

## CHAPTER 69

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

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

C.13:1E-125.1 Definitions relative to certain landfills.

1. As used in this act:

"Closed sanitary landfill facility" means a sanitary landfill facility, or a portion of a sanitary landfill facility, for which performance is complete with respect to all activities associated with the design, installation, purchase, or construction of all measures, structures, or equipment required by the Department of Environmental Protection, pursuant to law, in order to prevent, minimize, or monitor pollution or health hazards resulting from a sanitary landfill facility subsequent to the termination of operations at any portion thereof, including, but not necessarily limited to, the placement of earthen or vegetative cover, and the installation of methane gas vents, monitors, and air pollution control devices and leachate monitoring wells or collection systems at the site of any sanitary landfill facility.

"Closure" or "closure costs" means activities and costs associated with the design, purchase, reuse, construction, or maintenance of all measures deemed necessary by the Department of Environmental Protection, pursuant to law, in order to prevent, minimize, or monitor pollution or health hazards resulting from a legacy landfill or any other landfill subsequent to the termination of operations at any portion thereof, including, but not necessarily limited to, the costs of general liability insurance, the placement or regrading of fill material, the placement of final earthen or vegetative cover, the installation of methane gas vents or monitors and leachate monitoring wells or collection systems, and long-term operations and maintenance, at the site of a legacy landfill or any other landfill that is not listed on the National Priorities List pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 42 U.S.C. s.9605.

"Commissioner" means the Commissioner of Environmental Protection.

"Department" means the Department of Environmental Protection.

"Legacy landfill" means a landfill that ceased operations prior to January 1, 1982, and received for disposal: (1) solid waste; or (2) waste material that was received for disposal prior to October 21, 1976 and that is included within the definition of hazardous waste adopted by the federal government pursuant to the "Resource Conservation and Recovery Act," 42 U.S.C. s.6921 et seq.

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

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

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

"Solid waste" means garbage, refuse, and other discarded materials resulting from industrial, commercial, and agricultural operations, and from domestic and community activities, and shall include all other waste materials including liquids.

## C.13:1E-125.2 Voidable causes; closure.

2. a. (1) An administrative consent order, agreement, closure or post-closure plan, or other permit or approval entered into before or after the effective date of this act by the Department of Environmental Protection 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 shall be voidable for any of the following causes:

(a) if the owner or operator does not satisfy the financial assurance requirements of P.L.2013, c.69 (C.13:1E-125.1 et seq.) or any material financial plan requirements in any administrative consent order, agreement, closure or post-closure plan, or other permit or approval;

(b) if the owner or operator, or any person entering into the administrative consent order, agreement, closure or post-closure plan, or other permit or approval, made or submitted to any government entity or official any material misrepresentation, false statement, false report, false filing, misleading statement, or evasion or suppression of a material fact, including making a false financial disclosure, 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 for the legacy landfill or closed sanitary landfill facility; or

(c) for fraud, deceit, or material misrepresentation in securing a license issued pursuant to P.L.1983, c.392 (C.13:1E-126 et seq.) related to the closure of a legacy landfill or the placement of waste or material at a closed sanitary landfill facility.

(2) The commissioner may institute a summary action in the Superior Court to terminate 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. In any such proceeding, if an administrative consent order, agreement, closure or post-closure plan, or other permit or approval is voidable as provided in paragraph (1) of this subsection, the Superior Court shall issue an order terminating the administrative consent order, agreement, plan, permit, or approval.

b. If an administrative consent order, agreement, closure or post-closure plan, or other permit or approval, entered into by the department and any person for the closure of a legacy landfill or the placement of waste or material at a closed sanitary landfill facility is terminated pursuant to the provisions of subsection a. of this section, the department shall take such measures deemed necessary by the department to protect the public, which may include closing the legacy landfill or sanitary landfill facility, consistent with the provisions of P.L.2013, c.69 (C.13:1E-125.1 et seq.).

c. Any closure costs and costs incurred by the department in a proceeding resulting in termination pursuant to subsection a. of this section, including attorney's fees and court costs, may be recovered by the State from the owner or operator of the legacy landfill or closed sanitary landfill facility and shall constitute a debt of the owner or operator to the State. All owners or operators shall be jointly and severally liable for all recoverable costs. The debt shall constitute a lien on all property owned by the owner or operator when a notice of lien, incorporating a description of the property of the owner or operator subject to the closure and an identification of the amount of closure and related costs expended by the State, is duly filed with the clerk of the Superior Court. The clerk shall promptly enter upon the civil judgment or order docket the name and address of the owner or operator and the

amount of the lien as set forth in the notice of lien. Upon entry by the clerk, the lien, to the amount committed by the State for closure and related costs, shall attach to the revenues and all real and personal property of the owner or operator, whether or not the owner or operator is insolvent.

d. The notice of lien filed pursuant to subsection c. of this section which affects the property of an owner or operator subject to the closure shall create a lien with priority over all other claims or liens which are or have been filed against the property. The notice of lien filed pursuant to subsection c. of this section which affects any property of an owner or operator, other than the property subject to the closure, shall have priority from the day of the filing of the notice of the lien over all other claims and liens filed against the property, but shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien pursuant to this subsection.

#### C.13:1E-125.3 Site plan approval required.

3. Notwithstanding the provisions of any other law to the contrary, 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 shall apply for and obtain site plan approval pursuant to the provisions of the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

#### C.13:1E-125.4 Hydrogen sulfide levels, odors; violations; adoption of standards.

4. a. Hydrogen sulfide levels 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 to be measured at the property line of a legacy landfill or closed sanitary landfill facility.

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

- (1) develop a hydrogen sulfide monitoring plan to be approved by the department;
- (2) purchase and install devices in accordance with this plan to monitor hydrogen sulfide levels at the property boundary of the legacy landfill or closed sanitary landfill facility;
- (3) operate and maintain these devices to record hydrogen sulfide levels in accordance with the plan; and
- (4) provide periodic reports to the department on a schedule determined by the department on the levels of hydrogen sulfide emitted from the legacy landfill or closed sanitary landfill facility.

c. The Department of Environmental Protection, a county, or a municipality in which a violation of subsection a. of this section occurs, or any person who resides or owns property within two miles of the boundary of the legacy landfill or closed sanitary landfill facility, may institute an action or proceeding in the Superior Court for injunctive and other relief, for any violation of the air quality standard established in subsection a. of this section that is measured at the legacy landfill or the closed sanitary landfill facility, or within two miles of the property boundary of a legacy landfill or closed sanitary landfill facility, and the court may proceed in the action in a summary manner. In any such proceeding the court may grant temporary or interlocutory relief. Upon a finding of a violation, the court shall require the owner or operator of the legacy landfill or closed sanitary landfill facility to abate the

violation immediately and may require that wastes or materials be mixed, rolled, or covered, or that odor shields be installed to abate the violation.

Such relief may also include, singly or in combination:

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

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

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

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

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

Assessments under this subsection shall be paid to the party bringing the action, except that compensatory damages shall be paid by specific order of the court to any persons who have been aggrieved by the violation.

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

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

#### C.13:1E-125.5 Financial assurance to pay for closure costs.

5. a. The owner or operator of any legacy landfill or closed sanitary landfill facility who accepts recyclable material, contaminated soil, wastewater treatment residual material, or construction debris shall establish and maintain financial assurance in an amount necessary to pay for all closure costs, and shall maintain a general liability insurance policy in an amount determined in advance by the department to pay for damages or claims resulting from operations or closure of the legacy landfill or closed sanitary landfill facility, as required pursuant to subsection b. of this section. Financial assurance shall be certified by a New Jersey licensed professional engineer prior to the acceptance of any solid waste or any other materials at the legacy landfill or closed sanitary landfill facility. General liability insurance coverage shall be maintained through the entirety of closure and post-closure activities.

b. Financial assurance shall be established in an amount equal to or greater than the cost estimate of the closure costs (1) as certified by the New Jersey licensed professional engineer retained pursuant to section 7 of P.L.2013, c.69 (C.13:1E-125.7), (2) as provided in an administrative consent order, (3) as stated in a departmental order or directive, or (4) as

approved by a court, and shall be in effect for a term not less than the actual time necessary to complete all activities at the legacy landfill or closed sanitary landfill facility including all closure activities. Closure cost estimates shall be revised and re-certified by a New Jersey licensed professional engineer every two years after commencement of approved activities on the legacy landfill or closed sanitary landfill facility. In the event of an increase, the owner or operator shall cause the amount of the financial assurance to be increased to an amount at least equal to the new estimate. If the closure cost estimate decreases as a result of a periodic review, the owner or operator may file a written request with the department to decrease the amount of the financial assurance, supported by a certification by a New Jersey licensed professional engineer of the details of the decrease in the cost estimate, as applicable. The financial assurance may be decreased to the amount of the new estimate upon written approval by the department.

c. Financial assurance shall be established pursuant to this section by any of the following, individually or in combination, surety bond, a letter of credit or a line of credit upon which the department may draw directly to fund closure in the event of a termination.

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

#### C.13:1E-125.6 Monthly deposit of costs of post-closure monitoring.

6. a. The owner or operator of every legacy landfill and every closed sanitary landfill facility that accepts any recyclable material, contaminated soil, wastewater treatment residual material, or construction debris shall deposit, on a monthly basis in an interest-bearing account with an accredited financial institution, an amount determined by the department after review of the estimated costs of post-closure monitoring and operational costs, but not less than \$1.00 per ton of all waste or material accepted during the preceding month at the legacy landfill or closed sanitary landfill facility. In the event that any waste or material is measured, upon acceptance, by a metric other than tons, the amount to be deposited shall be calculated by using the equivalents thereof as shall be determined by the department.

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

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

#### C.13:1E-125.7 New Jersey licensed professional engineer to perform closure.

7. a. The owner or operator of a legacy landfill or a closed sanitary landfill facility that 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 shall hire a New Jersey licensed professional engineer to perform the closure and to oversee any other activities performed at the legacy landfill or closed sanitary landfill facility.

b. The New Jersey licensed professional engineer shall certify on a quarterly basis that all wastes and materials accepted at the site for any purpose are weighed, sampled, and tested

according to a protocol approved in advance by the department, and that all provisions and prohibitions of the administrative consent order, closure or post-closure plans, permits, or approvals are complied with at the legacy landfill or closed sanitary landfill facility.

C.13:1E-125.8 Violations, penalties.

8. a. Whenever the commissioner finds that a person has violated any provision of P.L.2013, c.69 (C.13:1E-125.1 et seq.), the commissioner may institute an action or proceeding in the Superior Court for injunctive and other relief, and for a civil penalty for each violation in an amount not to exceed \$25,000 per day provided that each day during which the violation continues shall constitute an additional, separate and distinct offense.

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

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

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

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

(4) assessment against the violator of compensatory damages for any damages, loss, or destruction of wildlife, fish or aquatic life, and for any other actual damages to the public caused by any violation of P.L.2013, c.69 (C.13:1E-125.1 et seq.); and

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

b. Assessments under this section shall be paid to the State Treasurer. Recourse to any remedy available under this section shall not preclude recourse to any other remedies authorized by P.L.2013, c.69 (C.13:1E-125.1 et seq.) or by any other applicable law.

C.13:1E-125.9 Emergency orders.

9. If the commissioner determines that any activity or activities occurring at a legacy landfill or closed sanitary landfill facility present an imminent threat to the environment or public health and safety, the provisions of section 2 of P.L.1990, c.70 (C.13:1E-9.5) shall govern the issuance of and any challenge to, any emergency order issued by the commissioner to the owner or operator of a legacy landfill or closed sanitary landfill facility.

10. This act shall take effect immediately.

Approved June 26, 2013.