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.