

[Second Reprint]

SENATE, No. 2861

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED JUNE 6, 2013

Sponsored by:

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Senator ANTHONY R. BUCCO

District 25 (Morris and Somerset)

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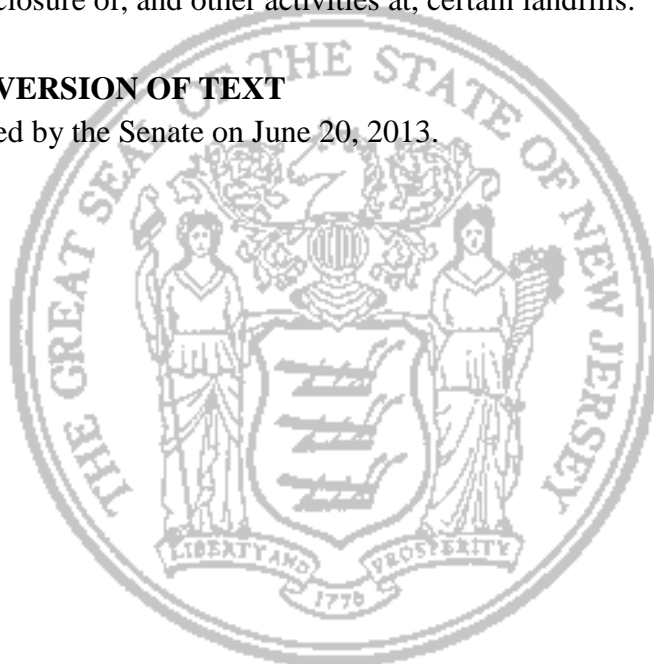
Senator Pennacchio

SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the Senate on June 20, 2013.



(Sponsorship Updated As Of: 6/25/2013)

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

37 ²“Commissioner” means the Commissioner of Environmental
38 Protection.²

39 "Department" means the Department of Environmental
40 Protection.

41 "Legacy landfill" means a landfill that ceased operations prior to
42 January 1, 1982, and received for disposal ²[household solid waste

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 and at least one of the following²: (1) ²**commercial**² solid waste;
2 ²or² (2) ²**industrial solid waste**; or (3)² waste material that was
3 received for disposal prior to October 21, 1976 and that is included
4 within the definition of hazardous waste adopted by the federal
5 government pursuant to the "Resource Conservation and Recovery
6 Act," 42 U.S.C. s.6921 et seq.

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

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

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

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

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

39 ²"Solid waste" means garbage, refuse, and other discarded
40 materials resulting from industrial, commercial, and agricultural
41 operations, and from domestic and community activities, and shall
42 include all other waste materials including liquids.²

43
44 2. a. ²(1)² An administrative consent order ², agreement,
45 closure or post-closure plan, or other permit or approval² entered
46 into ²before or after the effective date of this act² by the
47 Department of Environmental Protection and any person for the

1 closure of a legacy landfill ¹or for the authorization to place
 2 additional waste or material on a ²**properly**² closed sanitary
 3 landfill facility¹ shall be ²**void**² voidable² for any of the following
 4 causes:

5 ²**[(1)]** (a) if the owner or operator does not satisfy the²
 6 financial assurance requirements ²of P.L. _____, c. (C. _____)
 7 (pending before the Legislature as this bill)² or ²any material²
 8 financial plan requirements in ²**the**² any² administrative consent
 9 order ²**are not met**², agreement, closure or post-closure plan, or
 10 other permit or approval²;

11 ²**[(2) the]** (b) if the owner or operator, or any² person entering
 12 into the administrative consent order ², agreement, closure or post-
 13 closure plan, or other permit or approval,² made or submitted to any
 14 government entity or official any ²material² misrepresentation, false
 15 statement, false report, false filing, misleading statement, or evasion
 16 or suppression of a material fact, ²including making a false
 17 financial disclosure,² related to the subject of the administrative
 18 consent order, the closure or post-closure plans of the legacy
 19 landfill ¹or ²closed² sanitary landfill facility¹, the property
 20 ownership of the legacy landfill site ¹or ²closed² sanitary landfill
 21 facility¹, or the qualifications of the person responsible for the
 22 closure or post-closure plans for the legacy landfill ¹or ²closed²
 23 sanitary landfill facility¹; or

24 ²**[(3)]** (c) for² fraud, ²deceit, or material² misrepresentation
 25 ²**or deceit**² in securing a license issued pursuant to P.L.1983,
 26 c.392 (C.13:1E-126 et seq.) related to the closure of ²**the**² a²
 27 legacy landfill ¹or the placement of waste or material at ²**the**² a
 28 closed² sanitary landfill facility¹.

29 ²(2) The commissioner may institute a summary action in the
 30 Superior Court to terminate an administrative consent order,
 31 agreement, closure or post-closure plan, or other permit or approval
 32 entered into by the department and a person for the closure of a
 33 legacy landfill or the placement of waste or material at a closed
 34 sanitary landfill facility. In any such proceeding, if an
 35 administrative consent order, agreement, closure or post-closure
 36 plan, or other permit or approval is voidable as provided in
 37 paragraph (1) of this subsection, the Superior Court shall issue an
 38 order terminating the administrative consent order, agreement, plan,
 39 permit, or approval. ²

40 b. If ²**the**² an² administrative consent order ², agreement,
 41 closure or post-closure plan, or other permit or approval,² entered
 42 into by the ²**Department of Environmental Protection**² department²
 43 and any person for the closure of a legacy landfill ¹or the placement
 44 of waste or material at **the**² a closed² sanitary landfill facility¹ is
 45 ²**void**² terminated² pursuant to the provisions of subsection a. of

1 this section, the department shall ²**[properly close]** take such
2 measures deemed necessary by the department to protect the public,
3 which may include closing² the legacy landfill ¹or sanitary landfill
4 facility^{1 2}, consistent with the provisions of P.L. , c. (C.)
5 (pending before the Legislature as this bill)² .

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

26 ²d.² The notice of lien filed pursuant to ²**[this]**² subsection ²c. of

27 this section² which affects the property of an owner or operator
28 subject to the closure shall create a lien with priority over all other
29 claims or liens which are or have been filed against the property.
30 The notice of lien filed pursuant to ²**[this]**² subsection ²c. of this

31 section² which affects any property of an owner or operator, other
32 than the property subject to the closure, shall have priority from the
33 day of the filing of the notice of the lien over all other claims and
34 liens filed against the property, but shall not affect any valid lien,
35 right, or interest in the property filed in accordance with established
36 procedure prior to the filing of a notice of lien pursuant to this
37 subsection.

38

39 3. Notwithstanding the provisions of any other law to the
40 contrary, any person who undertakes the closure of a legacy
41 landfill, or the owner or operator of a ²**[properly]**² closed sanitary
42 landfill facility, who accepts for any reason, solid waste, recyclable
43 material, contaminated soil, cover material, wastewater treatment
44 residual material, dredge material, construction debris, or any other
45 waste or material shall apply for and obtain site plan approval

1 pursuant to the provisions of the "Municipal Land Use Law,"
2 P.L.1975, c.291 (C.40:55D-1 et seq.).

3

4 4. a. ²~~There is established a maximum air quality standard for~~
5 ~~hydrogen~~ Hydrogen² sulfide ²~~of~~ levels emanating from a legacy
6 landfill or closed sanitary landfill facility shall not exceed² 30 parts
7 per billion averaged over a period of ²~~any~~² 30 minutes ²~~to be~~
8 measured at the property line of a legacy landfill or closed sanitary
9 landfill facility².

10 b. ²Upon verification by the department of complaints about
11 hydrogen sulfide odors and a determination by the department that
12 the legacy landfill or closed sanitary landfill facility is the source of
13 those odors, the department may order the person who is
14 undertaking the closure of a legacy landfill or placement of
15 materials at a closed sanitary landfill facility, or the owner or
16 operator of the legacy landfill or closed sanitary landfill facility to:

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

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

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

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

27 c.² The Department of Environmental Protection, a county, or a
28 municipality in which a violation of subsection a. of this section
29 occurs, or any person who resides or owns property within two
30 miles of the boundary of the legacy landfill or ²~~properly~~² closed
31 sanitary landfill facility, may institute an action or proceeding in the
32 Superior Court for injunctive and other relief, for any violation of
33 the air quality standard established in subsection a. of this section
34 that is measured at the legacy landfill or the ²~~properly~~² closed
35 sanitary landfill facility, or within two miles of the property
36 boundary of a legacy landfill or ²~~properly~~² closed sanitary
37 landfill facility, and the court may proceed in the action in a
38 summary manner. In any such proceeding the court may grant
39 temporary or interlocutory relief. Upon a finding of a violation, the
40 court shall require the owner or operator of the legacy landfill or
41 ²~~properly~~² closed sanitary landfill facility to abate the violation
42 immediately and may require that wastes or materials be mixed,
43 rolled, or covered, or that odor shields be installed to abate the
44 violation.

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

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

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

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

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

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

27 Assessments under this subsection shall be paid to the ¹【State
28 Treasurer】 party bringing the action¹, except that compensatory
29 damages shall be paid by specific order of the court to any persons
30 who have been aggrieved by the violation.

31 ¹Recourse to any remedy available under this section shall not
32 preclude recourse to any other remedies authorized in this act or by
33 any other applicable law.¹

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

39
40 5. a. The owner or operator of any legacy landfill or
41 ²【properly】² closed sanitary landfill facility who accepts ²【solid
42 waste,】² recyclable material, contaminated soil, ²【cover material,】²
43 wastewater treatment residual material, ²【dredge material,】 or²
44 construction debris ²【, or any other waste or material,】² shall
45 establish and maintain financial assurance in an amount necessary
46 to pay for ¹【the】 all¹ closure costs ^{2,2} and ²【to provide funds】 shall
47 maintain a general liability insurance policy in an amount

1 determined in advance by the department² to pay for damages or
2 claims resulting from operations or closure of the legacy landfill or
3 ²**[properly]**² closed sanitary landfill facility, as required pursuant to
4 subsection b. of this section. Financial assurance shall be
5 ²**[established]** certified by a New Jersey licensed professional
6 engineer² prior to the acceptance of any ²solid² waste or ²any other²
7 materials at the legacy landfill or ²**[properly]**² closed sanitary
8 landfill facility. ²General liability insurance coverage shall be
9 maintained through the entirety of closure and post-closure
10 activities.²

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

43 c. Financial assurance shall be established pursuant to this
44 section by ²**[establishing]** any of the following, individually or in
45 combination, surety bond,² a letter of credit or a line of credit ²upon

1 which the department may draw directly to fund closure in the event
2 of a termination².

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

9
10 6. a. The owner or operator of every legacy landfill and every
11 ²[properly]² closed sanitary landfill facility that accepts any ²[solid
12 waste,]² recyclable material, contaminated soil, ²[cover material,]²
13 wastewater treatment residual material, ²[dredge material,] or²
14 construction debris ²[, or any other waste or material,]² shall
15 deposit, on a monthly basis in an interest-bearing account with an
16 accredited financial institution, an amount ²[equal to] determined
17 by the department after review of the estimated costs of post-
18 closure monitoring and operational costs, but not less than² \$1.00
19 per ton of all ¹waste or¹ material accepted during the preceding
20 month at the legacy landfill or ²[properly]² closed sanitary landfill
21 facility. In the event that any waste ¹or material¹ is measured, upon
22 acceptance, by a metric other than tons, the amount to be deposited
23 shall be calculated by using the equivalents thereof as shall be
24 determined by the department.

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

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

36
37 7. a. The owner or operator of a legacy landfill or a
38 ²[properly]² closed sanitary landfill facility that undertakes any
39 activity that includes the placement or disposal of any material,
40 regrading, compression, venting, construction, or installation of
41 monitors or wells at a legacy landfill or a ²[properly]² closed
42 sanitary landfill shall hire a ²New Jersey² licensed ²[site
43 remediation]² professional ²engineer² to perform the closure ²[,
44 remediation, or redevelopment project or] and² to oversee any other
45 activities performed at the legacy landfill or ²[properly]² closed

1 sanitary landfill ²【until the cessation of all activity and the final
2 closure thereof】 facility² .

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

14
15 ²8. a. Whenever the commissioner finds that a person has
16 violated any provision of P.L. , c. (C.) (pending before the
17 Legislature as this bill), the commissioner may institute an action or
18 proceeding in the Superior Court for injunctive and other relief, and
19 for a civil penalty for each violation in an amount not to exceed
20 \$25,000 per day provided that each day during which the violation
21 continues shall constitute an additional, separate and distinct
22 offense.

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

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

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

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

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

43 (5) assessment against the violator of the amount of any
44 economic benefits accruing to the violator from a violation.
45 Economic benefits may include the amount of any fees or charges
46 paid for the placement of the waste or material that is the source of
47 the violation; savings realized from avoided capital or noncapital

1 costs resulting from the violation; any return earned or that may be
2 earned on the amount of fees or charges or of the avoided costs; any
3 benefits accruing to the violator as a result of a competitive market
4 advantage enjoyed by reason of the violation; or any other benefits
5 resulting from the violation.

6 b. Assessments under this section shall be paid to the State
7 Treasurer. Recourse to any remedy available under this section
8 shall not preclude recourse to any other remedies authorized by
9 P.L. , c. (C.) (pending before the Legislature as this bill) or
10 by any other applicable law.²

11
12 ²9. If the commissioner determines that any activity or activities
13 occurring at a legacy landfill or closed sanitary landfill facility
14 present an imminent threat to the environment or public health and
15 safety, the provisions of section 2 of P.L.1990, c.70 (C.13:1E-9.5)
16 shall govern the issuance of and any challenge to, any emergency
17 order issued by the commissioner to the owner or operator of a
18 legacy landfill or closed sanitary landfill facility.²

19
20 ²[8.] ²10.² This act shall take effect immediately.