of Environmental Protection,
25 pursuant to law, in order to prevent, minimize, or monitor pollution
26 or health hazards resulting from ¹a¹ legacy ¹**[landfills]** landfill or
27 any other landfill¹ subsequent to the termination of operations at
28 any portion thereof, including, but not necessarily limited to, ²the
29 costs of general liability insurance,² the placement ²**[of]** or²
30 regrading ²**[or]** of² fill material, the placement of final earthen or
31 vegetative cover, the installation of methane gas vents or monitors
32 and leachate monitoring wells or collection systems, and long-term
33 operations and maintenance, at the site of ¹**[any]** a¹ legacy landfill
34 ¹or any other landfill¹ that is not listed on the National Priorities

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:

¹Senate SEN committee amendments adopted June 13, 2013.

²Senate floor amendments adopted June 20, 2013.

1 List pursuant to the "Comprehensive Environmental Response,
2 Compensation, and Liability Act of 1980," 42 U.S.C. s.9605.

3 ²"Commissioner" means the Commissioner of Environmental
4 Protection.²

5 "Department" means the Department of Environmental
6 Protection.

7 "Legacy landfill" means a landfill that ceased operations prior to
8 January 1, 1982, and received for disposal ²**[**household solid waste
9 and at least one of the following²: (1) ²**[**commercial² solid waste;
10 ²or² (2) ²**[**industrial solid waste; or (3)²**]** waste material that was
11 received for disposal prior to October 21, 1976 and that is included
12 within the definition of hazardous waste adopted by the federal
13 government pursuant to the "Resource Conservation and Recovery
14 Act," 42 U.S.C. s.6921 et seq.

15 ²**[**"Licensed site remediation professional" means an individual
16 who is licensed by the Site Remediation Professional Licensing
17 Board pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) or the
18 Department of Environmental Protection pursuant to section 12 of
19 P.L.2009, c.60 (C.58:10C-12).

20 "Properly closed sanitary landfill facility" means a sanitary
21 landfill facility, or a portion of a sanitary landfill facility, for which
22 performance is complete with respect to all activities associated
23 with the design, installation, purchase, or construction of all
24 measures, structures, or equipment required by the Department of
25 Environmental Protection, pursuant to law, in order to prevent,
26 minimize, or monitor pollution or health hazards resulting from a
27 sanitary landfill facility subsequent to the termination of operations
28 at any portion thereof, including, but not necessarily limited to, the
29 placement of earthen or vegetative cover, and the installation of
30 methane gas vents or monitors and leachate monitoring wells or
31 collection systems at the site of any sanitary landfill facility ¹**[;]**

32 "Owner or operator" means and includes, in addition to the usual
33 meanings thereof, each owner of record or any interest in land
34 whereon a legacy landfill or sanitary landfill facility is or has been
35 located, and any person or corporation which owns a majority
36 interest in any other corporation which is the owner or operator of
37 any legacy landfill or sanitary landfill facility.

38 "Person" means an individual, trust, firm, joint stock company,
39 business concern, and corporation, including, but not limited to, a
40 partnership, limited liability company, or association. "Person"
41 shall also mean any responsible corporate official² .

42 "Sanitary landfill facility" means a solid waste facility at which
43 solid waste is deposited on or in the land as fill for the purpose of
44 permanent disposal or storage for a period exceeding six months,
45 except that it shall not include any waste facility approved for
46 disposal of hazardous waste.¹

1 ²“Solid waste” means garbage, refuse, and other discarded
 2 materials resulting from industrial, commercial, and agricultural
 3 operations, and from domestic and community activities, and shall
 4 include all other waste materials including liquids.²

5
 6 2. a. ²(1)² An administrative consent order ², agreement,
 7 closure or post-closure plan, or other permit or approval² entered
 8 into ²before or after the effective date of this act² by the
 9 Department of Environmental Protection and any person for the
 10 closure of a legacy landfill ¹or for the authorization to place
 11 additional waste or material on a ²【properly】² closed sanitary
 12 landfill facility¹ shall be ²【void】 voidable² for any of the following
 13 causes:

14 ²【(1)】 (a) if the owner or operator does not satisfy the²
 15 financial assurance requirements ²of P.L. _____, c. (C. _____)
 16 (pending before the Legislature as this bill)² or ²any material²
 17 financial plan requirements in ²【the】 any² administrative consent
 18 order ²【are not met】 , agreement, closure or post-closure plan, or
 19 other permit or approval² ;

20 ²【(2) the】 (b) if the owner or operator, or any² person entering
 21 into the administrative consent order ², agreement, closure or post-
 22 closure plan, or other permit or approval,² made or submitted to any
 23 government entity or official any ²material² misrepresentation, false
 24 statement, false report, false filing, misleading statement, or evasion
 25 or suppression of a material fact, ²including making a false
 26 financial disclosure,² related to the subject of the administrative
 27 consent order, the closure or post-closure plans of the legacy
 28 landfill ¹or ²closed² sanitary landfill facility¹, the property
 29 ownership of the legacy landfill site ¹or ²closed² sanitary landfill
 30 facility¹, or the qualifications of the person responsible for the
 31 closure or post-closure plans for the legacy landfill ¹or ²closed²
 32 sanitary landfill facility¹; or

33 ²【(3)】 (c) for² fraud, ²deceit, or material² misrepresentation
 34 ²【or deceit】² in securing a license issued pursuant to P.L.1983,
 35 c.392 (C.13:1E-126 et seq.) related to the closure of ²【the】 a²
 36 legacy landfill ¹or the placement of waste or material at ²【the】 a
 37 closed² sanitary landfill facility¹.

38 ²(2) The commissioner may institute a summary action in the
 39 Superior Court to terminate an administrative consent order,
 40 agreement, closure or post-closure plan, or other permit or approval
 41 entered into by the department and a person for the closure of a
 42 legacy landfill or the placement of waste or material at a closed
 43 sanitary landfill facility. In any such proceeding, if an
 44 administrative consent order, agreement, closure or post-closure
 45 plan, or other permit or approval is voidable as provided in

1 paragraph (1) of this subsection, the Superior Court shall issue an
2 order terminating the administrative consent order, agreement, plan,
3 permit, or approval.²

4 b. If ²~~the~~ ²an administrative consent order ², agreement,
5 closure or post-closure plan, or other permit or approval,² entered
6 into by the ²~~Department of Environmental Protection~~ ²department²
7 and any person for the closure of a legacy landfill ¹or the placement
8 of waste or material at ~~the~~ ²a closed² sanitary landfill facility¹ is
9 ²~~void~~ ²terminated² pursuant to the provisions of subsection a. of
10 this section, the department shall ²~~properly close~~ ²take such
11 measures deemed necessary by the department to protect the public,
12 which may include closing² the legacy landfill ¹or sanitary landfill
13 facility¹ ², consistent with the provisions of P.L. , c. (C.)
14 (pending before the Legislature as this bill)².

15 c. Any ²closure² costs ²~~to properly close the legacy landfill~~
16 ²or sanitary landfill facility¹ ² and ²~~any related~~ ² costs incurred
17 by the department ²in a proceeding resulting in termination pursuant
18 to subsection a. of this section, including attorney's fees and court
19 costs,² may be recovered by the State from the owner or operator of
20 the legacy landfill ¹or ²closed² sanitary landfill facility¹ and shall
21 constitute a debt of the owner or operator to the State. ²All owners
22 or operators shall be jointly and severally liable for all recoverable
23 costs.² The debt shall constitute a lien on all property owned by the
24 owner or operator when a notice of lien, incorporating a description
25 of the property of the owner or operator subject to the closure and
26 an identification of the amount of closure and related costs
27 expended by the State, is duly filed with the clerk of the Superior
28 Court. The clerk shall promptly enter upon the civil judgment or
29 order docket the name and address of the owner or operator and the
30 amount of the lien as set forth in the notice of lien. Upon entry by
31 the clerk, the lien, to the amount committed by the State for closure
32 and related costs, shall attach to the revenues and all real and
33 personal property of the owner or operator, whether or not the
34 owner or operator is insolvent.

35 ²d.² The notice of lien filed pursuant to ²~~this~~ ² subsection ²c. of
36 this section² which affects the property of an owner or operator
37 subject to the closure shall create a lien with priority over all other
38 claims or liens which are or have been filed against the property.
39 The notice of lien filed pursuant to ²~~this~~ ² subsection ²c. of this
40 section² which affects any property of an owner or operator, other
41 than the property subject to the closure, shall have priority from the
42 day of the filing of the notice of the lien over all other claims and
43 liens filed against the property, but shall not affect any valid lien,
44 right, or interest in the property filed in accordance with established
45 procedure prior to the filing of a notice of lien pursuant to this
46 subsection.

1 3. Notwithstanding the provisions of any other law to the
2 contrary, any person who undertakes the closure of a legacy
3 landfill, or the owner or operator of a ²**[properly]**² closed sanitary
4 landfill facility, who accepts for any reason, solid waste, recyclable
5 material, contaminated soil, cover material, wastewater treatment
6 residual material, dredge material, construction debris, or any other
7 waste or material shall apply for and obtain site plan approval
8 pursuant to the provisions of the "Municipal Land Use Law,"
9 P.L.1975, c.291 (C.40:55D-1 et seq.).

10
11 4. a. ²**[**There is established a maximum air quality standard for
12 hydrogen] Hydrogen² sulfide ²[of] levels emanating from a legacy
13 landfill or closed sanitary landfill facility shall not exceed² 30 parts
14 per billion averaged over a period of ²any² 30 minutes ²to be
15 measured at the property line of a legacy landfill or closed sanitary
16 landfill facility².

17 b. ²Upon verification by the department of complaints about
18 hydrogen sulfide odors and a determination by the department that
19 the legacy landfill or closed sanitary landfill facility is the source of
20 those odors, the department may order the person who is
21 undertaking the closure of a legacy landfill or placement of
22 materials at a closed sanitary landfill facility, or the owner or
23 operator of the legacy landfill or closed sanitary landfill facility to:

24 (1) develop a hydrogen sulfide monitoring plan to be approved
25 by the department;

26 (2) purchase and install devices in accordance with this plan to
27 monitor hydrogen sulfide levels at the property boundary of the
28 legacy landfill or closed sanitary landfill facility;

29 (3) operate and maintain these devices to record hydrogen sulfide
30 levels in accordance with the plan; and

31 (4) provide periodic reports to the department on a schedule
32 determined by the department on the levels of hydrogen sulfide
33 emitted from the legacy landfill or closed sanitary landfill facility.

34 c.² The Department of Environmental Protection, a county, or a
35 municipality in which a violation of subsection a. of this section
36 occurs, or any person who resides or owns property within two
37 miles of the boundary of the legacy landfill or ²**[properly]**² closed
38 sanitary landfill facility, may institute an action or proceeding in the
39 Superior Court for injunctive and other relief, for any violation of
40 the air quality standard established in subsection a. of this section
41 that is measured at the legacy landfill or the ²**[properly]**² closed
42 sanitary landfill facility, or within two miles of the property
43 boundary of a legacy landfill or ²**[properly]**² closed sanitary
44 landfill facility, and the court may proceed in the action in a
45 summary manner. In any such proceeding the court may grant
46 temporary or interlocutory relief. Upon a finding of a violation, the
47 court shall require the owner or operator of the legacy landfill or

1 ²**[properly]**² closed sanitary landfill facility to abate the violation
2 immediately and may require that wastes or materials be mixed,
3 rolled, or covered, or that odor shields be installed to abate the
4 violation.

5 Such relief may also include, singly or in combination:

6 (1) a temporary or permanent injunction that requires that the
7 wastes or materials that are the source of the violation be mixed,
8 covered, or removed;

9 (2) assessment of the violator for the costs of any investigation,
10 inspection, or monitoring survey that led to the establishment of the
11 violation, and for the reasonable costs of preparing and litigating
12 the case under this section;

13 (3) assessment of the violator for any cost incurred by the State,
14 county, or municipality in removing, correcting, or terminating the
15 adverse effects upon environmental quality or public health
16 resulting from any violation for which the action under this
17 subsection may have been brought;

18 (4) assessment against the violator of compensatory damages for
19 any damages to health or property, loss or destruction of wildlife,
20 fish or aquatic life, and for any other actual damages caused by any
21 violation of subsection a. of this section; and

22 (5) assessment against the violator of the amount of any
23 economic benefits accruing to the violator from a violation.
24 Economic benefits may include the amount of any fees or charges
25 paid for the placement of the waste or material that is the source of
26 the violation; savings realized from avoided capital or noncapital
27 costs resulting from the violation; any return earned or that may be
28 earned on the amount of fees or charges or of the avoided costs; any
29 benefits accruing to the violator as a result of a competitive market
30 advantage enjoyed by reason of the violation; or any other benefits
31 resulting from the violation.

32 Assessments under this subsection shall be paid to the ¹**[State**
33 **Treasurer]** party bringing the action¹, except that compensatory
34 damages shall be paid by specific order of the court to any persons
35 who have been aggrieved by the violation.

36 ¹Recourse to any remedy available under this section shall not
37 preclude recourse to any other remedies authorized in this act or by
38 any other applicable law.¹

39 ²d. The department may adopt, pursuant to the “Administrative
40 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), standards for
41 hydrogen sulfide emanating from a legacy landfill or closed sanitary
42 landfill facility that, upon adoption, shall supersede the standard set
43 forth in subsection a. of this section.²

44
45 5. a. The owner or operator of any legacy landfill or
46 ²**[properly]**² closed sanitary landfill facility who accepts ²**[solid**
47 **waste,]**² recyclable material, contaminated soil, ²**[cover material,]**²

1 wastewater treatment residual material, ²[dredge material,] ²or²
2 construction debris ²[, or any other waste or material,]² shall
3 establish and maintain financial assurance in an amount necessary
4 to pay for ¹[the] all¹ closure costs ^{2,2} and ²[to provide funds] shall
5 maintain a general liability insurance policy in an amount
6 determined in advance by the department² to pay for damages or
7 claims resulting from operations or closure of the legacy landfill or
8 ²[properly]² closed sanitary landfill facility, as required pursuant to
9 subsection b. of this section. Financial assurance shall be
10 ²[established] certified by a New Jersey licensed professional
11 engineer² prior to the acceptance of any ²solid² waste or ²any other²
12 materials at the legacy landfill or ²[properly]² closed sanitary
13 landfill facility. General liability insurance coverage shall be
14 maintained through the entirety of closure and post-closure
15 activities.²

16 b. Financial assurance shall be established in an amount equal to
17 or greater than the cost estimate of ²[both]² the closure costs ²[and
18 the amount necessary to provide funds to pay for damages or claims
19 resulting from operations or closure of the legacy landfill or
20 properly closed sanitary landfill]² (1) as ²[approved by the
21 department or as determined] certified² by the ²New Jersey²
22 licensed ²[site remediation professional, as applicable] professional
23 engineer retained pursuant to section 7 of P.L. , c. (C.)
24 (pending before the Legislature as this bill)², (2) as provided in an
25 administrative consent order, (3) as stated in a departmental order
26 or directive, or (4) as approved by a court, and shall be in effect for
27 a term not less than the actual time necessary to complete all
28 activities at the legacy landfill or ²[properly]² closed sanitary
29 landfill ²facility² including all closure activities ²[and post-closure
30 monitoring]². ²[Whenever the] Closure² cost ²[estimate increases]
31 estimates shall be revised and re-certified by a New Jersey licensed
32 professional engineer every two years after commencement of
33 approved activities on the legacy landfill or closed sanitary landfill
34 facility. In the event of an increase², the ²[person required to
35 establish the financial assurance] owner or operator² shall cause the
36 amount of the financial assurance to be increased to an amount at
37 least equal to the new estimate. ²[Whenever] If² the ²closure² cost
38 estimate decreases ²as a result of a periodic review², the ²[person
39 required to obtain the financial assurance] owner or operator² may
40 file a written request with the department to decrease the amount of
41 the financial assurance, ²[or may submit written documentation to
42 the department certified] supported by a certification² by ²[the] a
43 New Jersey² licensed ²[site remediation]² professional ²engineer²
44 of the details of the decrease in the cost estimate, as applicable. The
45 financial assurance may be decreased to the amount of the new

1 estimate upon written approval by the department ²[delivered to the
2 person who established the financial assurance]².

3 c. Financial assurance shall be established pursuant to this
4 section by ²[establishing] any of the following, individually or in
5 combination, surety bond,² a letter of credit or a line of credit ²upon
6 which the department may draw directly to fund closure in the event
7 of a termination².

8 d. Any person who fails to establish financial assurance,
9 deposits or places any waste or material prior to the establishment
10 of financial assurance, or uses those funds for any purpose other
11 than closure costs as approved by the department, or to pay
12 damages or claims as approved by the department or by a court,
13 shall be guilty of a crime of the third degree.

14
15 6. a. The owner or operator of every legacy landfill and every
16 ²[properly]² closed sanitary landfill facility that accepts any ²[solid
17 waste,]² recyclable material, contaminated soil, ²[cover material,]²
18 wastewater treatment residual material, ²[dredge material,] or²
19 construction debris ²[, or any other waste or material,]² shall
20 deposit, on a monthly basis in an interest-bearing account with an
21 accredited financial institution, an amount ²[equal to] determined
22 by the department after review of the estimated costs of post-
23 closure monitoring and operational costs, but not less than² \$1.00
24 per ton of all ¹waste or¹ material accepted during the preceding
25 month at the legacy landfill or ²[properly]² closed sanitary landfill
26 facility. In the event that any waste ¹or material¹ is measured, upon
27 acceptance, by a metric other than tons, the amount to be deposited
28 shall be calculated by using the equivalents thereof as shall be
29 determined by the department.

30 The account established pursuant to this subsection shall
31 constitute an escrow account for the ²[closure and]² post-closure
32 ²monitoring and operating² costs of the ²[particular]² legacy
33 landfill or ²[properly]² closed sanitary landfill facility, and no
34 withdrawals therefrom may be made without written approval of the
35 department, except as otherwise authorized by the department.

36 b. Any owner or operator of a legacy landfill or ²[properly]²
37 closed sanitary landfill facility who ¹[shall fail] fails¹ to deposit
38 funds into an escrow account, as provided herein, or uses those
39 funds for any purpose other than closure costs, as approved by the
40 department, shall be guilty of a crime of the third degree.

41
42 7. a. The owner or operator of a legacy landfill or a
43 ²[properly]² closed sanitary landfill facility that undertakes any
44 activity that includes the placement or disposal of any material,
45 regrading, compression, venting, construction, or installation of
46 monitors or wells at a legacy landfill or a ²[properly]² closed

1 sanitary landfill shall hire a ²New Jersey² licensed ²site
2 remediation² professional ²engineer² to perform the closure ²,
3 remediation, or redevelopment project or² and² to oversee any other
4 activities performed at the legacy landfill or ²properly² closed
5 sanitary landfill ²until the cessation of all activity and the final
6 closure thereof² facility² .

7 b. The ²New Jersey² licensed ²site remediation² professional
8 ²engineer² shall ²assure² certify on a quarterly basis² that all
9 wastes and materials accepted at the site for any purpose are
10 weighed, sampled, and tested ¹according to a protocol approved in
11 advance by the department², ²that no household solid waste is
12 deposited at the site, that all odors are properly controlled, and that
13 surface water bodies are protected from the deposition of any waste
14 or material from the property² and that all provisions and
15 prohibitions of the administrative consent order, closure or post-
16 closure plans, permits, or approvals are complied with at the legacy
17 landfill or closed sanitary landfill facility².

18
19 ²8. a. Whenever the commissioner finds that a person has
20 violated any provision of P.L. , c. (C.) (pending before the
21 Legislature as this bill), the commissioner may institute an action or
22 proceeding in the Superior Court for injunctive and other relief, and
23 for a civil penalty for each violation in an amount not to exceed
24 \$25,000 per day provided that each day during which the violation
25 continues shall constitute an additional, separate and distinct
26 offense.

27 In any such proceeding the court may grant temporary or
28 interlocutory relief. Such relief may include, singly or in
29 combination:

30 (1) a temporary or permanent injunction that requires that the
31 wastes or materials that are the source of the violation be mixed,
32 covered, or removed;

33 (2) assessment of the violator for the costs of any investigation,
34 inspection, or monitoring survey that led to the establishment of the
35 violation, and for the reasonable costs of preparing and litigating
36 the case under this section;

37 (3) assessment of the violator for any cost incurred by the State,
38 county, or municipality in removing, correcting, or terminating the
39 adverse effects upon environmental quality or public health
40 resulting from any violation for which the action under this
41 subsection may have been brought;

42 (4) assessment against the violator of compensatory damages for
43 any damages, loss, or destruction of wildlife, fish or aquatic life,
44 and for any other actual damages to the public caused by any
45 violation of P.L. , c. (C.) (pending before the Legislature as
46 this bill); and

SENATE, No. 2861

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED JUNE 6, 2013

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator ANTHONY R. BUCCO

District 25 (Morris and Somerset)

SYNOPSIS

Concerns closure of, and other activities at, certain landfills.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/14/2013)

1 AN ACT concerning certain landfills, and supplementing Title 13 of
2 the Revised Statutes.

3

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

6

7 1. As used in this act:

8 "Closure" means all activities associated with the design,
9 purchase, reuse, construction, or maintenance of all measures
10 required or authorized by the Department of Environmental
11 Protection, pursuant to law, in order to prevent, minimize, or
12 monitor pollution or health hazards resulting from legacy landfills
13 subsequent to the termination of operations at any portion thereof,
14 including, but not necessarily limited to, the placement of regrading
15 or fill material, the placement of final earthen or vegetative cover,
16 the installation of methane gas vents or monitors and leachate
17 monitoring wells or collection systems, and long-term operations
18 and maintenance, at the site of any legacy landfill that is not listed
19 on the National Priorities List pursuant to the "Comprehensive
20 Environmental Response, Compensation, and Liability Act of
21 1980," 42 U.S.C. s.9605.

22 "Department" means the Department of Environmental
23 Protection.

24 "Legacy landfill" means a landfill that ceased operations prior to
25 January 1, 1982, and received for disposal household solid waste
26 and at least one of the following: (1) commercial solid waste; (2)
27 industrial solid waste; or (3) waste material that was received for
28 disposal prior to October 21, 1976 and that is included within the
29 definition of hazardous waste adopted by the federal government
30 pursuant to the "Resource Conservation and Recovery Act," 42
31 U.S.C. s.6921 et seq.

32 "Licensed site remediation professional" means an individual
33 who is licensed by the Site Remediation Professional Licensing
34 Board pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) or the
35 Department of Environmental Protection pursuant to section 12 of
36 P.L.2009, c.60 (C.58:10C-12).

37 "Properly closed sanitary landfill facility" means a sanitary
38 landfill facility, or a portion of a sanitary landfill facility, for which
39 performance is complete with respect to all activities associated
40 with the design, installation, purchase, or construction of all
41 measures, structures, or equipment required by the Department of
42 Environmental Protection, pursuant to law, in order to prevent,
43 minimize, or monitor pollution or health hazards resulting from a
44 sanitary landfill facility subsequent to the termination of operations
45 at any portion thereof, including, but not necessarily limited to, the
46 placement of earthen or vegetative cover, and the installation of
47 methane gas vents or monitors and leachate monitoring wells or
48 collection systems at the site of any sanitary landfill facility;

1 2. a. An administrative consent order entered into by the
2 Department of Environmental Protection and any person for the
3 closure of a legacy landfill shall be void for any of the following
4 causes:

5 (1) financial assurance requirements or financial plan
6 requirements in the administrative consent order are not met;

7 (2) the person entering into the administrative consent order
8 made or submitted to any government entity or official any
9 misrepresentation, false statement, false report, false filing,
10 misleading statement, or evasion or suppression of a material fact,
11 related to the subject of the administrative consent order, the
12 closure or post-closure plans of the legacy landfill, the property
13 ownership of the legacy landfill site, or the qualifications of the
14 person responsible for the closure or post-closure plans for the
15 legacy landfill; or

16 (3) fraud, misrepresentation or deceit in securing a license
17 issued pursuant to P.L.1983, c.392 (C.13:1E-126 et seq.) related to
18 the closure of the legacy landfill.

19 b. If the administrative consent order entered into by the
20 Department of Environmental Protection and any person for the
21 closure of a legacy landfill is void pursuant to the provisions of
22 subsection a. of this section, the department shall properly close the
23 legacy landfill.

24 c. Any costs to properly close the legacy landfill and any
25 related costs incurred by the department may be recovered by the
26 State from the owner or operator of the legacy landfill and shall
27 constitute a debt of the owner or operator to the State. The debt
28 shall constitute a lien on all property owned by the owner or
29 operator when a notice of lien, incorporating a description of the
30 property of the owner or operator subject to the closure and an
31 identification of the amount of closure and related costs expended
32 by the State, is duly filed with the clerk of the Superior Court. The
33 clerk shall promptly enter upon the civil judgment or order docket
34 the name and address of the owner or operator and the amount of
35 the lien as set forth in the notice of lien. Upon entry by the clerk,
36 the lien, to the amount committed by the State for closure and
37 related costs, shall attach to the revenues and all real and personal
38 property of the owner or operator, whether or not the owner or
39 operator is insolvent.

40 The notice of lien filed pursuant to this subsection which affects
41 the property of an owner or operator subject to the closure shall
42 create a lien with priority over all other claims or liens which are or
43 have been filed against the property. The notice of lien filed
44 pursuant to this subsection which affects any property of an owner
45 or operator, other than the property subject to the closure, shall have
46 priority from the day of the filing of the notice of the lien over all
47 other claims and liens filed against the property, but shall not affect
48 any valid lien, right, or interest in the property filed in accordance

1 with established procedure prior to the filing of a notice of lien
2 pursuant to this subsection.

3
4 3. Notwithstanding the provisions of any other law to the
5 contrary, any person who undertakes the closure of a legacy
6 landfill, or the owner or operator of a properly closed sanitary
7 landfill facility, who accepts for any reason, solid waste, recyclable
8 material, contaminated soil, cover material, wastewater treatment
9 residual material, dredge material, construction debris, or any other
10 waste or material shall apply for and obtain site plan approval
11 pursuant to the provisions of the "Municipal Land Use Law,"
12 P.L.1975, c.291 (C.40:55D-1 et seq.).

13
14 4. a. There is established a maximum air quality standard for
15 hydrogen sulfide of 30 parts per billion averaged over a period of
16 30 minutes.

17 b. The Department of Environmental Protection, a county, or a
18 municipality in which a violation of subsection a. of this section
19 occurs, or any person who resides or owns property within two
20 miles of the boundary of the legacy landfill or properly closed
21 sanitary landfill facility, may institute an action or proceeding in the
22 Superior Court for injunctive and other relief, for any violation of
23 the air quality standard established in subsection a. of this section
24 that is measured at the legacy landfill or the properly closed
25 sanitary landfill facility, or within two miles of the property
26 boundary of a legacy landfill or properly closed sanitary landfill
27 facility, and the court may proceed in the action in a summary
28 manner. In any such proceeding the court may grant temporary or
29 interlocutory relief. Upon a finding of a violation, the court shall
30 require the owner or operator of the legacy landfill or properly
31 closed sanitary landfill facility to abate the violation immediately
32 and may require that wastes or materials be mixed, rolled, or
33 covered, or that odor shields be installed to abate the violation.

34 Such relief may also include, singly or in combination:

35 (1) a temporary or permanent injunction that requires that the
36 wastes or materials that are the source of the violation be mixed,
37 covered, or removed;

38 (2) assessment of the violator for the costs of any investigation,
39 inspection, or monitoring survey that led to the establishment of the
40 violation, and for the reasonable costs of preparing and litigating
41 the case under this section;

42 (3) assessment of the violator for any cost incurred by the State,
43 county, or municipality in removing, correcting, or terminating the
44 adverse effects upon environmental quality or public health
45 resulting from any violation for which the action under this
46 subsection may have been brought;

47 (4) assessment against the violator of compensatory damages for
48 any damages to health or property, loss or destruction of wildlife,

1 fish or aquatic life, and for any other actual damages caused by any
2 violation of subsection a. of this section; and

3 (5) assessment against the violator of the amount of any
4 economic benefits accruing to the violator from a violation.
5 Economic benefits may include the amount of any fees or charges
6 paid for the placement of the waste or material that is the source of
7 the violation; savings realized from avoided capital or noncapital
8 costs resulting from the violation; any return earned or that may be
9 earned on the amount of fees or charges or of the avoided costs; any
10 benefits accruing to the violator as a result of a competitive market
11 advantage enjoyed by reason of the violation; or any other benefits
12 resulting from the violation.

13 Assessments under this subsection shall be paid to the State
14 Treasurer, except that compensatory damages shall be paid by
15 specific order of the court to any persons who have been aggrieved
16 by the violation.

17

18 5. a. The owner or operator of any legacy landfill or properly
19 closed sanitary landfill facility who accepts solid waste, recyclable
20 material, contaminated soil, cover material, wastewater treatment
21 residual material, dredge material, construction debris, or any other
22 waste or material, shall establish and maintain financial assurance
23 in an amount necessary to pay for the closure costs and to provide
24 funds to pay for damages or claims resulting from operations or
25 closure of the legacy landfill or properly closed sanitary landfill
26 facility, as required pursuant to subsection b. of this section.
27 Financial assurance shall be established prior to the acceptance of
28 any waste or materials at the legacy landfill or properly closed
29 sanitary landfill facility.

30 b. Financial assurance shall be established in an amount equal
31 to or greater than the cost estimate of both the closure costs and the
32 amount necessary to provide funds to pay for damages or claims
33 resulting from operations or closure of the legacy landfill or
34 properly closed sanitary landfill (1) as approved by the department
35 or as determined by the licensed site remediation professional, as
36 applicable, (2) as provided in an administrative consent order, (3) as
37 stated in a departmental order or directive, or (4) as approved by a
38 court, and shall be in effect for a term not less than the actual time
39 necessary to complete all activities at the legacy landfill or properly
40 closed sanitary landfill including all closure activities and post-
41 closure monitoring. Whenever the cost estimate increases, the
42 person required to establish the financial assurance shall cause the
43 amount of the financial assurance to be increased to an amount at
44 least equal to the new estimate. Whenever the cost estimate
45 decreases, the person required to obtain the financial assurance may
46 file a written request with the department to decrease the amount of
47 the financial assurance, or may submit written documentation to the
48 department certified by the licensed site remediation professional of

1 the details of the decrease in the cost estimate, as applicable. The
2 financial assurance may be decreased to the amount of the new
3 estimate upon written approval by the department delivered to the
4 person who established the financial assurance.

5 c. Financial assurance shall be established pursuant to this
6 section by establishing a letter of credit or a line of credit.

7 d. Any person who fails to establish financial assurance,
8 deposits or places any waste or material prior to the establishment
9 of financial assurance, or uses those funds for any purpose other
10 than closure costs as approved by the department, or to pay
11 damages or claims as approved by the department or by a court,
12 shall be guilty of a crime of the third degree.

13

14 6. a. The owner or operator of every legacy landfill and every
15 properly closed sanitary landfill facility that accepts any solid
16 waste, recyclable material, contaminated soil, cover material,
17 wastewater treatment residual material, dredge material,
18 construction debris, or any other waste or material, shall deposit, on
19 a monthly basis in an interest-bearing account with an accredited
20 financial institution, an amount equal to \$1.00 per ton of all
21 material accepted during the preceding month at the legacy landfill
22 or properly closed sanitary landfill facility. In the event that any
23 waste is measured, upon acceptance, by a metric other than tons, the
24 amount to be deposited shall be calculated by using the equivalents
25 thereof as shall be determined by the department.

26 The account established pursuant to this subsection shall
27 constitute an escrow account for the closure and post-closure costs
28 of the particular legacy landfill or properly closed sanitary landfill
29 facility, and no withdrawals therefrom may be made without written
30 approval of the department, except as otherwise authorized by the
31 department.

32 b. Any owner or operator of a legacy landfill or properly closed
33 sanitary landfill facility who shall fail to deposit funds into an
34 escrow account, as provided herein, or uses those funds for any
35 purpose other than closure costs, as approved by the department,
36 shall be guilty of a crime of the third degree.

37

38 7. a. The owner or operator of a legacy landfill or a properly
39 closed sanitary landfill facility that undertakes any activity that
40 includes the placement or disposal of any material, regrading,
41 compression, venting, construction, or installation of monitors or
42 wells at a legacy landfill or a properly closed sanitary landfill shall
43 hire a licensed site remediation professional to perform the closure,
44 remediation, or redevelopment project or to oversee any other
45 activities performed at the legacy landfill or properly closed
46 sanitary landfill until the cessation of all activity and the final
47 closure thereof.

1 b. The licensed site remediation professional shall assure that all
2 wastes and materials accepted at the site for any purpose are
3 weighed, sampled, and tested, that no household solid waste is
4 deposited at the site, that all odors are properly controlled, and that
5 surface water bodies are protected from the deposition of any waste
6 or material from the property.

7

8 8. This act shall take effect immediately.

9

10

11

STATEMENT

12

13 This bill establishes requirements and controls applicable to
14 "legacy landfills" and properly closed sanitary landfill facilities that
15 accept the placement of new materials after closure. These
16 measures, which protect the environment and the public health and
17 safety, give the Department of Environmental Protection, local
18 governments, and the public new tools to assure that old dumps that
19 are reopened for proper closure and future reuse, or properly closed
20 sanitary landfill facilities that accept new material, are not operated
21 in ways that are dangerous to the health of their neighbors or that
22 cause additional harm to the environment.

23

24 The bill would define "legacy landfill" and would void an
25 administrative consent order entered into by the department with
26 any person for the closure of a legacy landfill if: (1) financial
27 assurance requirements or financial plan requirements in the
28 administrative consent order are not met; (2) the person entering
29 into the administrative consent order made or submitted to any
30 government agency or official any misrepresentation, false
31 statement, false report, false filing, misleading statement, or evasion
32 or suppression of a material fact, related to the subject of the
33 administrative consent order, the closure or post-closure plans of
34 the legacy landfill, the property ownership of the legacy landfill
35 site, or the qualifications of the person responsible for the closure or
36 post-closure plans for the legacy landfill; or (3) fraud,
37 misrepresentation or deceit in securing a license issued pursuant to
38 P.L.1983, c.392 (C.13:1E-126 et seq.) (i.e. the "A901 law") related
39 to the closure of the legacy landfill. The bill also provides that if
40 the administrative consent order is void, the department would be
41 required to properly close the legacy landfill and recover costs from
42 the owner or operator.

42

43 The bill also requires that any person who undertakes the closure
44 of a legacy landfill, or the owner or operator of a properly closed
45 sanitary landfill facility, who accepts for any reason, solid waste,
46 recyclable material, contaminated soil, cover material, wastewater
47 treatment residual material, dredge material, construction debris, or
any other waste or material must apply for and obtain site plan

1 approval pursuant to the provisions of the "Municipal Land Use
2 Law."

3 The bill establishes a maximum air quality standard for hydrogen
4 sulfide of 30 parts per billion averaged over a period of 30 minutes.
5 If a violation of the air quality standard occurs at or within two
6 miles of the property boundary of a legacy landfill or a properly
7 closed sanitary landfill facility, the Department of Environmental
8 Protection, a county, or a municipality in which the violation
9 occurs, or any person who resides or owns property within two
10 miles of the boundary of the legacy landfill or properly closed
11 sanitary landfill facility, may bring an action in Superior Court for
12 injunctive or other relief. The court, upon a finding of a violation,
13 is required to issue an order requiring the owner or operator of the
14 facility to abate the violation immediately. The court may also
15 issue an injunction, assess the violator for costs of the investigation,
16 costs incurred by the State, county, or municipality to correct the
17 violation, or terminate the adverse affects of the violation,
18 compensatory damages, and the amount of any economic benefits
19 accruing to the violator from a violation.

20 The bill requires the owner or operator of a legacy landfill or
21 properly closed sanitary landfill that accepts solid waste, recyclable
22 material, contaminated soil, cover material, wastewater treatment
23 residual material, dredge material, construction debris, or any other
24 waste or material, to establish and maintain financial assurance in
25 an amount necessary to pay for the closure costs and to provide
26 funds to pay for damages or claims resulting from operations or
27 closure of the legacy landfill or properly closed sanitary landfill
28 facility. Further, the owner or operator of a legacy landfill or
29 properly closed sanitary landfill that accepts solid waste, recyclable
30 material, contaminated soil, cover material, wastewater treatment
31 residual material, dredge material, construction debris, or any other
32 waste or material, to establish an escrow account and to deposit an
33 amount equal to \$1.00 per ton of all waste or material accepted at
34 the legacy landfill or properly closed sanitary landfill facility to be
35 used to pay for closure or post closure costs.

36 Finally, the bill requires that the owner or operator of a legacy
37 landfill or properly closed sanitary landfill who undertakes any
38 activity that includes the placement or disposal of any material,
39 regrading, compression, venting, construction, or installation of
40 monitors or wells at a legacy landfill or a properly closed sanitary
41 landfill is required to hire a licensed site remediation professional to
42 perform the closure, remediation, or redevelopment project or to
43 oversee any other activities performed at a legacy landfill or
44 properly closed sanitary landfill until the cessation of all activity
45 and the final closure.

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

SENATE, No. 2861

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 13, 2013

The Senate Environment and Energy Committee favorably reports Senate Bill No. 2861 with committee amendments.

This bill establishes requirements and controls applicable to "legacy landfills" and properly closed sanitary landfill facilities that accept the placement of new materials after closure. As amended, the bill would define "legacy landfill" and would void an administrative consent order entered into by the Department of Environmental Protection (DEP) with any person for the closure of a legacy landfill or for the authorization to place additional waste or material on a properly closed sanitary landfill facility if: (1) financial assurance requirements or financial plan requirements in the administrative consent order are not met; (2) the person entering into the administrative consent order made or submitted to any government agency or official any misrepresentation, false statement, false report, false filing, misleading statement, or evasion or suppression of a material fact, related to the subject of the administrative consent order, the closure or post-closure plans of the legacy landfill or sanitary landfill facility, the property ownership of the legacy landfill site or sanitary landfill facility, or the qualifications of the person responsible for the closure or post-closure plans for the legacy landfill or sanitary landfill facility; or (3) fraud, misrepresentation or deceit in securing a license issued pursuant to P.L.1983, c.392 (C.13:1E-126 et seq.) (i.e., the "A901 law") related to the closure of the legacy landfill or the placement of waste or material at the sanitary landfill facility. The bill also provides that if the administrative consent order is void, the DEP would be required to properly close the legacy landfill or the sanitary landfill facility and recover costs from the owner or operator.

The bill also requires that any person who undertakes the closure of a legacy landfill, or the owner or operator of a properly closed sanitary landfill facility, who accepts for any reason, solid waste, recyclable material, contaminated soil, cover material, wastewater treatment residual material, dredge material, construction debris, or any other waste or material must apply for and obtain site plan approval pursuant to the provisions of the "Municipal Land Use Law."

The bill establishes a maximum air quality standard for hydrogen sulfide of 30 parts per billion averaged over a period of 30 minutes. If a violation of the air quality standard occurs at or within two miles of the property boundary of a legacy landfill or a properly closed sanitary landfill facility, the DEP, a county, or a municipality in which the violation occurs, or any person who resides or owns property within two miles of the boundary of the legacy landfill or properly closed sanitary landfill facility, may bring an action in Superior Court for injunctive or other relief. The court, upon a finding of a violation, is required to issue an order requiring the owner or operator of the legacy landfill or properly closed sanitary landfill facility to abate the violation immediately. The court may also issue an injunction, assess the violator for costs of the investigation, costs incurred by the State, county, or municipality to correct the violation, or terminate the adverse affects of the violation, compensatory damages, and the amount of any economic benefits accruing to the violator from a violation. Assessments would be paid to the party bringing the action except that any compensatory damages must be paid to any persons aggrieved by the violation.

The bill requires the owner or operator of a legacy landfill or properly closed sanitary landfill that accepts solid waste, recyclable material, contaminated soil, cover material, wastewater treatment residual material, dredge material, construction debris, or any other waste or material, to establish and maintain financial assurance in an amount necessary to pay for the closure costs and to provide funds to pay for damages or claims resulting from operations or closure of the legacy landfill or properly closed sanitary landfill facility. Further, the owner or operator of a legacy landfill or properly closed sanitary landfill that accepts solid waste, recyclable material, contaminated soil, cover material, wastewater treatment residual material, dredge material, construction debris, or any other waste or material, to establish an escrow account and to deposit an amount equal to \$1.00 per ton of all waste or material accepted at the legacy landfill or properly closed sanitary landfill facility to be used to pay for closure or post closure costs.

Finally, the bill requires that the owner or operator of a legacy landfill or properly closed sanitary landfill who undertakes any activity that includes the placement or disposal of any material, regrading, compression, venting, construction, or installation of monitors or wells at a legacy landfill or a properly closed sanitary landfill is required to hire a licensed site remediation professional to perform the closure, remediation, or redevelopment project or to oversee any other activities performed at a legacy landfill or properly closed sanitary landfill until the cessation of all activity and the final closure.

The committee amendments would:

(1) expand section 2 of the bill regarding the authority of the Department of Environmental Protection to void an administrative

consent order to apply to an administrative consent order authorizing the placement of waste or material on a properly closed sanitary landfill facility;

(2) provide that any assessment imposed by a court under section 4 of the bill would be paid to the party bringing the action, rather than to the State Treasurer;

(3) clarify that recourse to any remedy available under section 4 of the bill would not preclude recourse to any other remedy authorized in the bill or by any other applicable law;

(4) add a definition of "sanitary landfill facility" to the bill; and

(5) make technical corrections to the bill.

STATEMENT TO
[First Reprint]
SENATE, No. 2861

with Senate Floor Amendments
(Proposed by Senator SMITH)

ADOPTED: JUNE 20, 2013

The floor amendments:

(1) specify that an administrative consent order (ACO), or any agreement, closure or post-closure plan, or other permit or approval, entered into by the Department of Environmental Protection (DEP) and any person, before or after the effective date of the bill, for the closure of a legacy landfill or for the authorization to place additional waste or material on a closed sanitary landfill facility is voidable under certain conditions, and authorize the commissioner of the DEP to institute a summary action in Superior Court to terminate an ACO, or any agreement, closure or post-closure plan, or other permit or approval, if those conditions are met;

(2) clarify the hydrogen sulfide level emanating from a legacy landfill or closed sanitary landfill facility shall not exceed 30 parts per billion averaged over a period of any 30 minutes, and provide authority to the DEP to order actions to be taken to monitor hydrogen sulfide levels at their source;

(3) authorize the DEP to adopt regulations to supersede the hydrogen sulfide standard established in the bill;

(4) require the owner or operator of certain legacy landfills and closed sanitary landfill facilities to maintain general liability insurance, and clarify requirements regarding the demonstration of financial assurances;

(5) authorize the DEP to increase the amounts the owner or operator of a legacy landfill or closed sanitary landfill facility is required to deposit in escrow after review of estimated costs of post-closure monitoring and operations;

(6) remove the requirement that a licensed site remediation professional oversee activity at a legacy landfill or closed sanitary landfill facility that accepts for placement additional waste or material and instead require a New Jersey licensed professional engineer to oversee those activities;

(7) authorize the commissioner of the DEP to institute actions in Superior Court for injunctive and other relief, including civil penalties, for violations of the bill;

(8) make changes to the bill's defined terms; and

(9) make technical amendments to the bill.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 2861

STATE OF NEW JERSEY 215th LEGISLATURE

DATED: JULY 5, 2013

SUMMARY

- Synopsis:** Concerns closure of, and other activities at, certain landfills.
- Type of Impact:** Increased State cost recovered from landfill owners/operators.
- Agencies Affected:** Department of Environmental Protection; counties and municipalities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate increase – See comments below		
State Revenue	Indeterminate – See comments below		

- The Office of Legislative Services (OLS) does not have sufficient information, data, or resources to fully determine and quantify the fiscal impact of this bill. However, the OLS estimates the Department of Environmental Protection (DEP) could potentially incur substantial capital costs and long-term operating and maintenance costs during and after a landfill closure if it is required to close certain landfills as the bill directs.
- The OLS assumes that most or all of the landfill closure and related costs incurred by the DEP would be recovered by the State from the landfill's owner or operator since the bill requires the owner or operator to establish and maintain financial assurance in an amount necessary to pay for all closure costs, and also requires the owner or operator to maintain a general liability insurance policy in an amount necessary to pay for the closure costs.
- The OLS notes that the closure, post-closure and related costs incurred by the DEP could vary considerably depending on the size, location, and type of landfill to be closed, and the specific inspection, safety, and health monitoring systems required to be used during and after the closure of the landfill.

BILL DESCRIPTION

Senate Bill No. 2861 (2R) of 2013 establishes requirements and controls applicable to legacy landfills and closed sanitary landfill facilities that accept the placement of new materials after closure. The bill defines "legacy landfill" and "closed sanitary landfill facility" and establishes a summary procedure for the termination of an administrative consent order, agreement, closure or post-closure plan, or other permit or approval entered into by the DEP and any person authorizing the closure of a legacy landfill or the placement of additional waste or material on a closed sanitary landfill facility. An administrative consent order, agreement, closure or post-closure plan, or other permit or approval entered into by the department and a person for the closure of a legacy landfill or the placement of waste or material at a closed sanitary landfill facility would be voidable by a court if: (1) financial assurance requirements or financial plan requirements in the administrative consent order, agreement, closure or post-closure plan, or other permit or approval are not met; (2) the person entering into the administrative consent order, closure or post-closure plan, or other permit or approval made or submitted to any government agency or official any material misrepresentation, false statement, false report, false filing, misleading statement, or evasion or suppression of a material fact, related to the subject of the administrative consent order, the closure or post-closure plans of the legacy landfill or closed sanitary landfill facility, the property ownership of the legacy landfill site or closed sanitary landfill facility, or the qualifications of the person responsible for the closure or post-closure plans; or (3) fraud, deceit, or material misrepresentation in securing a license issued pursuant to P.L.1983, c.392 (C.13:1E-126 et seq.) (i.e. the "A901 law") related to the closure of a legacy landfill or the placement of waste or material at a closed sanitary landfill facility. An administrative consent order, agreement, closure or post-closure plan, or other permit or approval for the closure of a legacy landfill or for the authorization to place additional waste or material on a closed sanitary landfill facility voidable by a court, would apply to such orders, agreements, plans, permits or approvals entered into before or after the effective date of the bill. The bill also provides that if the administrative consent order is terminated, the DEP must take measures to protect the public, which may include closing the legacy landfill or closed sanitary landfill facility, and may recover costs from the owner or operator.

The bill requires the owner or operator of a legacy landfill or closed sanitary landfill facility that accepts recyclable material, contaminated soil, wastewater treatment residual material, or construction debris, to establish and maintain financial assurance in an amount necessary to pay for all closure costs and to maintain a general liability insurance policy to pay for damages or claims resulting from operations or closure of the legacy landfill or closed sanitary landfill facility. Further, the owner or operator of a legacy landfill or closed sanitary landfill facility that accepts recyclable material, contaminated soil, wastewater treatment residual material, or construction debris, must establish an escrow account and deposit into that account an amount equal to at least \$1.00 per ton, as determined by the DEP, of all waste or material accepted at the legacy landfill or closed sanitary landfill facility, to be used to pay for closure or post closure costs.

Finally, the bill provides the DEP with the authority to enforce the provisions of the bill by instituting an action in Superior Court for injunctive or other relief and for civil penalties of up to \$25,000 per day, and authorizes the DEP to issue an emergency order if the commissioner determines that any activities at the legacy landfill or closed sanitary landfill facility pose an imminent threat to the environment or public health and safety. The bill would take effect immediately.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS does not have sufficient information, data, or resources to fully determine and quantify the fiscal impact of this bill. However, the OLS estimates the DEP could potentially incur substantial capital costs and long-term operating and maintenance costs during and after a landfill closure if it is required to close certain landfills as the bill directs. The OLS assumes that most or all of the landfill closure and related costs incurred by the DEP would be recovered by the State from the landfill's owner or operator since the bill requires the owner or operator to establish and maintain financial assurance in an amount necessary to pay for all closure costs, and also requires the owner or operator to maintain a general liability insurance policy in an amount necessary to pay for the closure costs. The OLS notes that the closure, post-closure and related costs incurred by the DEP could vary considerably depending on the size, location, and type of landfill to be closed, and the specific inspection, safety, and health monitoring systems required to be used during and after the closure of the landfill.

Section: Environment, Agriculture, Energy and Natural Resources

*Analyst: Joseph A. Hroncich
Senior Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 4238

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED JUNE 13, 2013

Sponsored by:

Assemblyman MICHAEL PATRICK CARROLL
District 25 (Morris and Somerset)

SYNOPSIS

Concerns closure of, and other activities at, certain landfills.

CURRENT VERSION OF TEXT

As introduced.



A4238 CARROLL

2

1 AN ACT concerning certain landfills, and supplementing Title 13 of
2 the Revised Statutes.

3

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

6

7 1. As used in this act:

8 "Closure" means all activities associated with the design,
9 purchase, reuse, construction, or maintenance of all measures
10 required or authorized by the Department of Environmental
11 Protection, pursuant to law, in order to prevent, minimize, or
12 monitor pollution or health hazards resulting from legacy landfills
13 subsequent to the termination of operations at any portion thereof,
14 including, but not necessarily limited to, the placement of regrading
15 or fill material, the placement of final earthen or vegetative cover,
16 the installation of methane gas vents or monitors and leachate
17 monitoring wells or collection systems, and long-term operations
18 and maintenance, at the site of any legacy landfill that is not listed
19 on the National Priorities List pursuant to the "Comprehensive
20 Environmental Response, Compensation, and Liability Act of
21 1980," 42 U.S.C. s.9605.

22 "Department" means the Department of Environmental
23 Protection.

24 "Legacy landfill" means a landfill that ceased operations prior to
25 January 1, 1982, and received for disposal household solid waste
26 and at least one of the following: (1) commercial solid waste; (2)
27 industrial solid waste; or (3) waste material that was received for
28 disposal prior to October 21, 1976 and that is included within the
29 definition of hazardous waste adopted by the federal government
30 pursuant to the "Resource Conservation and Recovery Act," 42
31 U.S.C. s.6921 et seq.

32 "Licensed site remediation professional" means an individual
33 who is licensed by the Site Remediation Professional Licensing
34 Board pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) or the
35 Department of Environmental Protection pursuant to section 12 of
36 P.L.2009, c.60 (C.58:10C-12).

37 "Properly closed sanitary landfill facility" means a sanitary
38 landfill facility, or a portion of a sanitary landfill facility, for which
39 performance is complete with respect to all activities associated
40 with the design, installation, purchase, or construction of all
41 measures, structures, or equipment required by the Department of
42 Environmental Protection, pursuant to law, in order to prevent,
43 minimize, or monitor pollution or health hazards resulting from a
44 sanitary landfill facility subsequent to the termination of operations
45 at any portion thereof, including, but not necessarily limited to, the
46 placement of earthen or vegetative cover, and the installation of
47 methane gas vents or monitors and leachate monitoring wells or
48 collection systems at the site of any sanitary landfill facility;

1 2. a. An administrative consent order entered into by the
2 Department of Environmental Protection and any person for the
3 closure of a legacy landfill shall be void for any of the following
4 causes:

5 (1) financial assurance requirements or financial plan
6 requirements in the administrative consent order are not met;

7 (2) the person entering into the administrative consent order
8 made or submitted to any government entity or official any
9 misrepresentation, false statement, false report, false filing,
10 misleading statement, or evasion or suppression of a material fact,
11 related to the subject of the administrative consent order, the
12 closure or post-closure plans of the legacy landfill, the property
13 ownership of the legacy landfill site, or the qualifications of the
14 person responsible for the closure or post-closure plans for the
15 legacy landfill; or

16 (3) fraud, misrepresentation or deceit in securing a license
17 issued pursuant to P.L.1983, c.392 (C.13:1E-126 et seq.) related to
18 the closure of the legacy landfill.

19 b. If the administrative consent order entered into by the
20 Department of Environmental Protection and any person for the
21 closure of a legacy landfill is void pursuant to the provisions of
22 subsection a. of this section, the department shall properly close the
23 legacy landfill.

24 c. Any costs to properly close the legacy landfill and any related
25 costs incurred by the department may be recovered by the State
26 from the owner or operator of the legacy landfill and shall
27 constitute a debt of the owner or operator to the State. The debt
28 shall constitute a lien on all property owned by the owner or
29 operator when a notice of lien, incorporating a description of the
30 property of the owner or operator subject to the closure and an
31 identification of the amount of closure and related costs expended
32 by the State, is duly filed with the clerk of the Superior Court. The
33 clerk shall promptly enter upon the civil judgment or order docket
34 the name and address of the owner or operator and the amount of
35 the lien as set forth in the notice of lien. Upon entry by the clerk,
36 the lien, to the amount committed by the State for closure and
37 related costs, shall attach to the revenues and all real and personal
38 property of the owner or operator, whether or not the owner or
39 operator is insolvent.

40 The notice of lien filed pursuant to this subsection which affects
41 the property of an owner or operator subject to the closure shall
42 create a lien with priority over all other claims or liens which are or
43 have been filed against the property. The notice of lien filed
44 pursuant to this subsection which affects any property of an owner
45 or operator, other than the property subject to the closure, shall have
46 priority from the day of the filing of the notice of the lien over all
47 other claims and liens filed against the property, but shall not affect
48 any valid lien, right, or interest in the property filed in accordance

1 with established procedure prior to the filing of a notice of lien
2 pursuant to this subsection.

3
4 3. Notwithstanding the provisions of any other law to the
5 contrary, any person who undertakes the closure of a legacy
6 landfill, or the owner or operator of a properly closed sanitary
7 landfill facility, who accepts for any reason, solid waste, recyclable
8 material, contaminated soil, cover material, wastewater treatment
9 residual material, dredge material, construction debris, or any other
10 waste or material shall apply for and obtain site plan approval
11 pursuant to the provisions of the "Municipal Land Use Law,"
12 P.L.1975, c.291 (C.40:55D-1 et seq.).

13
14 4. a. There is established a maximum air quality standard for
15 hydrogen sulfide of 30 parts per billion averaged over a period of
16 30 minutes.

17 b. The Department of Environmental Protection, a county, or a
18 municipality in which a violation of subsection a. of this section
19 occurs, or any person who resides or owns property within two
20 miles of the boundary of the legacy landfill or properly closed
21 sanitary landfill facility, may institute an action or proceeding in the
22 Superior Court for injunctive and other relief, for any violation of
23 the air quality standard established in subsection a. of this section
24 that is measured at the legacy landfill or the properly closed
25 sanitary landfill facility, or within two miles of the property
26 boundary of a legacy landfill or properly closed sanitary landfill
27 facility, and the court may proceed in the action in a summary
28 manner. In any such proceeding the court may grant temporary or
29 interlocutory relief. Upon a finding of a violation, the court shall
30 require the owner or operator of the legacy landfill or properly
31 closed sanitary landfill facility to abate the violation immediately
32 and may require that wastes or materials be mixed, rolled, or
33 covered, or that odor shields be installed to abate the violation.

34 Such relief may also include, singly or in combination:

35 (1) a temporary or permanent injunction that requires that the
36 wastes or materials that are the source of the violation be mixed,
37 covered, or removed;

38 (2) assessment of the violator for the costs of any investigation,
39 inspection, or monitoring survey that led to the establishment of the
40 violation, and for the reasonable costs of preparing and litigating
41 the case under this section;

42 (3) assessment of the violator for any cost incurred by the State,
43 county, or municipality in removing, correcting, or terminating the
44 adverse effects upon environmental quality or public health
45 resulting from any violation for which the action under this
46 subsection may have been brought;

47 (4) assessment against the violator of compensatory damages for
48 any damages to health or property, loss or destruction of wildlife,

1 fish or aquatic life, and for any other actual damages caused by any
2 violation of subsection a. of this section; and

3 (5) assessment against the violator of the amount of any
4 economic benefits accruing to the violator from a violation.
5 Economic benefits may include the amount of any fees or charges
6 paid for the placement of the waste or material that is the source of
7 the violation; savings realized from avoided capital or noncapital
8 costs resulting from the violation; any return earned or that may be
9 earned on the amount of fees or charges or of the avoided costs; any
10 benefits accruing to the violator as a result of a competitive market
11 advantage enjoyed by reason of the violation; or any other benefits
12 resulting from the violation.

13 Assessments under this subsection shall be paid to the State
14 Treasurer, except that compensatory damages shall be paid by
15 specific order of the court to any persons who have been aggrieved
16 by the violation.

17

18 5. a. The owner or operator of any legacy landfill or properly
19 closed sanitary landfill facility who accepts solid waste, recyclable
20 material, contaminated soil, cover material, wastewater treatment
21 residual material, dredge material, construction debris, or any other
22 waste or material, shall establish and maintain financial assurance
23 in an amount necessary to pay for the closure costs and to provide
24 funds to pay for damages or claims resulting from operations or
25 closure of the legacy landfill or properly closed sanitary landfill
26 facility, as required pursuant to subsection b. of this section.
27 Financial assurance shall be established prior to the acceptance of
28 any waste or materials at the legacy landfill or properly closed
29 sanitary landfill facility.

30 b. Financial assurance shall be established in an amount equal to
31 or greater than the cost estimate of both the closure costs and the
32 amount necessary to provide funds to pay for damages or claims
33 resulting from operations or closure of the legacy landfill or
34 properly closed sanitary landfill (1) as approved by the department
35 or as determined by the licensed site remediation professional, as
36 applicable, (2) as provided in an administrative consent order, (3) as
37 stated in a departmental order or directive, or (4) as approved by a
38 court, and shall be in effect for a term not less than the actual time
39 necessary to complete all activities at the legacy landfill or properly
40 closed sanitary landfill including all closure activities and post-
41 closure monitoring. Whenever the cost estimate increases, the
42 person required to establish the financial assurance shall cause the
43 amount of the financial assurance to be increased to an amount at
44 least equal to the new estimate. Whenever the cost estimate
45 decreases, the person required to obtain the financial assurance may
46 file a written request with the department to decrease the amount of
47 the financial assurance, or may submit written documentation to the
48 department certified by the licensed site remediation professional of

1 the details of the decrease in the cost estimate, as applicable. The
2 financial assurance may be decreased to the amount of the new
3 estimate upon written approval by the department delivered to the
4 person who established the financial assurance.

5 c. Financial assurance shall be established pursuant to this
6 section by establishing a letter of credit or a line of credit.

7 d. Any person who fails to establish financial assurance,
8 deposits or places any waste or material prior to the establishment
9 of financial assurance, or uses those funds for any purpose other
10 than closure costs as approved by the department, or to pay
11 damages or claims as approved by the department or by a court,
12 shall be guilty of a crime of the third degree.

13

14 6. a. The owner or operator of every legacy landfill and every
15 properly closed sanitary landfill facility that accepts any solid
16 waste, recyclable material, contaminated soil, cover material,
17 wastewater treatment residual material, dredge material,
18 construction debris, or any other waste or material, shall deposit, on
19 a monthly basis in an interest-bearing account with an accredited
20 financial institution, an amount equal to \$1.00 per ton of all
21 material accepted during the preceding month at the legacy landfill
22 or properly closed sanitary landfill facility. In the event that any
23 waste is measured, upon acceptance, by a metric other than tons, the
24 amount to be deposited shall be calculated by using the equivalents
25 thereof as shall be determined by the department.

26 The account established pursuant to this subsection shall
27 constitute an escrow account for the closure and post-closure costs
28 of the particular legacy landfill or properly closed sanitary landfill
29 facility, and no withdrawals therefrom may be made without written
30 approval of the department, except as otherwise authorized by the
31 department.

32 b. Any owner or operator of a legacy landfill or properly closed
33 sanitary landfill facility who shall fail to deposit funds into an
34 escrow account, as provided herein, or uses those funds for any
35 purpose other than closure costs, as approved by the department,
36 shall be guilty of a crime of the third degree.

37

38 7. a. The owner or operator of a legacy landfill or a properly
39 closed sanitary landfill facility that undertakes any activity that
40 includes the placement or disposal of any material, regrading,
41 compression, venting, construction, or installation of monitors or
42 wells at a legacy landfill or a properly closed sanitary landfill shall
43 hire a licensed site remediation professional to perform the closure,
44 remediation, or redevelopment project or to oversee any other
45 activities performed at the legacy landfill or properly closed
46 sanitary landfill until the cessation of all activity and the final
47 closure thereof.

1 b. The licensed site remediation professional shall assure that all
2 wastes and materials accepted at the site for any purpose are
3 weighed, sampled, and tested, that no household solid waste is
4 deposited at the site, that all odors are properly controlled, and that
5 surface water bodies are protected from the deposition of any waste
6 or material from the property.

7

8 8. This act shall take effect immediately.

9

10

11

STATEMENT

12

13 This bill establishes requirements and controls applicable to
14 "legacy landfills" and properly closed sanitary landfill facilities that
15 accept the placement of new materials after closure. These
16 measures, which protect the environment and the public health and
17 safety, give the Department of Environmental Protection, local
18 governments, and the public new tools to assure that old dumps that
19 are reopened for proper closure and future reuse, or properly closed
20 sanitary landfill facilities that accept new material, are not operated
21 in ways that are dangerous to the health of their neighbors or that
22 cause additional harm to the environment.

23 The bill would define "legacy landfill" and would void an
24 administrative consent order entered into by the department with
25 any person for the closure of a legacy landfill if: (1) financial
26 assurance requirements or financial plan requirements in the
27 administrative consent order are not met; (2) the person entering
28 into the administrative consent order made or submitted to any
29 government agency or official any misrepresentation, false
30 statement, false report, false filing, misleading statement, or evasion
31 or suppression of a material fact, related to the subject of the
32 administrative consent order, the closure or post-closure plans of
33 the legacy landfill, the property ownership of the legacy landfill
34 site, or the qualifications of the person responsible for the closure or
35 post-closure plans for the legacy landfill; or (3) fraud,
36 misrepresentation or deceit in securing a license issued pursuant to
37 P.L.1983, c.392 (C.13:1E-126 et seq.) (i.e. the "A901 law") related
38 to the closure of the legacy landfill. The bill also provides that if
39 the administrative consent order is void, the department would be
40 required to properly close the legacy landfill and recover costs from
41 the owner or operator.

42 The bill also requires that any person who undertakes the closure
43 of a legacy landfill, or the owner or operator of a properly closed
44 sanitary landfill facility, who accepts for any reason, solid waste,
45 recyclable material, contaminated soil, cover material, wastewater
46 treatment residual material, dredge material, construction debris, or
47 any other waste or material must apply for and obtain site plan

1 approval pursuant to the provisions of the "Municipal Land Use
2 Law."

3 The bill establishes a maximum air quality standard for hydrogen
4 sulfide of 30 parts per billion averaged over a period of 30 minutes.
5 If a violation of the air quality standard occurs at or within two
6 miles of the property boundary of a legacy landfill or a properly
7 closed sanitary landfill facility, the Department of Environmental
8 Protection, a county, or a municipality in which the violation
9 occurs, or any person who resides or owns property within two
10 miles of the boundary of the legacy landfill or properly closed
11 sanitary landfill facility, may bring an action in Superior Court for
12 injunctive or other relief. The court, upon a finding of a violation,
13 is required to issue an order requiring the owner or operator of the
14 facility to abate the violation immediately. The court may also
15 issue an injunction, assess the violator for costs of the investigation,
16 costs incurred by the State, county, or municipality to correct the
17 violation, or terminate the adverse affects of the violation,
18 compensatory damages, and the amount of any economic benefits
19 accruing to the violator from a violation.

20 The bill requires the owner or operator of a legacy landfill or
21 properly closed sanitary landfill that accepts solid waste, recyclable
22 material, contaminated soil, cover material, wastewater treatment
23 residual material, dredge material, construction debris, or any other
24 waste or material, to establish and maintain financial assurance in
25 an amount necessary to pay for the closure costs and to provide
26 funds to pay for damages or claims resulting from operations or
27 closure of the legacy landfill or properly closed sanitary landfill
28 facility. Further, the owner or operator of a legacy landfill or
29 properly closed sanitary landfill that accepts solid waste, recyclable
30 material, contaminated soil, cover material, wastewater treatment
31 residual material, dredge material, construction debris, or any other
32 waste or material, to establish an escrow account and to deposit an
33 amount equal to \$1.00 per ton of all waste or material accepted at
34 the legacy landfill or properly closed sanitary landfill facility to be
35 used to pay for closure or post closure costs.

36 Finally, the bill requires that the owner or operator of a legacy
37 landfill or properly closed sanitary landfill who undertakes any
38 activity that includes the placement or disposal of any material,
39 regrading, compression, venting, construction, or installation of
40 monitors or wells at a legacy landfill or a properly closed sanitary
41 landfill is required to hire a licensed site remediation professional to
42 perform the closure, remediation, or redevelopment project or to
43 oversee any other activities performed at a legacy landfill or
44 properly closed sanitary landfill until the cessation of all activity
45 and the final closure.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4238

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 17, 2013

The Assembly Budget Committee reports favorably Assembly Bill No. 4238, with committee amendments.

As amended, the bill establishes requirements and controls applicable to legacy landfills and closed sanitary landfill facilities that accept the placement of new materials after closure. The bill, as amended, defines "legacy landfill" and "closed sanitary landfill facility" and establishes a summary procedure for the termination of an administrative consent order agreement, closure or post-closure plan, or other permit or approval entered into by the Department of Environmental Protection (DEP) and any person authorizing the closure of a legacy landfill or the placement of additional waste or material on a closed sanitary landfill facility. An administrative consent order, or agreement, closure or post-closure plan, or other permit or approval entered into by the department and a person for the closure of a legacy landfill or the placement of waste or material at a closed sanitary landfill facility would be voidable by a court if: (1) financial assurance requirements or financial plan requirements in the administrative consent order, closure, or post-closure plan, or other permit or approval are not met; (2) the person entering into the administrative consent order, closure, or post-closure plan, or other permit or approval made or submitted to any government agency or official any material misrepresentation, false statement, false report, false filing, misleading statement, or evasion or suppression of a material fact, related to the subject of the administrative consent order, the closure or post-closure plans of the legacy landfill or closed sanitary landfill facility, the property ownership of the legacy landfill site or closed sanitary landfill facility, or the qualifications of the person responsible for the closure or post-closure plans; or (3) fraud, deceit, or material misrepresentation in securing a license issued pursuant to P.L.1983, c.392 (C.13:1E-126 et seq.) (i.e. the "A901 law") related to the closure of a legacy landfill or the placement of waste or material at a closed sanitary landfill facility. The bill, as amended, also provides that if the administrative consent order is terminated, the DEP must take measures to protect the public, which

may include closing the legacy landfill or closed sanitary landfill facility, and may recover costs from the owner or operator.

The bill also requires that any person who undertakes the closure of a legacy landfill, or the owner or operator of a closed sanitary landfill facility, who accepts for any reason, solid waste, recyclable material, contaminated soil, cover material, wastewater treatment residual material, dredge material, construction debris, or any other waste or material must apply for and obtain site plan approval pursuant to the provisions of the "Municipal Land Use Law."

The bill establishes a maximum air quality standard for emissions from a legacy landfill or closed sanitary landfill facility for hydrogen sulfide of 30 parts per billion averaged over a period of any 30 minutes, measured at the property line of the legacy landfill or closed sanitary landfill facility. Upon verification of a violation of the standard, the bill, as amended, authorizes the DEP to order the owner or operator to take measures to monitor hydrogen sulfide levels. In addition, if a violation of the air quality standard occurs at or within two miles of the property boundary of a legacy landfill or closed sanitary landfill facility, the DEP, a county, or a municipality in which the violation occurs, or any person who resides or owns property within two miles of the boundary of the legacy landfill or properly closed sanitary landfill facility, may bring an action in Superior Court for injunctive or other relief. The court, upon a finding of a violation, is required to issue an order requiring the owner or operator of the facility to abate the violation immediately. The court may also issue an injunction, assess the violator for costs of the investigation, costs incurred by the State, county, or municipality to correct the violation, or terminate the adverse affects of the violation, compensatory damages, and the amount of any economic benefits accruing to the violator from a violation.

The bill, as amended, requires the owner or operator of a legacy landfill or closed sanitary landfill that accepts recyclable material, contaminated soil, wastewater treatment residual material, or construction debris, to establish and maintain financial assurance in an amount necessary to pay for all closure costs and to maintain a general liability insurance policy to pay for damages or claims resulting from operations or closure of the legacy landfill or closed sanitary landfill facility. Further, the owner or operator of a legacy landfill or closed sanitary landfill facility that accepts recyclable material, contaminated soil, wastewater treatment residual material, or construction debris, to establish an escrow account and to deposit an amount equal to at least \$1.00 per ton, as determined by the DEP, of all waste or material accepted at the legacy landfill or closed sanitary landfill facility, to be used to pay for closure or post closure costs.

Further, the bill, as amended, requires the owner or operator of a legacy landfill or closed sanitary landfill who undertakes any activity that includes the placement or disposal of any material, regrading,

compression, venting, construction, or installation of monitors or wells at a legacy landfill or a closed sanitary landfill to hire a New Jersey licensed professional engineer to perform the closure and to oversee any other activities performed at a legacy landfill or closed sanitary landfill facility.

The bill, as amended, provides the DEP with the authority to enforce the provisions of the bill by instituting an action in Superior Court for injunctive or other relief and for civil penalties of up to \$25,000 per day. Finally, the bill authorizes the DEP to issue an emergency order if the commissioner determines that any activities at the legacy landfill or closed sanitary landfill facility pose an imminent threat to the environment or public health and safety.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the Department of Environmental Protection (DEP) could incur substantial costs if it is required to properly close certain landfills as this bill directs. However, the bill provides that the DEP may recover any and all costs related to the closure of the legacy landfill or sanitary landfill facility from the owner or operator of the landfill. The OLS assumes that most or all of the landfill closure and related costs could eventually be recovered by the DEP through negotiations with the owner or operator or through an action or proceeding in the courts.

COMMITTEE AMENDMENTS:

The committee amendments:

(1) specify that an administrative consent order (ACO), agreement, closure or post-closure plan, or other permit or approval entered into by the DEP and any person for the closure of a legacy landfill or for the authorization to place additional waste or material on a closed sanitary landfill facility is voidable under certain conditions, and authorize the commissioner of the DEP to institute a summary action in Superior Court to terminate an ACO if those conditions are met;

(2) clarify the hydrogen sulfide level emanating from a legacy landfill or closed sanitary landfill shall not exceed 30 parts per billion averaged over a period of any 30 minutes, and provide authority to the DEP to order actions to be taken to monitor hydrogen sulfide levels at their source;

(3) authorize the DEP to adopt regulations to supersede the hydrogen sulfide standard established in the bill;

(4) require owners of certain legacy landfills and closed sanitary landfill facilities to maintain general liability insurance, and clarify requirements regarding the demonstration of financial assurances;

(5) authorize the DEP to increase the amounts owners of legacy landfills and closed sanitary landfill facilities are required to deposit in escrow after review of estimated costs of post-closure monitoring and operations;

(6) remove the requirement that a licensed site remediation professional oversee activity at a legacy landfill or closed sanitary landfill facility that accepts for placement additional material and instead require a New Jersey licensed professional engineer to oversee those activities;

(7) authorize the commissioner of the DEP to institute actions in Superior Court for injunctive and other relief, including civil penalties, for violations of the bill;

(8) make changes to the bill's defined terms; and

(9) make technical amendments to the bill.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 4238

with Assembly Floor Amendments
(Proposed by Assemblyman CARROLL)

ADOPTED: JUNE 20, 2013

These floor amendments would clarify that the bill's provisions making an administrative consent order, agreement, closure or post-closure plan, or other permit or approval for the closure of a legacy landfill or for the authorization to place additional waste or material on a closed sanitary landfill facility voidable by a court, would apply to such orders, agreements, plans, permits or approvals entered into before or after the effective date of the bill. The amendments would also make technical changes to the bill.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 4238

STATE OF NEW JERSEY 215th LEGISLATURE

DATED: JUNE 27, 2013

SUMMARY

- Synopsis:** Concerns closure of, and other activities at, certain landfills.
- Type of Impact:** Increased State cost recovered from landfill owners/operators.
- Agencies Affected:** Department of Environmental Protection; counties and municipalities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate increase – See comments below		
State Revenue	Indeterminate – See comments below		

- The Office of Legislative Services (OLS) does not have sufficient information, data, or resources to fully determine and quantify the fiscal impact of this bill. However, the OLS estimates the Department of Environmental Protection (DEP) could potentially incur substantial capital costs and long-term operating and maintenance costs during and after a landfill closure if it is required to close certain landfills as the bill directs.
- The OLS assumes that most or all of the landfill closure and related costs incurred by the DEP would be recovered by the State from the landfill's owner or operator since the bill requires the owner or operator to establish and maintain financial assurance in an amount necessary to pay for all closure costs, and also requires the owner or operator to maintain a general liability insurance policy in an amount necessary to pay for the closure costs.
- The OLS notes that the closure, post-closure and related costs incurred by the DEP could vary considerably depending on the size, location, and type of landfill to be closed, and the specific inspection, safety, and health monitoring systems required to be used during and after the closure of the landfill.

BILL DESCRIPTION

Assembly Bill No. 4238 (2R) of 2013 establishes requirements and controls applicable to legacy landfills and closed sanitary landfill facilities that accept the placement of new materials after closure. The bill defines "legacy landfill" and "closed sanitary landfill facility" and establishes a summary procedure for the termination of an administrative consent order, agreement, closure or post-closure plan, or other permit or approval entered into by the DEP and any person authorizing the closure of a legacy landfill or the placement of additional waste or material on a closed sanitary landfill facility. An administrative consent order, agreement, closure or post-closure plan, or other permit or approval entered into by the department and a person for the closure of a legacy landfill or the placement of waste or material at a closed sanitary landfill facility would be voidable by a court if: (1) financial assurance requirements or financial plan requirements in the administrative consent order, agreement, closure or post-closure plan, or other permit or approval are not met; (2) the person entering into the administrative consent order, closure or post-closure plan, or other permit or approval made or submitted to any government agency or official any material misrepresentation, false statement, false report, false filing, misleading statement, or evasion or suppression of a material fact, related to the subject of the administrative consent order, the closure or post-closure plans of the legacy landfill or closed sanitary landfill facility, the property ownership of the legacy landfill site or closed sanitary landfill facility, or the qualifications of the person responsible for the closure or post-closure plans; or (3) fraud, deceit, or material misrepresentation in securing a license issued pursuant to P.L.1983, c.392 (C.13:1E-126 et seq.) (i.e. the "A901 law") related to the closure of a legacy landfill or the placement of waste or material at a closed sanitary landfill facility. An administrative consent order, agreement, closure or post-closure plan, or other permit or approval for the closure of a legacy landfill or for the authorization to place additional waste or material on a closed sanitary landfill facility voidable by a court, would apply to such orders, agreements, plans, permits or approvals entered into before or after the effective date of the bill. The bill also provides that if the administrative consent order is terminated, the DEP must take measures to protect the public, which may include closing the legacy landfill or closed sanitary landfill facility, and may recover costs from the owner or operator.

The bill requires the owner or operator of a legacy landfill or closed sanitary landfill facility that accepts recyclable material, contaminated soil, wastewater treatment residual material, or construction debris, to establish and maintain financial assurance in an amount necessary to pay for all closure costs and to maintain a general liability insurance policy to pay for damages or claims resulting from operations or closure of the legacy landfill or closed sanitary landfill facility. Further, the owner or operator of a legacy landfill or closed sanitary landfill facility that accepts recyclable material, contaminated soil, wastewater treatment residual material, or construction debris, must establish an escrow account and deposit into that account an amount equal to at least \$1.00 per ton, as determined by the DEP, of all waste or material accepted at the legacy landfill or closed sanitary landfill facility, to be used to pay for closure or post closure costs.

Finally, the bill provides the DEP with the authority to enforce the provisions of the bill by instituting an action in Superior Court for injunctive or other relief and for civil penalties of up to \$25,000 per day, and authorizes the DEP to issue an emergency order if the commissioner determines that any activities at the legacy landfill or closed sanitary landfill facility pose an imminent threat to the environment or public health and safety. The bill would take effect immediately.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS does not have sufficient information, data, or resources to fully determine and quantify the fiscal impact of this bill. However, the OLS estimates the DEP could potentially incur substantial capital costs and long-term operating and maintenance costs during and after a landfill closure if it is required to close certain landfills as the bill directs. The OLS assumes that most or all of the landfill closure and related costs incurred by the DEP would be recovered by the State from the landfill's owner or operator since the bill requires the owner or operator to establish and maintain financial assurance in an amount necessary to pay for all closure costs, and also requires the owner or operator to maintain a general liability insurance policy in an amount necessary to pay for the closure costs. The OLS notes that the closure, post-closure and related costs incurred by the DEP could vary considerably depending on the size, location, and type of landfill to be closed, and the specific inspection, safety, and health monitoring systems required to be used during and after the closure of the landfill.

Section: Environment, Agriculture, Energy and Natural Resources

*Analyst: Joseph A. Hroncich
Senior Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).