
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2495 Session of
1986

INTRODUCED BY CORDISCO, BALDWIN, BELARDI AND GRUITZA, MAY 7,
1986

REFERRED TO COMMITTEE ON CONSERVATION, MAY 7, 1986

AN ACT

1 Providing for planning for the processing and disposal of
2 municipal waste; requiring counties to submit plans for
3 municipal waste management systems within their boundaries;
4 authorizing grants to counties and municipalities for
5 planning, resource recovery and recycling; imposing and
6 collecting fees; establishing certain rights for host
7 municipalities; imposing duties; granting powers to counties
8 and municipalities; authorizing the Environmental Quality
9 Board to adopt regulations; authorizing the Department of
10 Environmental Resources to implement this act; providing
11 remedies; prescribing penalties; establishing a fund; and
12 making repeals.

13 TABLE OF CONTENTS

14 Chapter 1. General Provisions

15 Section 101. Short title.

16 Section 102. Legislative findings; declaration of policy and
17 goals.

18 Section 103. Definitions.

19 Chapter 3. Powers and Duties

20 Section 301. Powers and duties of department.

21 Section 302. Powers and duties of Environmental Quality Board.

22 Section 303. Powers and duties the Environmental Hearing Board.

1 Section 304. Powers and duties of counties.

2 Section 305. Powers and duties of municipalities other than
3 counties.

4 Chapter 5. Municipal Waste Planning

5 Section 501. Schedule for submission of municipal waste
6 management plans.

7 Section 502. Content of municipal waste management plans.

8 Section 503. Development of municipal waste management plans.

9 Section 504. Mediation.

10 Section 505. Binding arbitration.

11 Section 506. Review of municipal waste management plans.

12 Section 507. Contracts.

13 Section 508. Relationship between plans and permitting.

14 Section 509. Market development study for recyclable municipal
15 waste.

16 Chapter 7. Resource Recovery Fee

17 Section 701. Resource recovery fee for municipal waste
18 landfills.

19 Section 702. Form and timing of resource recovery fee payment.

20 Section 703. Collection and enforcement of fee.

21 Section 704. Records.

22 Section 705. Surcharge.

23 Section 706. Resource Recovery Fund.

24 Section 707. Relationship to Pennsylvania Solid Waste - Resource
25 Recovery Development Act.

26 Chapter 9. Resource Recovery Grants

27 Section 901. Planning grants.

28 Section 902. Grants to counties for resource recovery
29 feasibility studies.

30 Section 903. Grants to public institutions for resource

1 recovery feasibility studies.

2 Section 904. Grants for development and implementation of

3 recycling programs.

4 Section 905. Grants for recycling programs.

5 Chapter 11. Assistance to Municipalities

6 Section 1101. Information provided to host municipalities.

7 Section 1102. Landfill Site Inspection Board.

8 Section 1103. Landfill site inspectors.

9 Section 1104. Water supply testing for contiguous landowners.

10 Section 1105. Water supply protection.

11 Chapter 13. Host Municipality Benefit Fee

12 Section 1301. Host municipality benefit fee.

13 Section 1302. Form and timing of host municipality benefit fee

14 payment.

15 Section 1303. Collection and enforcement of fee.

16 Section 1304. Records.

17 Section 1305. Surcharge.

18 Chapter 15. Enforcement and Remedies

19 Section 1501. Unlawful conduct.

20 Section 1502. Enforcement orders.

21 Section 1503. Restraining violations.

22 Section 1504. Civil penalties.

23 Section 1505. Criminal penalties.

24 Section 1506. Existing rights and remedies preserved;

25 cumulative remedies authorized.

26 Section 1507. Production of materials; recordkeeping

27 requirements.

28 Section 1508. Withholding of State funds.

29 Section 1509. Collection of fines, fees, etc.

30 Section 1510. Right of citizen to intervene in proceedings.

1 Chapter 17. Procurement

2 Section 1701. Procurement by the Commonwealth.

3 Section 1702. Purchase of cogenerated electricity.

4 Section 1703. Pennsylvania Public Utility Commission.

5 Chapter 19. Construction

6 Section 1901. Construction of act.

7 Chapter 21. Miscellaneous Provisions

8 Section 2101. Severability.

9 Section 2102. Repeals.

10 Section 2103. Effective date.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 CHAPTER 1

14 GENERAL PROVISIONS

15 Section 101. Short title.

16 This act shall be known and may be cited as the Municipal
17 Waste Planning and Resource Recovery Act.

18 Section 102. Legislative findings; declaration of policy and
19 goals.

20 (a) Legislative findings.--The General Assembly hereby
21 determines, declares and finds that:

22 (1) Improper municipal waste practices create public
23 health hazards, environmental pollution and economic loss,
24 and cause irreparable harm to the public health, safety and
25 welfare.

26 (2) Parts of this Commonwealth have inadequate and
27 rapidly diminishing processing and disposal capacity for
28 municipal waste.

29 (3) Virtually every county in this Commonwealth will
30 have to replace existing municipal waste processing and

1 disposal facilities over the next decade.

2 (4) Needed additional municipal waste processing and
3 disposal facilities have not been developed in a timely
4 manner because of diffused responsibility for municipal waste
5 planning, processing, and disposal among numerous and
6 overlapping units of local government.

7 (5) It is necessary to give counties the primary
8 responsibility to plan for the processing and disposal of
9 municipal waste generated within their boundaries to insure
10 the timely development of needed processing and disposal
11 facilities.

12 (6) Proper and adequate processing and disposal of
13 municipal waste generated within a county requires the
14 generating county to give first choice to new processing and
15 disposal sites located within that county.

16 (7) It is appropriate to provide those living near
17 municipal waste processing and disposal facilities with
18 additional guarantees of the proper operation of such
19 facilities, and to provide incentives for municipalities to
20 host such facilities.

21 (8) Resource recovery and recycling are preferable to
22 other means of processing or disposing of municipal waste in
23 this Commonwealth, in terms of environmental protection,
24 resource conservation, and energy conservation.

25 (9) Prompt payment and efficient collection of the
26 resource recovery fee created by this act are essential to
27 the administration of the resource recovery and recycling
28 grants provided by this act.

29 (b) Purpose.--It is the purpose of this act to:

30 (1) Establish and maintain a cooperative State and local

1 program of planning and technical and financial assistance
2 for comprehensive municipal waste management.

3 (2) Encourage the development of waste reduction,
4 recycling, and resource recovery as a means of managing
5 municipal waste, conserving resources, and supplying energy
6 through planning, grants and other incentives.

7 (3) Protect the public health, safety and welfare from
8 the short and long-term dangers of transportation,
9 processing, treatment, storage and disposal of municipal
10 waste.

11 (4) Provide a flexible and effective means to implement
12 and enforce the provisions of this act.

13 (5) Utilize, wherever feasible, the capabilities of
14 private enterprise in accomplishing the desired objectives of
15 an effective, comprehensive solid waste management plan.

16 (6) Establish a resource recovery fee for municipal
17 waste landfills to provide grants for resource recovery,
18 recycling, planning and related purposes.

19 (7) Establish a host municipality benefit fee for
20 municipal waste landfills and resource recovery facilities
21 that are permitted after the effective date of this act so
22 that municipalities might consider encouraging such
23 facilities to be located within their boundaries, and provide
24 benefits to host municipalities for the presence of such
25 facilities.

26 (8) Shift the primary responsibility for developing and
27 implementing municipal waste management plans from
28 municipalities to counties.

29 (c) Declaration of goals.--The General Assembly therefore
30 declares the following goals:

1 (1) At least 50% of all municipal waste generated in
2 this Commonwealth on and after January 1, 1996, shall be
3 processed at resource recovery facilities.

4 (2) At least an additional 15% of all municipal waste
5 generated in this Commonwealth on and after January 1, 1996,
6 shall be recycled.

7 Section 103. Definitions.

8 The following words and phrases when used in this act shall
9 have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Abatement." The restoration, reclamation, recovery, etc.,
12 of a natural resource adversely affected by the activity of a
13 person.

14 "Commission." The Pennsylvania Public Utility Commission.

15 "Department." The Department of Environmental Resources of
16 the Commonwealth.

17 "Disposal." The incineration, deposition, injection,
18 dumping, spilling, leaking or placing of solid waste into or on
19 the land or water in a manner that the solid waste or a
20 constituent of the solid waste enters the environment, is
21 emitted into the air or is discharged to the waters of this
22 Commonwealth.

23 "Management." The entire process, or any part thereof, of
24 storage, collection, transportation, processing, treatment and
25 disposal of solid wastes by any person engaging in such process.

26 "Municipal recycling program." A source separation and
27 collection program for recycling municipal waste, or a program
28 for designated drop-off points or collection centers for
29 recycling municipal waste, that is operated by or on behalf of a
30 municipality. The term shall not include any program for

1 recycling demolition waste or sludge from sewage treatment
2 plants or water supply treatment plants.

3 "Municipal waste." Any garbage, refuse, industrial lunchroom
4 or office waste and other material, including solid, liquid,
5 semisolid or contained gaseous material, resulting from
6 operation of residential, municipal, commercial or institutional
7 establishments and from community activities and any sludge not
8 meeting the definition of residual or hazardous waste in the
9 Solid Waste Management Act from a municipal, commercial or
10 institutional water supply treatment plant, waste water
11 treatment plant or air pollution control facility.

12 "Municipal waste landfill." Any facility that is designed,
13 operated or maintained for the disposal of municipal waste,
14 whether or not such facility possesses a permit from the
15 department under the Solid Waste Management Act. The term shall
16 not include any facility that is used exclusively for disposal
17 of demolition waste or sludge from sewage treatment plants or
18 water supply treatment plants.

19 "Municipality." A county, city, borough, incorporated town,
20 township or home rule municipality or any authority created by
21 any of the foregoing.

22 "Operator." A person engaged in solid waste processing or
23 disposal. Where more than one person is so engaged in a single
24 operation, all persons shall be deemed jointly and severally
25 responsible for compliance with the provisions of this act.

26 "Person." Any individual, partnership, corporation,
27 association, institution, cooperative enterprise, municipality,
28 municipal authority, Federal Government or agency, State
29 institution or agency (including, but not limited to, the
30 Department of General Services and the State Public School

1 Building Authority), or any other legal entity whatsoever which
2 is recognized by law as the subject of rights and duties. In any
3 provisions of this act prescribing a fine, imprisonment or
4 penalty, or any combination of the foregoing, the term "person"
5 shall include the officers and directors of any corporation or
6 other legal entity having officers and directors.

7 "Pollution." Contamination of any air, water, land or other
8 natural resources of this Commonwealth that will create or is
9 likely to create a public nuisance or to render the air, water,
10 land or other natural resources harmful, detrimental or
11 injurious to public health, safety or welfare, or to domestic,
12 municipal, commercial, industrial, agricultural, recreational or
13 other legitimate beneficial uses, or to livestock, wild animals,
14 birds, fish or other life.

15 "Processing." Any technology used for the purpose of
16 reducing the volume or bulk of municipal waste or any technology
17 used to convert part or all of such waste materials for offsite
18 reuse. Processing facilities include, but are not limited to,
19 transfer facilities, composting facilities and resource recovery
20 facilities.

21 "Recycling." The collection, separation, recovery and sale
22 or reuse of metals, glass, paper and other materials which would
23 otherwise become municipal waste.

24 "Remaining available permitted capacity." The remaining
25 permitted capacity that is actually available for processing or
26 disposal to the county or other municipality that generated the
27 waste.

28 "Remaining permitted capacity." The weight or volume of
29 municipal waste that can be processed or disposed at an existing
30 municipal waste processing or disposal facility. The term shall

1 include only weight or volume capacity for which the department
2 has issued a permit under the Solid Waste Management Act. The
3 term shall not include any facility that the department
4 determines, or has determined, has failed and continues to fail
5 to comply with the provisions of the Solid Waste Management Act,
6 and the regulations promulgated pursuant thereto, or any permit
7 conditions, unless and until the Environmental Hearing Board
8 issues a final adjudication voiding any final action by the
9 department based on that determination and such adjudication is
10 either affirmed on appeal or not appealed.

11 "Resource recovery." The extraction and utilization from
12 municipal waste of materials or energy. The term includes, but
13 is not limited to, the operation of resource recovery facilities
14 or municipal recycling programs.

15 "Resource recovery facility." A facility that provides for
16 the extraction and utilization of materials or energy from
17 municipal waste, including, but not limited to, a facility that
18 mechanically extracts materials from municipal waste, a
19 combustion facility that converts the organic fraction of
20 municipal waste to usable energy, and any chemical and
21 biological process that converts municipal waste into a fuel
22 product or other usable materials. The term does not include
23 methane gas extraction from a municipal waste landfill, nor
24 shall it include any separation and collection center, drop-off
25 point or collection center for recycling municipal waste.

26 "Resource recovery feasibility study." A study which
27 analyzes a specific resource recovery system to assess the
28 likelihood that the system can be successfully implemented,
29 including, but not limited to, an analysis of the prospective
30 market, the projected costs and revenues of the system, the

1 municipal waste stream that the system will rely upon, and
2 various options available to implement the system.

3 "Secretary." The Secretary of Environmental Resources of the
4 Commonwealth.

5 "Solid waste." Solid waste, as defined in the act of July 7,
6 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

7 "Solid Waste Abatement Fund." The fund created pursuant to
8 section 701 of the Solid Waste Management Act.

9 "Solid Waste Management Act." The act of July 7, 1980
10 (P.L.380, No.97).

11 "Storage." The containment of any municipal waste on a
12 temporary basis in such a manner as not to constitute disposal
13 of such waste. It shall be presumed that the containment of any
14 municipal waste in excess of one year constitutes disposal. This
15 presumption can be overcome by clear and convincing evidence to
16 the contrary.

17 "Transportation." The offsite removal of any municipal waste
18 at any time after generation.

19 "Treatment." Any method, technique, or process, including,
20 but not limited to, neutralization, designed to change the
21 physical, chemical, or biological character or composition of
22 any municipal waste so as to neutralize such waste or so as to
23 render such waste safer for transport, suitable for recovery,
24 suitable for storage, or reduced in volume.

25 CHAPTER 3

26 POWERS AND DUTIES

27 Section 301. Powers and duties of department.

28 The department, in consultation with the Department of Health
29 regarding matters of public health significance, shall have the
30 power and its duty shall be to:

1 (1) Administer the municipal waste planning and resource
2 recovery program pursuant to the provisions of this act and
3 the regulations promulgated pursuant thereto.

4 (2) Cooperate with appropriate Federal, State,
5 interstate and local units of government and with appropriate
6 private organizations in carrying out its duties under this
7 act.

8 (3) Provide technical assistance to municipalities,
9 including, but not limited to, the training of personnel.

10 (4) Initiate, conduct, and support research,
11 demonstration projects, and investigations, and coordinate
12 all State agency research programs pertaining to municipal
13 waste management systems.

14 (5) Regulate municipal waste planning, including, but
15 not limited to, the development and implementation of county
16 municipal waste management plans.

17 (6) Approve, conditionally approve, or disapprove
18 municipal waste management plans, issue orders, conduct
19 inspections, and abate public nuisances to implement the
20 provisions and purposes of this act and the regulations
21 promulgated pursuant to this act.

22 (7) Serve as the agency of the Commonwealth for the
23 receipt of moneys from the Federal Government or other public
24 agencies or private agencies and expend such moneys for
25 studies and research with respect to, and for the enforcement
26 and administration of, the provisions and purposes of this
27 act and the regulations promulgated pursuant thereto.

28 (8) Institute, in a court of competent jurisdiction,
29 proceedings against any person to compel compliance with the
30 provisions of this act, and any regulation promulgated

1 pursuant thereto, any order of the department, or the terms
2 and conditions of any approved municipal waste management
3 plan.

4 (9) Institute prosecutions against any person under this
5 act.

6 (10) Appoint such advisory committees as the secretary
7 deems necessary and proper to assist the department in
8 carrying out the provisions of this act. The secretary is
9 authorized to pay reasonable and necessary expenses incurred
10 by the members of such advisory committees in carrying out
11 their functions.

12 (11) Encourage and, where the department determines it
13 is appropriate, require counties and municipalities to carry
14 out their duties under this act, using the full range of
15 incentives and enforcement authority provided in this act.

16 (12) Take any action not inconsistent with this act that
17 the department may deem necessary or proper to collect the
18 resource recovery fee provided by this act, and to insure the
19 payment of the host municipality benefit fee provided by this
20 act.

21 (13) Accept any solid waste management plan by a county,
22 solid waste management district, or region outside
23 Pennsylvania that has been developed and approved pursuant to
24 requirements that are comparable to those contained in this
25 act, except that any such plan must comply with sections
26 502(h) and 505(b)(6) for municipal waste to be processed or
27 disposed in Pennsylvania.

28 (14) Administer and distribute moneys in the Resource
29 Recovery Fund for any public educational programs on
30 recycling that the department believes to be appropriate, for

1 technical assistance to counties in the preparation of
2 municipal waste management plans, for technical assistance to
3 municipalities concerning recycling, to conduct research, and
4 for other purposes set forth in this act.

5 (15) Do any and all other acts and things, not
6 inconsistent with any provision of this act, which it may
7 deem necessary or proper for the effective enforcement of
8 this act and the regulations promulgated pursuant thereto
9 after consulting with the Department of Health regarding
10 matters of public health significance.

11 Section 302. Powers and duties of Environmental Quality Board.

12 The Environmental Quality Board shall have the power and its
13 duty shall be to adopt the regulations of the department to
14 accomplish the purposes and to carry out the provisions of this
15 act.

16 Section 303. Powers and duties of the Environmental Hearing
17 Board.

18 The Environmental Hearing Board shall have the power and its
19 duty shall be to hold hearings and issue adjudications on any
20 final action of the department according to the provisions of
21 the act of April 9, 1929 (P.L.177, No.175), known as The
22 Administrative Code of 1929, and 2 Pa.C.S. (relating to
23 administrative law and procedure), provided, however, that
24 jurisdiction review of any final department action with respect
25 to approval, conditional approval or disapproval of a municipal
26 solid waste management plan shall lie exclusively with the
27 Commonwealth Court, which review shall be solely on the record
28 certified to said court by the department and the affected
29 county.

30 Section 304. Powers and duties of counties.

1 (a) Primary responsibility of county.--Each county shall
2 have the power and its duty shall be to insure the availability
3 of adequate permitted processing and disposal capacity for the
4 municipal waste which is generated within its boundaries. As
5 part of this power a county:

6 (1) May require all persons collecting or transporting
7 municipal waste within the county to obtain licenses.

8 (2) Shall have the power and duty to implement its
9 approved plan as it relates to the processing and disposal of
10 municipal waste generated within its boundaries.

11 (3) May plan for the processing and disposal of
12 municipal waste generated outside its boundaries and to
13 implement its approved plan as it relates to the processing
14 and disposal of such waste.

15 (b) Joint planning.--Any two or more counties may adopt and
16 implement a single municipal waste management plan for the
17 municipal waste generated within the combined area of the
18 counties. A county may enter into a joint solid waste management
19 plan with a district, county or authority outside of the
20 Commonwealth with a solid waste management plan which the
21 department is authorized to accept pursuant to section 301(13)
22 of this act.

23 (c) Ordinances and resolutions.--In carrying out its duties
24 under this section, a county may adopt ordinances, regulations
25 and standards consistent with the county plan approved by the
26 department, for the processing and disposal of municipal waste,
27 which shall not be less stringent than, and not in violation of
28 or inconsistent with, the provisions and purposes of the Solid
29 Waste Management Act, this act and the regulations promulgated
30 pursuant thereto.

1 (d) Delegation of county responsibility.--A county may enter
2 into a written agreement with another person pursuant to which
3 the person undertakes to fulfill some or all of the county's
4 responsibilities under this act for municipal waste planning and
5 implementation of the approved county plan. Any such person
6 shall be jointly and severally responsible with the county for
7 municipal waste planning and implementation of the approved
8 county plan in accordance with this act and the regulations
9 promulgated pursuant thereto.

10 (e) Designated disposal sites.--A county with an approved
11 municipal waste management plan that was submitted pursuant to
12 section 501(a) or (b) is also authorized to require that all
13 municipal wastes generated within its boundaries shall be
14 processed or disposed at a designated processing or disposal
15 facility that is contained in the approved plan and is further
16 authorized to designate transportation routes within the county
17 to and from the facility consistent with the county plan
18 approved by the department. No county shall direct municipal
19 waste that would otherwise be recycled to any resource recovery
20 facility or other facility for purposes other than recycling
21 such waste.

22 Section 305. Powers and duties of municipalities other than
23 counties.

24 (a) Responsibility of other municipalities.--Each
25 municipality other than a county shall have the power and its
26 duty shall be to assure the proper and adequate transportation,
27 collection, and storage of municipal waste which is generated
28 within its boundaries. As part of that power, municipalities may
29 adopt and implement programs for the collection and recycling of
30 municipal waste.

1 (b) Ordinances.--In carrying out its duties under this
2 section, a municipality other than a county may adopt
3 ordinances, regulations and standards consistent with the county
4 plan approved by the department, for the transportation,
5 storage, and collection of municipal wastes, which shall not be
6 less stringent than, and not in violation of or inconsistent
7 with, the provisions and purposes of the Solid Waste Management
8 Act, this act and the regulations promulgated and the county
9 plan approved by the department pursuant thereto.

10 (c) Delegation of responsibility.--A municipality other than
11 a county may contract with any person to carry out its duties
12 for the transportation, collection and storage of municipal
13 waste, if the transportation, collection or storage activity or
14 facility is conducted or operated in a manner that is consistent
15 with the Solid Waste Management Act, this act and the
16 regulations promulgated and the county plan approved by the
17 department pursuant thereto. Any such person shall be jointly
18 and severally responsible with the municipality for said
19 transportation, collection or storage activity.

20 (d) Designated disposal sites.--A municipality other than a
21 county may require by ordinance that all municipal waste
22 generated within its jurisdiction shall be disposed of at a
23 designated facility. Such ordinance shall remain in effect until
24 the county in which the municipality is located adopts a waste
25 flow control ordinance as part of a plan approved by the
26 department pursuant to section 505 and such county ordinance
27 takes effect. Any such county ordinance shall supersede any such
28 municipal ordinance to the extent that the municipal ordinance
29 is inconsistent with the county ordinance.

MUNICIPAL WASTE PLANNING

Section 501. Schedule for submission of municipal waste management plans.

(a) Submission of plan.--Except as provided in subsections (b) and (c), each county shall submit to the department within two and one half years of the effective date of this act an officially adopted plan for a municipal waste management plan for municipal waste generated within its boundaries. Such plan shall be consistent with the requirements of this act.

(b) Request for alternative date.--A county may request the department to establish an alternative date to that set forth in subsection (a) if such request is received by the department no later than 120 days from the effective date of this act. If the department approves the request, the county's plan shall be submitted to the department on the date stated in the department's approval. Each such request, if approved, shall be updated and submitted to the department for approval annually on or before the date on which the department first approved the request. The department may not approve any request unless such request:

(1) Identifies and describes the facilities where municipal waste generated in the county is currently being disposed of or processed, and the remaining available permitted capacity of those facilities.

(2) Estimates the time before all remaining available permitted capacity that can be included in this request will be exhausted, and justifies such estimate.

(3) Proposes a date for initiating development of the county's municipal waste management plan that is at least six years before the time all remaining available permitted

1 capacity that can be included in this request will be
2 exhausted, and proposes a date for submitting the plan that
3 it is at least three years before all remaining available
4 permitted capacity that can be included in this request will
5 be exhausted.

6 (c) Departmental consideration.--A county that submits or
7 has submitted a complete municipal waste management plan to the
8 department for approval within ten months from the effective
9 date of this act shall have such plan considered by the
10 department according to the standards and procedures applicable
11 to such plans prior to the effective date of this act. The plan
12 review and municipal ratification process for any such plan,
13 however, shall be governed by sections 503(c) and (d) and 504.
14 Upon approval by the department, such plan shall be deemed to
15 have been approved pursuant to section 505.

16 (d) Plan revisions.--Each county with an approved municipal
17 waste management plan shall submit a revised or updated plan to
18 the department in accordance with the requirements of this act:

19 (1) No later than ten years following the department's
20 last approval of the county's current municipal waste
21 management plan.

22 (2) At least three years prior to the time all remaining
23 available permitted capacity for the county will be
24 exhausted.

25 (3) When otherwise deemed appropriate by the county.

26 (4) When otherwise required by the department.

27 Section 502. Content of municipal waste management plans.

28 (a) General rule.--Except as provided in section 501(c),
29 every plan submitted after the effective date of this act shall
30 comply with the provisions of this section.

1 (b) Description of waste.--The plan shall describe and
2 explain the origin, content, and weight or volume of municipal
3 waste currently generated within the county's boundaries, and
4 the origin, content, and weight or volume of municipal waste
5 that will be generated within the county's boundaries during the
6 next ten years.

7 (c) Description of facilities.--The plan shall identify and
8 describe the facilities where municipal waste is currently being
9 disposed or processed, and the remaining available permitted
10 capacity of such facilities. The plan shall contain an analysis
11 of the effect of current and planned recycling on waste
12 generated within the county. The plan shall also explain the
13 extent to which existing facilities will be used during the life
14 of the plan, and shall not substantially impair the use of their
15 remaining permitted capacity. For purposes of this subsection,
16 existing facilities shall include facilities for which a
17 complete permit application under the Solid Waste Management
18 Act, is filed with the department on or before the effective
19 date of this act, unless such permit application is denied by
20 the department or unless no permit is issued as of the date upon
21 which the county commissioners adopt the plan.

22 (d) Estimated future capacity.--The plan shall estimate the
23 processing or disposal capacity needed for the municipal waste
24 that will be generated in the county during the next ten years.
25 The assessment shall describe the primary variables affecting
26 this estimate and the extent to which they can reasonably be
27 expected to affect the estimate, including, but not limited to,
28 the amount of residual waste disposed or processed at municipal
29 waste disposal or processing facilities in the county, and the
30 extent to which residual waste will be disposed or processed at

1 such facilities during the next ten years.

2 (e) Description of recyclable waste.--The plan shall
3 describe the kind and weight or volume of municipal waste that
4 could be recycled, the potential benefits of recycling and the
5 compatibility of recycling with other municipal waste processing
6 or disposal methods, giving consideration to and describing
7 anticipated and available markets for recycled municipal waste.
8 If recycling is proposed, the plan shall describe the kind and
9 weight or volume of recyclable materials that will be collected;
10 proposed collection methods for recyclable materials; options
11 for insuring the collection of recyclable materials, including,
12 but not limited to, county ordinances and programs, municipal
13 ordinances, and options for municipal cooperation or agreement
14 for the collection, processing and sale of recyclable material.

15 (f) Identification of facilities.--The plan shall describe
16 the type, mix, size, expected cost, and proposed methods of
17 financing the facilities, recycling programs, or waste reduction
18 programs that are proposed for the processing and disposal of
19 the municipal waste that will be generated within the county's
20 boundaries during the next ten years. For every proposed
21 facility, recycling program, or waste reduction program, the
22 plan shall discuss all of the following:

23 (1) Explain in detail the reason for selecting such
24 facility or program.

25 (2) Describe alternative facilities or programs,
26 including, but not limited to, waste reduction, recycling, or
27 resource recovery facilities or programs, that were
28 considered.

29 (3) Evaluate the environmental, energy, life cycle cost,
30 and economic advantages and disadvantages of the proposed

1 facility or program as well as the alternatives considered.

2 (4) Show that adequate provision for existing and
3 reasonably anticipated future recycling has been made in
4 designing the size of any proposed facility.

5 (5) Set forth a time schedule and program for planning,
6 design, siting, construction, and operation of each proposed
7 facility or program.

8 (g) Location.--The plan shall clearly identify the site of
9 each municipal waste processing or disposal facility identified
10 in subsection (f).

11 (h) Prior written approval.--For any facility to be
12 permitted after the effective date of this act that is proposed
13 to be located outside of the boundaries of the county for which
14 the plan is submitted:

15 (1) the plan shall contain a written statement approving
16 the facility from the county board of commissioners of the
17 county where the facility is proposed to be located; or

18 (2) provide an explanation for the failure to obtain a
19 written statement, in which case the plan shall also cover
20 all of the following:

21 (i) Identify the site on which the facility is
22 proposed to be located; explain the nature of the
23 county's property right to use that site for municipal
24 waste processing or disposal; and demonstrate that
25 written notice has been given to the host municipality.

26 (ii) Explain in detail the reasons for proposing an
27 out-of-county site.

28 (iii) Describe alternative sites within the
29 generator county that were considered and explain the
30 reasons these alternative sites were rejected.

1 (iv) Evaluate the environmental, energy and economic
2 merits of the site proposed as well as the alternatives
3 considered.

4 (v) Explain how the construction and operation of
5 the proposed facility will not interfere with municipal
6 waste processing and disposal in the host county.

7 (i) Implementing entity identification.--The plan shall
8 identify the governmental entity that will be responsible for
9 implementing the plan on behalf of the county and describe the
10 legal basis for that entity's authority to do so.

11 (j) Public function.--Where the county determines that it is
12 in the public interest for municipal waste transportation,
13 processing, and disposal to be a public function, the plan shall
14 provide for appropriate mechanism. Nothing contained herein
15 shall be deemed to imply presumption in favor of public or
16 private ownership or control.

17 (k) Copies of ordinances and resolutions.--The plan shall
18 include any proposed waste flow control ordinances or
19 requirements that will be used to insure the operation of any
20 facilities proposed in the plan. For each ordinance or
21 requirement, the plan shall identify the areas of the county to
22 be affected, the expected effective date, and the implementing
23 mechanism.

24 (l) Extension of plan.--The plan shall provide for the
25 orderly extension of municipal waste management systems in a
26 manner that is consistent with the needs of the area and is also
27 consistent with any existing State, regional, or local plans
28 affecting the development, use and protection of air, water,
29 land or other natural resources. The plan shall also take into
30 consideration planning, zoning, population estimates,

1 engineering and economics.

2 (m) Other information.--The plan shall include any other
3 information that the department may require or the county may
4 deem appropriate.

5 Section 503. Development of municipal waste management plans.

6 (a) Advisory committee.--Within 60 days of the effective
7 date of this act, the county shall form an advisory committee,
8 which shall include representatives of municipalities within the
9 county and the private sector, including at least one member
10 representing the private solid waste industry and at least one
11 member representing environmentalists, and any other persons
12 deemed appropriate by the county. The advisory committee shall
13 meet at least once a month during the first 18 months of its
14 existence and thereafter as needed. The advisory committee shall
15 be regularly consulted during the preparation of the plan.

16 (b) Written notice.--The county shall provide written notice
17 to all municipalities when plan development begins, and shall
18 provide periodic written progress reports to all municipalities
19 concerning the preparation of the plan. Said plan development
20 shall begin no later than 60 days after the effective date of
21 this act.

22 (c) Review and comment.--Prior to adoption by the county
23 board of commissioners, and no later than 18 months after the
24 effective date of this act, unless an alternative date is
25 established pursuant to subsection 501(b) of this act, the
26 county shall submit copies of the proposed plan for review and
27 comment to the department, all municipalities within the county,
28 all areawide planning agencies, and the county health
29 department, if one exists. The county shall also make the
30 proposed plan available for public review and comment. The

1 period for review and comment shall not be less than 45 days nor
2 more than 90 days. The county shall hold at least one public
3 hearing on the proposed plan during this period. The plan
4 subsequently submitted to the county board of commissioners for
5 adoption shall be accompanied by a document containing written
6 responses to comments made during the comment period.

7 (d) Adoption and ratification of plan.--The county board of
8 commissioners shall adopt a plan within 60 days from the end of
9 the public comment period. Not later than ten days following
10 adoption of a plan by the county board of commissioners, the
11 plan shall be sent to municipalities within the county for
12 ratification. If a municipality does not act on the plan within
13 90 days of its submission to such municipality, it shall be
14 deemed to have ratified the plan. If more than one-half of the
15 municipalities, representing more than one-half of the county's
16 population as determined by the most recent decennial census by
17 the United States Bureau of the Census, ratify the plan, then
18 the county within ten days of ratification shall submit the plan
19 to the department for approval.

20 Section 504. Mediation.

21 If the host municipality of any facility identified in a plan
22 pursuant to section 502(f) and (g) of this act objects to the
23 plan or the plan is not ratified by the municipalities as
24 provided in section 503(d), the county shall submit the plan to
25 mediation which shall be for a maximum of 60 days. The mediator
26 shall be selected from a list of mediators approved by the
27 department.

28 Section 505. Binding arbitration.

29 (a) Submission.--If the plan is not ratified by the
30 municipalities or is rejected by the host municipality, and the

1 mediation period has elapsed, the plan shall be submitted to a
2 panel of three persons for binding arbitration within ten days
3 after the mediation period has elapsed.

4 (b) Composition of panel.--One member of the panel shall be
5 the chairman of the county board of commissioners or his
6 designee; one member shall be chosen by the governing body of
7 the most populous municipality that refused to ratify the plan
8 in the case of the municipalities failing to ratify the plan in
9 accordance with section 503(d), or in the case of the host
10 municipality objecting to the plan then one member chosen by the
11 governing body of that host municipality; and the third member
12 shall be chosen by the other two members from a list of
13 arbitrators approved by the American Arbitration Association.

14 (c) Award.--After a public hearing, the board must prepare
15 its arbitration award. The arbitration award must adopt, without
16 modification, the final offer of either the county or the host
17 municipality or the most populous municipality that refused to
18 ratify a plan except that the arbitration award shall delete
19 those items which are not subject to arbitration or are not
20 consistent with this act.

21 (d) Deadline for award.--If no award is adopted within 60
22 days of submission of the plan to the panel, the county shall
23 promptly submit the plan adopted by the county commissioners to
24 the department for approval, and such adopted county plan shall
25 supersede any plan that may later be submitted by the panel.

26 (e) Costs.--One-half of the costs of the arbitration panel
27 shall be borne by the county, and one-half of the costs shall be
28 paid by the department from the Resource Recovery Fund.

29 Section 506. Review of municipal waste management plans.

30 (a) Departmental approval options.--Within 30 days after

1 receiving a complete plan, the department shall approve,
2 conditionally approve, or disapprove it, unless the department
3 gives written notice that additional time is necessary to
4 complete its review. If the department gives such notice, it
5 shall have 30 additional days to render a decision. Failure of
6 the department to act within the allotted time shall be deemed
7 approval of the submitted plan.

8 (b) Minimum plan requirement.--The department shall not
9 approve any county plan unless the plan demonstrates to the
10 satisfaction of the department that:

11 (1) The plan is complete and accurate.

12 (2) The plan gives priority to resource recovery to
13 address the county's projected municipal waste processing and
14 disposal needs, giving consideration to environmental,
15 energy, and economic factors.

16 (3) With respect to recycling:

17 (i) the plan shows that recycling is not necessary
18 or not feasible, or that only limited recycling is
19 necessary and feasible, giving consideration to
20 environmental, energy and economic factors; or

21 (ii) the plan gives priority to recycling to address
22 the county's projected municipal waste processing and
23 disposal needs, giving consideration to environmental,
24 energy, and economic factors.

25 (4) The plan provides for the processing and disposal of
26 municipal waste in a manner that is consistent with the
27 requirements of the Solid Waste Management Act and the
28 regulations promulgated pursuant thereto.

29 (5) The plan provides a practical method for the
30 processing and disposal of municipal waste.

1 (6) The plan identifies suitable, specific sites for all
2 necessary solid waste processing and disposal facilities.

3 (7) For any municipal waste processing or disposal sites
4 that are proposed to be located outside the county, the plan:

5 (i) contains a written statement approving the
6 facility from the county board of commissioners where the
7 facility is proposed to be located and is not
8 inconsistent with the approved plan for the county where
9 the facility is proposed to be located; or

10 (ii) provides a clear and convincing rationale for
11 locating the facility outside the county that complies
12 with the requirements of section 502(h).

13 Section 507. Contracts.

14 (a) General rule.--Nothing in this act shall be construed to
15 interfere with, or in any way modify, the provisions of any
16 contract for municipal waste disposal, processing, or collection
17 in force in any county upon the effective date of this act.

18 (b) Renewals.--No renewal of any existing contract upon the
19 expiration or termination of the original term thereof, and no
20 new contract for municipal waste disposal, processing, or
21 collection shall be entered into after the effective date of
22 this act, unless such renewal or such new contract shall conform
23 to the applicable provisions of an approved county plan.

24 (c) Renegotiation option.--If no plan has been approved for
25 the county, no contract renewal or new contract for municipal
26 waste disposal, processing, or collection shall be entered into
27 unless such contract contains a provision for renegotiation to
28 conform to the approved plan when such plan is approved by the
29 department.

30 Section 508. Relationship between plans and permitting.

1 (a) Issuance of permits.--The department shall not issue any
2 municipal waste processing or disposal permit under the Solid
3 Waste Management Act in a county other than a sewage sludge or
4 demolition waste processing or disposal permit:

5 (1) On and after the date that the county board of
6 commissioners has approved a municipal waste management plan
7 but before a plan is approved by the department under section
8 505, unless the department has considered the potential
9 effect of that permit on the proposed plan.

10 (2) On and after the date of departmental approval of
11 the county municipal waste management plan under section 505,
12 unless the permit applicant demonstrates to the department's
13 satisfaction that:

14 (i) For waste generated within the county, the
15 proposed facility is provided for in the approved plan
16 for that county.

17 (ii) For waste generated outside the county:

18 (A) the proposed facility is provided for in the
19 approved plan for the county that generated the
20 waste; or

21 (B) the county where the permitted facility
22 would be located has failed to adhere to the schedule
23 set forth in its approved plan for planning, design,
24 siting, construction, or operation of municipal waste
25 processing or disposal facilities.

26 (b) Municipal ordinances subordinated.--Issuance by the
27 department of a municipal waste processing or disposal permit in
28 accordance with this section shall supersede any and all
29 municipal land use and zoning ordinances and controls.

30 Section 509. Market development study for recyclable municipal

1 waste.

2 Within 15 months after the effective date of this act, the
3 department shall submit to the General Assembly a report that
4 describes:

5 (1) The current and projected capacity of existing
6 markets to absorb materials generated by municipal recycling
7 programs in this Commonwealth.

8 (2) Market conditions that inhibit or affect demand for
9 materials generated by municipal recycling programs.

10 (3) Potential opportunities to increase demand for and
11 use of materials generated by municipal recycling programs.

12 (4) Recommendations for specific actions to increase and
13 stabilize the demand for materials generated by municipal
14 recycling programs, including, but not limited to, proposed
15 legislation if necessary.

16 CHAPTER 7

17 RESOURCE RECOVERY FEE

18 Section 701. Resource recovery fee for municipal waste
19 landfills.

20 (a) Imposition.--There is imposed a resource recovery fee of
21 \$1.50 per ton for all solid waste disposed of at municipal waste
22 landfills except for process residue from a resource recovery
23 facility, including, but not limited to, noncombustible material
24 that is separated during the preparation of a refuse-derived
25 fuel. Such fee shall be paid by the operator of each municipal
26 waste landfill.

27 (b) Surcharge.--In addition to any fee imposed by this act,
28 a surcharge of \$1.50 per ton shall be charged on each ton of
29 waste generated outside the county wherein the landfill is
30 located. This surcharge shall not apply in the case where a

1 landfill is situate in one county and owned and operated by or
2 on behalf of another county or counties.

3 (c) Alternative calculation.--Except as provided in
4 subsection (d), the fee for operators of municipal waste
5 landfills that do not weigh solid waste when it is received
6 shall be calculated as if three cubic yards were equal to one
7 ton of solid waste.

8 (d) Waste weight requirement.--On and after January 1, 1987,
9 each operator of a municipal waste landfill that has received
10 30,000 or more cubic yards of solid waste in the previous
11 calendar year shall weigh all solid waste when it is received.
12 The scale used to weigh solid waste shall conform to the
13 requirements of the act of December 1, 1965 (P.L.988, No.368),
14 known as the Weights and Measures Act of 1965, and the
15 regulations promulgated pursuant thereto. The operator of the
16 scale shall be a licensed public weighmaster under the act of
17 April 28, 1961 (P.L.135, No.64), known as the Public
18 Weighmaster's Act, and the regulations promulgated pursuant
19 thereto.

20 (e) Sunset for fee.--No fee shall be imposed under this
21 section on and after the first day of the eleventh year
22 following the effective date of this act.

23 Section 702. Form and timing of resource recovery fee payment.

24 (a) Quarterly payments.--Each operator of a municipal waste
25 landfill shall make the resource recovery fee payment quarterly.
26 The fee shall be paid on or before the 20th day of April, July,
27 October and January for the three months ending the last day of
28 March, June, September and December.

29 (b) Quarterly reports.--Each resource recovery fee payment
30 shall be accompanied by a form prepared and furnished by the

1 department and completed by the operator. The form shall state
2 the weight or volume of solid waste received by the landfill
3 during the payment period and provide any other information
4 deemed necessary by the department to carry out the purposes of
5 this act. The form shall be signed by the operator.

6 (c) Timeliness of payment.--The operator shall be deemed to
7 have made a timely payment of the resource recovery fee if the
8 operator complies with all of the following:

9 (1) The enclosed payment is for the full amount owed
10 pursuant to this section and no further departmental action
11 is required for collection.

12 (2) The payment is accompanied by the required form, and
13 such form is complete and accurate.

14 (3) The letter transmitting the payment that is received
15 by the department is postmarked by the United States Postal
16 Service on or prior to the final day on which the payment is
17 to be received.

18 (d) Discount.--Any operator that makes a timely payment of
19 the resource recovery fee as provided in this section shall be
20 entitled to credit and apply against the fee payable, a discount
21 of 1% of the amount of the fee collected.

22 (e) Refunds.--Any operator that believes he has overpaid the
23 resource recovery fee may file a petition for refund to the
24 department. If the department determines that the operator has
25 overpaid the fee, the department shall refund to the operator
26 the amount due him, together with interest at a rate established
27 pursuant to section 806.1 of the act of April 9, 1929 (P.L.343,
28 No.176), known as The Fiscal Code, from the date of overpayment.
29 No refund of the resource recovery fee shall be made unless the
30 petition for the refund is filed with the department within six

1 months of the date of the overpayment.

2 (f) Alternative proof of payment.--For purposes of this
3 section, presentation of a receipt indicating that the payment
4 was mailed by registered or certified mail on or before the due
5 date shall be evidence of timely payment.

6 Section 703. Collection and enforcement of fee.

7 (a) Interest.--If an operator fails to make a timely payment
8 of the resource recovery fee, the operator shall pay interest on
9 the unpaid amount due at the rate established pursuant section
10 806 of the act of April 9, 1929 (P.L.343, No.176), known as The
11 Fiscal Code, from the last day for timely payment to the date
12 paid.

13 (b) Additional penalty.--In addition to the interest
14 provided in subsection (a), if an operator fails to make timely
15 payment of the resource recovery fee, there shall be added to
16 the amount of fee actually due 5% of the amount of such fee, if
17 the failure to file a timely payment is for not more than one
18 month, with an additional 5% for each additional month, or
19 fraction thereof, during which such failure continues, not
20 exceeding 25% in the aggregate.

21 (c) Assessment notices.--

22 (1) If the department determines that any operator of a
23 municipal waste landfill has not made a timely payment of the
24 resource recovery fee, it will send the operator a written
25 notice of the amount of the deficiency, within 30 days of
26 determining such deficiency. When the operator has not
27 provided a complete and accurate statement of the weight or
28 volume of solid waste received at the landfill for the
29 payment period, the department may estimate the weight or
30 volume in its notice.

1 (2) The operator charged with the deficiency shall have
2 30 days to pay the deficiency in full or, if the operator
3 wishes to contest the deficiency, forward the amount of the
4 deficiency to the department for placement in an escrow
5 account with the State Treasurer or any Pennsylvania bank, or
6 post an appeal bond in the amount of the deficiency. Such
7 bond shall be executed by a surety licensed to do business in
8 this Commonwealth and be satisfactory to the department.
9 Failure to forward the money or the appeal bond to the
10 department within 30 days shall result in a waiver of all
11 legal rights to contest the deficiency.

12 (3) If, through administrative or judicial review of the
13 deficiency, it is determined that the amount of deficiency
14 shall be reduced, the department shall within 30 days remit
15 the appropriate amount to the operator, with any interest
16 accumulated by the escrow deposit.

17 (4) The amount determined after administrative hearing
18 or after waiver of administrative hearing shall be payable to
19 the Commonwealth and shall be collectible in the manner
20 provided in section 1509.

21 (5) Any other provision of law to the contrary
22 notwithstanding, there shall be a statute of limitations of
23 five years upon actions brought by the Commonwealth pursuant
24 to this section.

25 (6) If any amount due hereunder remains unpaid 30 days
26 after receipt of notice thereof, the department may order the
27 operator of the landfill to cease receiving any solid waste
28 until the amount of the deficiency is completely paid.

29 (d) Filing of appeals.--Notwithstanding any other provision
30 of law, all appeals of final department actions concerning the

1 resource recovery fee, including, but not limited to, petitions
2 for refunds, shall be filed with the Environmental Hearing
3 Board.

4 (e) Constructive trust.--All resource recovery fees
5 collected by an operator and held by such operator prior to
6 payment to the department shall constitute a trust fund for the
7 Commonwealth, and such trust shall be enforceable against such
8 operator, its representatives, and any person receiving any part
9 of such fund without consideration or with knowledge that the
10 operator is committing a breach of the trust. However, any
11 person receiving payment of lawful obligation of the operator
12 from such fund shall be presumed to have received the same in
13 good faith and without any knowledge of the breach of trust.

14 (f) Remedies cumulative.--The remedies provided to the
15 department in this section are in addition to any other remedies
16 provided at law or in equity.

17 Section 704. Records.

18 Each operator of a municipal waste landfill shall keep daily
19 records of all deliveries of solid waste to the landfill as
20 required by the department, including, but not limited to, the
21 name and address of the hauler, the source of the waste, the
22 kind of waste received, and the weight or volume of the waste. A
23 copy of these records shall be maintained at the site by the
24 operator for no less than three years and shall be made
25 available to the department for inspection, upon request.

26 Section 705. Surcharge.

27 The provisions of any law to the contrary notwithstanding,
28 the operator of any municipal waste landfill may collect the fee
29 imposed by this section as a surcharge on any fee schedule
30 established pursuant to law, ordinance, resolution or contract

1 for solid waste disposal operations at the landfill. In
2 addition, any person who collects or transports solid waste
3 subject to the resource recovery fee to a municipal waste
4 landfill may impose a surcharge on any fee schedule established
5 pursuant to law, ordinance, resolution or contract for the
6 collection or transportation of solid waste to the landfill. The
7 surcharge shall be equal to the increase in disposal fees at the
8 landfill attributable to the resource recovery fee. However,
9 interest and penalties on the fee under section 703(a) and (b)
10 may not be collected as a surcharge.

11 Section 706. Resource Recovery Fund.

12 (a) Establishment.--All fees received by the department
13 pursuant to section 701 shall be paid into the State Treasury
14 into a special fund to be known as the Resource Recovery Fund,
15 which is hereby established.

16 (b) Appropriation.--All moneys placed in the Resource
17 Recovery Fund are hereby appropriated to the department for the
18 purposes set forth in this section. The department shall, from
19 time to time, submit to the Governor for his approval estimates
20 of amounts to be expended under this act.

21 (c) Allocations.--The department shall, to the extent
22 practicable, allocate the moneys received by the Resource
23 Recovery Fund, including all interest generated thereon, in the
24 following manner over the life of the fund:

25 (1) At least 15% shall be expended by the department for
26 grants for resource recovery feasibility studies for counties
27 as set forth in section 902, grants for resource recovery
28 feasibility studies for public institutions as set forth in
29 section 903.

30 (2) Up to 25% may be expended by the department for

1 grants to municipalities for the development and
2 implementation of recycling programs as set forth in section
3 906, performance grants for municipal recycling programs as
4 set forth in section 907, market development studies as set
5 forth in section 508, and public information, public
6 education, and technical assistance programs for recycling.

7 (3) Up to 15% may be expended by the department for
8 arbitration panels as provided in section 504, planning
9 grants as set forth under section 901, and the host
10 municipality inspector program as set forth in section 1102.

11 (4) No more than 2% may be expended for the collection
12 and administration of the moneys in the fund.

13 (d) Transfer.--On the first day of the sixteenth year after
14 the fee imposed by section 701 becomes effective, all moneys in
15 the Resource Recovery Fund that are not obligated shall be
16 transferred to the Solid Waste Abatement Fund and expended in
17 the same manner as other moneys in the Solid Waste Abatement
18 Fund. On the first day of the nineteenth year after the fee
19 imposed by section 701 becomes effective, all moneys in the
20 Resource Recovery Fund that are not expended shall be
21 transferred to the Solid Waste Abatement Fund and expended in
22 the same manner as other moneys in the Solid Waste Abatement
23 Fund.

24 (e) Advisory committee.--The secretary shall establish a
25 Resource Recovery Fund Advisory Committee composed of
26 representatives of county and other municipal governments, the
27 municipal waste management industry, the municipal waste
28 recycling industry and the general public. The committee shall
29 meet at least annually to review the Commonwealth's progress in
30 meeting the resource recovery and recycling goals under section

1 102(c), to recommend priorities on expenditures from the fund,
2 and to advise the secretary on associated activities concerning
3 the administration of the fund. The department shall reimburse
4 members of the committee for reasonable travel, hotel and other
5 necessary expenses incurred in performance of their duties under
6 this section.

7 (f) Annual reports.--The department shall submit an annual
8 report to the General Assembly on receipts to and disbursements
9 from the Resource Recovery Fund in the previous year,
10 projections for revenues and expenditures in the coming year,
11 and the Commonwealth's progress in achieving the resource
12 recovery and recycling goals set forth in section 102(c).

13 Section 707. Relationship to Pennsylvania Solid Waste -
14 Resource Recovery Development Act.

15 (a) Transfer.--All moneys in the Solid Waste - Demonstration
16 Fund and the Solid Waste - Resource Recovery Development Fund
17 created by the act of July 20, 1974 (P.L.572, No.198), known as
18 the Pennsylvania Solid Waste - Resource Recovery Development
19 Act, are hereby transferred into a special account within the
20 Resource Recovery Fund. Except as provided in this section, the
21 moneys in this account shall be spent in accordance with the
22 provisions of the Pennsylvania Solid Waste - Resource Recovery
23 Act. The Solid Waste - Demonstration Fund and the Solid Waste -
24 Resource Recovery Development Fund are dissolved.

25 (b) Limitation on obligating funds.--Two years from the
26 effective date of this act, all moneys in the account described
27 in subsection (a) that are not obligated shall be released from
28 this account and made available for the purposes set forth in
29 this act. On and after two years from the effective date of this
30 act, the department may not obligate any moneys from this

1 account under the Pennsylvania Solid Waste - Resource Recovery
2 Development Act.

3 (c) Full release from limitations.--On the first day of the
4 fifth year from the effective date of this act, all moneys in
5 the account described in subsection (a) that are not expended
6 shall be released from this account and made available for the
7 purposes set forth in this act.

8 CHAPTER 9

9 RESOURCE RECOVERY GRANTS

10 Section 901. Planning grants.

11 The department may award grants for the cost of preparing
12 municipal waste management plans in accordance with this act and
13 for carrying out related studies, surveys, investigations,
14 inquiries, research and analyses, upon application from any
15 county. The application shall be made on a form prepared and
16 furnished by the department. The application shall contain such
17 information as the department deems necessary to carry out the
18 provisions and purposes of this act. The grant to any county
19 under this section shall be 50% of the approved cost of such
20 plans and studies. Grants shall be proportionately allocated
21 according to the population of the county or counties preparing
22 the plan.

23 Section 902. Grants to counties for resource recovery
24 feasibility studies.

25 (a) Authorization.--The department may award grants for
26 resource recovery feasibility studies, upon application from any
27 county. The application shall be made on a form prepared and
28 furnished by the department. The application shall contain such
29 information as the department deems necessary to carry out the
30 provisions and purposes of this act. The grant to any county

1 under this section shall not exceed 50% of the approved cost of
2 the feasibility study.

3 (b) Prerequisites.--The department shall not award any grant
4 to a county under this section unless the site has been approved
5 and the application is complete and accurate and demonstrates to
6 the department's satisfaction that the proposed study:

7 (1) Is necessary for the preparation or implementation
8 of the county plan.

9 (2) Does not duplicate any prior feasibility study
10 prepared for or on behalf of the county.

11 (c) Priority.--In awarding grants under this section, the
12 department shall give priority to the following applicants in
13 the order listed:

14 (1) Those applicants that propose to use resource
15 recovery and recycling facilities or programs for the largest
16 percentage of municipal waste generated within the county.

17 (2) Those applicants that propose to use resource
18 recovery facilities in conjunction with recycling.

19 Section 903. Grants to public institutions for resource
20 recovery feasibility studies.

21 (a) Authorization.--The department may award grants for
22 resource recovery feasibility studies, upon application from any
23 public institution. The application shall be made on a form
24 prepared and furnished by the department. The application shall
25 contain such information as the department deems necessary to
26 carry out the provisions and purposes of this act. The grant to
27 any public institution under this section shall not exceed 50%
28 of the approved cost of the feasibility study.

29 (b) Prerequisites.--The department shall not award any grant
30 to a public institution under this section unless the site has

1 been approved and the application is complete and accurate, and
2 demonstrates all of the following to the department's
3 satisfaction:

4 (1) The county has stated in writing that the proposed
5 study will not interfere with the preparation or
6 implementation of the plan for the county in which the public
7 institution is located.

8 (2) The proposed study does not duplicate any prior
9 feasibility study prepared for on behalf of the public
10 institution.

11 (c) Definition.--For purposes of this section the term
12 "public institution" shall mean any government building or
13 complex of government buildings.

14 Section 904. Grants for development and implementation of
15 recycling programs.

16 (a) Authorization.--The department may award grants for
17 development and implementation of recycling programs. The grant
18 provided by this section may be used to identify markets,
19 develop a public education campaign, purchase collection and
20 storage equipment, and do other things necessary to establish a
21 recycling program. The grant may be used to purchase mechanical
22 processing equipment only to the extent needed for collection of
23 recyclable materials. The application shall be made on a form
24 prepared and furnished by the department. The application shall
25 explain the structure and operation of the program and shall
26 contain such other information as the department deems necessary
27 to carry out the provisions and purposes of this act. The grant
28 under this section shall not exceed 50% of the approved cost of
29 establishing a recycling program.

30 (b) Prerequisites.--The department shall not award any grant

1 under this section unless the application is complete and
2 accurate and demonstrates to the department's satisfaction that
3 the recycling program for which the grant is sought does not
4 duplicate any other recycling programs operating within the
5 county or municipality. In addition, the department shall not
6 award any grant to any county under this section unless the
7 proposed recycling program is consistent with the approved
8 county municipal waste management plan.

9 Section 905. Grants for recycling programs.

10 (a) Authorization.--The department may award annual
11 performance grants for municipal recycling programs, upon
12 application from any municipality. The application shall be made
13 on a form prepared and furnished by the department. The
14 application shall contain such information as the department
15 deems necessary to carry out the provisions and purposes of this
16 act.

17 (b) Availability and amount.--

18 (1) The department may award a grant under this
19 paragraph to a municipality based on each ton of municipal
20 waste recycled annually for up to five years. The amount of
21 the annual grant shall be as follows:

- 22 (i) for the first year, up to \$5 per ton;
- 23 (ii) for the second year, up to \$5 per ton;
- 24 (iii) for the third year, up to \$3 per ton;
- 25 (iv) for the fourth year, up to \$3 per ton; and
- 26 (v) for the fifth year, up to \$2 per ton.

27 (2) Where the municipality is serviced by a resource
28 recovery facility and where the recycled municipal waste for
29 which the grant is sought would otherwise have been processed
30 at the resource recovery facility, the department may award

1 an additional grant under this paragraph up to an additional
2 \$5 per ton of municipal waste recycled annually for a period
3 not in excess of two years.

4 (3) Any county which receives a grant under section 904
5 shall be ineligible to receive any grants under this section.

6 (c) Prerequisites.--The department shall not award any grant
7 under this section unless the application is complete and
8 accurate, and demonstrates all of the following to the
9 department's satisfaction:

10 (1) The municipality has complied with the requirements
11 of subsection (b).

12 (2) The recycling program does not duplicate any other
13 recycling programs operating within the county or
14 municipality.

15 (3) The recycled materials for which the grant is
16 sought:

17 (i) were not diverted from another recycling program
18 already in existence on the effective date of the
19 ordinance establishing the municipal recycling program;
20 and

21 (ii) were actually marketed.

22 CHAPTER 11

23 ASSISTANCE TO MUNICIPALITIES

24 Section 1101. Information provided to host municipalities.

25 (a) Departmental information.--The department will provide
26 all of the following information to the governing body of host
27 municipalities for municipal waste landfills and resource
28 recovery facilities:

29 (1) Copies of each department inspection report for such
30 facilities under the Solid Waste Management Act, the act of

June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act, the act of January 8, 1960 (P.L.1959 P.L.2119, No.787), known as the Air Pollution Control Act, the act of November 26, 1978 (P.L.1375, No.325), known as the Dam Safety and Encroachments Act, and the act of December 19, 1984 (P.L.1093, No.219), known as the Noncoal Surface Mining Conservation and Reclamation Act, within five days after the preparation of such reports.

(2) Prompt notification of all department enforcement or emergency actions for such facilities, including, but not limited to, abatement orders, cessation orders, proposed and final civil penalty assessments, and notices of violation.

(3) Copies of all air and water quality monitoring data collected by the department at such facilities, within five days after complete laboratory analysis of such data becomes available to the department.

(b) Operator information.--Every operator of a municipal waste landfill or resource recovery facility shall provide to the host municipality copies of all air and water quality monitoring data for the facility conducted by or on behalf of the operator, within five days after such data becomes available to the operator.

(c) Public information.--All information provided to the host municipality shall be made available to the public for review upon request.

(d) Definition.--For purposes of this section the term "host municipality" means the municipality other than a county within which a municipal waste landfill or resource recovery facility

1 is located or is proposed to be located in a permit application
2 approved by the department. If that municipality owns or
3 operates such landfill or facility, the term shall mean the
4 county within which the landfill or facility is located or
5 proposed to be located.

6 Section 1102. Landfill Site Inspection Board.

7 (a) Creation.--There is created within the department the
8 Landfill Site Inspection Board, hereinafter referred to as the
9 inspection board.

10 (b) Membership.--The inspection board shall consist of the
11 secretary, or a designee, who shall serve as chairperson, and
12 four public members. The public members shall be appointed by
13 the Governor with the advice and consent of a majority of each
14 house of the General Assembly. One public member shall be a
15 landfill operator; one public member shall be a transporter of
16 solid waste material; one public member shall be a
17 hydrogeologist; and one public member shall be an individual
18 with a Ph.D. in environmental engineering.

19 (c) Quorum.--Three members of the inspection board shall
20 constitute a quorum.

21 (d) Powers and duties.--The inspection board has the power
22 and duty to:

23 (1) Promulgate regulations setting minimum education and
24 experience qualifications for landfill site inspectors.

25 (2) Issue certifications to individuals who meet
26 qualifications under paragraph (1).

27 (e) Reimbursement.--Public members of the inspection board
28 shall be reimbursed for actual and necessary expenses incurred
29 in discharging their powers and duties.

30 Section 1103. Landfill site inspectors.

1 (a) Requirement.--A landfill site inspector, certified by
2 the inspection board under section 1102(d)(2), must be present
3 at all times when a permitted landfill is operating.

4 (b) Powers and duties.--A landfill site inspector has the
5 power and duty to:

6 (1) Inspect the contents of a vehicle when it arrives at
7 the boundary of the landfill.

8 (2) Assure that the waste in the vehicle is eligible for
9 disposal at the landfill.

10 (3) Reject any waste type which the facility is not
11 permitted to accept.

12 (4) Issue notices of violation.

13 (5) Appear and testify at any judicial or quasi judicial
14 hearings.

15 (c) Employment.--A landfill site inspector shall be an
16 employee of the municipality in which the inspector works. A
17 municipality shall employ a landfill site inspector at every
18 landfill within its boundaries.

19 (d) Reimbursement.--The department shall reimburse
20 municipalities for the salaries and employment expenses of
21 landfill site inspectors who are certified by the inspection
22 board under section 1102(d)(2).

23 Section 1104. Water supply testing for contiguous landowners.

24 (a) Required water sampling.--Upon written request from
25 persons owning land contiguous to or within one half mile of the
26 permitted area of a municipal waste landfill, the operator of
27 such landfill shall have quarterly sampling and analysis
28 conducted of private water supplies used by such persons for
29 drinking water. Such sampling and analysis shall be conducted by
30 a laboratory certified pursuant to the act of May 1, 1984

1 (P.L.206, No.43), known as the Pennsylvania Safe Drinking Water
2 Act. The laboratory shall be chosen by the landowners from a
3 list of regional laboratories supplied by the department.
4 Sampling and analysis shall be at the expense of the landfill
5 operator.

6 (b) Extent of analysis.--Water supplies shall be analyzed
7 for all parameters or chemical constituents determined by the
8 department to be indicative of typical contamination from
9 municipal waste landfills. The laboratory performing such
10 sampling and analysis shall provide written copies of sample
11 results to the landowner and to the department.

12 (c) Additional sampling required.--If the analysis indicates
13 possible contamination from a municipal waste landfill, the
14 department may conduct, or require the landfill operator to have
15 the laboratory conduct, additional sampling and analysis to
16 determine more precisely the nature, extent, and source of
17 contamination.

18 (d) Written notice of rights.--On or before 60 days from the
19 effective date of this act for permits issued under the Solid
20 Waste Management Act prior to the effective date of this act,
21 and at or before the time of permit issuance for permits issued
22 under the Solid Waste Management Act after the effective date of
23 this act, the operator of each municipal waste landfill shall
24 provide contiguous landowners with written notice of their
25 rights under this section on a form prepared by the department.
26 Section 1105. Water supply protection.

27 (a) Alternative water supply requirement.--Any person owning
28 or operating a municipal waste management facility that affects
29 a public or private water supply by pollution or diminution
30 shall restore or replace the affected supply with an alternate

1 source of water adequate in quantity or quality for the purposes
2 served by the water supply. If any person shall fail to comply
3 with this requirement, the department may issue such orders to
4 the person as are necessary to assure compliance.

5 (b) Notification to department.--Any landowner or water
6 purveyor suffering pollution or diminution of a public or
7 private water supply as a result of solid waste disposal
8 activities at a municipal waste landfill may so notify the
9 department and request that an investigation be conducted.
10 Within 10 days of such notification, the department shall
11 investigate any such claims, and shall, within 45 days of the
12 notification, make a determination. If the department finds that
13 the pollution or diminution was caused by the operation of a
14 municipal waste landfill or if it presumes the owner or operator
15 of a municipal waste landfill responsible for pollution or
16 diminution pursuant to subsection (c), then it shall issue such
17 orders to the owner or operator as are necessary to insure
18 compliance with subsection (a).

19 (c) Rebuttable presumption.--Unless rebutted by one of the
20 four defenses established in subsection (d), it shall be
21 presumed that the owner or operator of a municipal waste
22 landfill is responsible for the pollution, contamination or
23 diminution of a public or private water supply that is within
24 one-quarter mile of the perimeter of the area where solid waste
25 disposal activities have been carried out.

26 (d) Defenses.--In order to rebut the presumption of
27 liability established in subsection (c), the owner or operator
28 must affirmatively prove by clear and convincing evidence one of
29 the following four defenses:

30 (1) The pollution or diminution existed prior to any

1 municipal waste landfill operations on the site as determined
2 by a preoperation survey.

3 (2) The landowner or water purveyor refused to allow the
4 owner or operator access to conduct a preoperation survey.

5 (3) The water supply is not within one-quarter mile of
6 the perimeter of the area where solid waste disposal
7 activities have been carried out.

8 (4) The pollution or diminution occurred as a result of
9 some cause other than solid waste disposal activities.

10 (e) Independent testing.--Any owner or operator electing to
11 preserve its defenses under subsection (d)(1) or (2) shall
12 retain the services of an independent certified laboratory to
13 conduct the preoperation survey of water supplies. A copy of the
14 results of any survey shall be submitted to the department and
15 the landowner or water purveyor in a manner prescribed by the
16 department.

17 (f) Other remedies preserved.--Nothing in this act shall
18 prevent any landowner or water purveyor who claims pollution or
19 diminution of a public or private water supply from seeking any
20 other remedy that may be provided at law or in equity.

21 CHAPTER 13

22 HOST MUNICIPALITY BENEFIT FEE

23 Section 1301. Host municipality benefit fee.

24 (a) Imposition.--There is imposed a host municipality
25 benefit fee upon the operator of each municipal or residual
26 waste landfill or resource recovery facility that receives a new
27 permit or permit for additional capacity from the department
28 under the Solid Waste Management Act after the effective date of
29 this act. The fee shall be paid to the municipality other than
30 the county or municipal authority within which such landfill or

1 facility is located. If such municipality owns or operates the
2 landfill or facility, the fee shall not be imposed for waste
3 generated within such municipality. If the landfill or facility
4 is located within more than one municipality other than a
5 county, the fee shall be apportioned among them according to the
6 percentage of the permitted area located in each municipality.

7 (b) Amount.--The fee is \$1 per ton of weighed solid waste
8 and \$1 per three cubic yards of volume-measured solid waste for
9 all solid waste received at a landfill or facility.

10 (c) Municipal options.--Nothing in this section or section
11 1302 shall prevent a municipality from receiving a higher fee or
12 receiving the fee in a different form or at different times than
13 provided in this section and section 1302, if the municipality
14 and the operator of the municipal waste landfill or resource
15 recovery facility agree in writing.
16 Section 1302. Form and timing of host municipality benefit fee
17 payment.

18 (a) Quarterly payment.--Each operator subject to section
19 1301 shall make the host municipality benefit fee payment
20 quarterly. The fee shall be paid on or before the 20th day of
21 April, July, October and January for the three months ending the
22 last day of March, June, September and December.

23 (b) Quarterly reports.--Each host municipality benefit fee
24 payment shall be accompanied by a form prepared and furnished by
25 the department and completed by the operator. The form shall
26 state the weight or volume of solid waste received by the
27 landfill or facility during the payment period and provide any
28 other information deemed necessary by the department to carry
29 out the purposes of the act. The form shall be signed by the
30 operator. A copy of the form shall be sent to the department at

1 the same time that the fee and form are sent to the host
2 municipality.

3 (c) Timeliness of payment.--An operator shall be deemed to
4 have made a timely payment of the host municipality benefit fee
5 if all of the following are met:

6 (1) The enclosed payment is for the full amount owed
7 pursuant to this section and no further host municipality
8 action is required for collection.

9 (2) The payment is accompanied by the required form, and
10 such form is complete and accurate.

11 (3) The letter transmitting the payment that is received
12 by the host municipality is postmarked by the United States
13 Postal Service on or prior to the final day on which the
14 payment is to be received.

15 (d) Discount.--Any operator that makes a timely payment of
16 the host municipality benefit fee as provided in this section
17 shall be entitled to credit and apply against the fee payable by
18 him a discount of 1% of the amount of the fee collected by him.

19 (e) Alternative proof.--For purposes of this section,
20 presentation of a receipt indicating that the payment was mailed
21 by registered or certified mail on or before the due date shall
22 be evidence of timely payment.

23 Section 1303. Collection and enforcement of fee.

24 (a) Interest.--If an operator fails to make a timely payment
25 of the host municipality benefit fee, the operator shall pay
26 interest on the unpaid amount due at the rate established
27 pursuant section 806 of the act of April 9, 1929 (P.L.343,
28 No.176), known as The Fiscal Code, from the last day for timely
29 payment to the date paid.

30 (b) Additional penalty.--In addition to the interest

1 provided in subsection (a), if an operator fails to make timely
2 payment of the host municipality benefit fee, there shall be
3 added to the amount of fee actually due 5% of the amount of such
4 fee, if the failure to file a timely payment is for not more
5 than one month, with an additional 5% for each additional month,
6 or fraction thereof, during which such failure continues, not
7 exceeding 25% in the aggregate.

8 (c) Assessment notices.--If the host municipality determines
9 that any operator of a municipal waste landfill or resource
10 recovery facility has not made a timely payment of the host
11 municipality benefit fee, it will send a written notice for the
12 amount of the deficiency to such operator within 30 days from
13 the date of determining such deficiency. When the operator has
14 not provided a complete and accurate statement of the weight or
15 volume of solid waste received at the landfill for the payment
16 period, the host municipality may estimate the weight or volume
17 in its deficiency notice.

18 (d) Constructive trust.--All host municipality benefit fees
19 collected by an operator and held by such operator prior to
20 payment to the host municipality shall constitute a trust fund
21 for the host municipality, and such trust shall be enforceable
22 against such operator, its representatives, and any person
23 receiving any part of such fund without consideration or with
24 knowledge that the operator is committing a breach of the trust.
25 However, any person receiving payment of lawful obligation of
26 the operator from such fund shall be presumed to have received
27 the same in good faith and without any knowledge of the breach
28 of trust.

29 (e) Manner of collection.--The amount due and owing under
30 section 1301 shall be collectible by the host municipality in

1 the manner provided in section 1509.

2 (f) Remedies cumulative.--The remedies provided to host
3 municipalities in this section are in addition to any other
4 remedies provided at law or in equity.

5 Section 1304. Records.

6 Each operator that is required to pay the Host Municipality
7 Benefit Fee shall keep daily records of all deliveries of solid
8 waste to the landfill or facility, as required by the host
9 municipality, including, but not limited to, the name and
10 address of the hauler, the source of the waste, the kind of
11 waste received and the weight or volume of the waste. Such
12 records shall be maintained in Pennsylvania by the person or
13 municipality for no less than three years and shall be made
14 available to the host municipality for inspection upon request.

15 Section 1305. Surcharge.

16 The provisions of any law to the contrary notwithstanding,
17 the operator of any municipal waste landfill or resource
18 recovery facility subject to section 1301 may collect the host
19 municipality benefit fee as a surcharge on any fee schedule
20 established pursuant to law, ordinance, resolution or contract
21 for solid waste disposal or processing operations at the
22 landfill or facility. In addition, any person who collects or
23 transports solid waste subject to the host municipality benefit
24 fee to a municipal waste landfill or resource recovery facility
25 subject to section 1301 may impose a surcharge on any fee
26 schedule established pursuant to law, ordinance, resolution or
27 contract for the collection or transportation of solid waste to
28 the landfill or facility. The surcharge shall be equal to the
29 increase in processing or disposal fees at the landfill or
30 attributable to the host municipality benefit fee. However,

1 interest and penalties on the fee under section 1303(a) and (b)
2 may not be collected as a surcharge.

3 CHAPTER 15

4 ENFORCEMENT AND REMEDIES

5 Section 1501. Unlawful conduct.

6 (a) Offenses defined.--It shall be unlawful for any person
7 to:

8 (1) Violate, or cause or assist in the violation of, any
9 provision of this act, any regulation promulgated hereunder,
10 any order issued hereunder, or the terms or conditions of any
11 municipal waste management plan approved by the department
12 under this act.

13 (2) Fail to adhere to the schedule set forth in, or
14 pursuant to, this act for developing or submitting to the
15 department a municipal waste management plan.

16 (3) Fail to adhere to the schedule set forth in an
17 approved plan for planning, design, siting, construction or
18 operation of municipal waste processing or disposal
19 facilities.

20 (4) Act in a manner that is contrary to the approved
21 county plan or otherwise fail to act in a manner that is
22 consistent with the approved county plan.

23 (5) Fail to make a timely payment of the resource
24 recovery fee or host municipality benefit fee.

25 (6) Hinder, obstruct, prevent or interfere with the
26 department or its personnel in the performance of any duty
27 under this act.

28 (7) Hinder, obstruct, prevent or interfere with host
29 municipalities or their personnel in the performance of any
30 duty related to the collection of the host municipality

benefit fee.

(8) Violate the provisions of 18 Pa.C.S. § 4903 (relating to false swearing) or 4904 (relating to unsworn falsification to authorities) in complying with any provision of this act, including, but not limited to, providing or preparing any information required by this act.

(b) Public nuisance.--All unlawful conduct set forth in subsection (a) shall also constitute a public nuisance.

Section 1502. Enforcement orders.

(a) Issuance.--The department may issue such orders to persons as it deems necessary to aid in the enforcement of the provisions of this act. Such orders may include, but shall not be limited to, orders requiring persons to comply with approved municipal waste management plans and orders requiring compliance with the provisions of this act and the regulations promulgated pursuant thereto. Any order issued under this act shall take effect upon notice, unless the order specifies otherwise. An appeal to the Environmental Hearing Board shall not act as a supersedeas. The power of the department to issue an order under this act is in addition to any other remedy which may be afforded to the department pursuant to this act or any other act.

(b) Compliance.--It shall be the duty of any person to proceed diligently to comply with any order issued pursuant to subsection (a). If such person fails to proceed diligently or fails to comply with the order within such time, if any, as may be specified, such person shall be guilty of contempt and shall be punished by the court in an appropriate manner, and for this purpose, application may be made by the department to the Commonwealth Court, which is hereby granted jurisdiction.

1 Section 1503. Restraining violations.

2 (a) Injunctions.--In addition to any other remedies provided
3 in this act, the department may institute a suit in equity in
4 the name of the Commonwealth where unlawful conduct or public
5 nuisance exists for an injunction to restrain a violation of
6 this act, the regulations promulgated pursuant thereto, any
7 order issued pursuant thereto, and the terms and conditions of
8 any approved municipal waste management plan, and to restrain
9 the maintenance or threat of a public nuisance. In any such
10 proceeding, the court shall, upon motion of the Commonwealth,
11 issue a prohibitory or mandatory preliminary injunction if it
12 finds that the defendant is engaging in unlawful conduct as
13 defined by this act or is engaged in conduct which is causing
14 immediate and irreparable harm to the public. The Commonwealth
15 shall not be required to furnish bond or other security in
16 connection with such proceedings. In addition to an injunction,
17 the court, in such equity proceedings, may levy civil penalties
18 as specified in section 1504.

19 (b) Municipal or county enforcement.--In addition to any
20 other remedies provided for in this act, upon relation of any
21 district attorney of any county affected or upon relation of the
22 solicitor of any county or municipality affected, an action in
23 equity may be brought in a court of competent jurisdiction for
24 an injunction to restrain any and all violations of this act,
25 the regulations promulgated pursuant thereto, or any municipal
26 waste plan approved pursuant thereto or to restrain any public
27 nuisance.

28 (c) Citizens suits.--Except as provided in subsection (d),
29 any person may commence a civil action on his own behalf to
30 compel compliance with this act or any rule, regulation, order

1 or municipal waste plan issued or approved pursuant to this act
2 against the department where there is alleged a failure of the
3 department to perform any act which is not discretionary with
4 the department or against any other person, including, without
5 limitation, a county, alleged to be in violation of any
6 provision of this act or any rule, regulation, order or
7 municipal waste plan issued or approved pursuant to this act.

8 (d) Notice.--No action pursuant to subsection (c) of this
9 section may be commenced prior to 60 days after the plaintiff
10 has given notice in writing of the violation to the department
11 and to any alleged violator, nor may such action be commenced if
12 the department has commenced and is diligently prosecuting a
13 civil action in a court of the United States or a state to
14 require compliance with this act or any rule, regulation, order
15 or plan issued or approved pursuant to this act, but in any such
16 action in a court of the United States or of the Commonwealth
17 any person may intervene as a matter of right.

18 (e) Imminent threats.--The provisions of subsection (d) to
19 the contrary notwithstanding, any action pursuant to this
20 section may be initiated immediately upon written notification
21 to the department in the case where the violation complained of
22 constitutes an imminent threat to the health or safety of the
23 plaintiff or would immediately affect a legal interest of the
24 plaintiff.

25 (f) Concurrent remedies.--The penalties and remedies
26 prescribed by this act shall be deemed concurrent, and the
27 existence of or exercise of any remedy shall not prevent the
28 department or any other person from exercising any other remedy
29 hereunder, at law or in equity.

30 (g) Venue.--Actions instituted under this section may be

1 filed in the appropriate court of common pleas or in the
2 Commonwealth Court, which courts are hereby granted jurisdiction
3 to hear such actions.

4 (h) Supplemental orders.--The court, in issuing any final
5 order in any action brought pursuant to this section, may award
6 costs of litigation (including attorney and expert witness fees)
7 to any party, whenever the court determines such award is
8 appropriate. The court may, if a temporary restraining order or
9 preliminary injunction is sought, require the filing of a bond
10 or equivalent security in accord with the Rules of Civil
11 Procedure.

12 Section 1504. Civil penalties.

13 (a) Assessment.--In addition to proceeding under any other
14 remedy available at law or in equity for a violation of any
15 provision of this act, the regulations promulgated hereunder,
16 any order of the department issued hereunder, or any term or
17 condition of an approved municipal waste management plan, the
18 department may assess a civil penalty upon a person for such
19 violation. Such a penalty may be assessed whether or not the
20 violation was willful or negligent. In determining the amount of
21 the penalty, the department shall consider the willfulness of
22 the violation; the effect on the municipal waste planning
23 process; damage to air, water, land or other natural resources
24 of this Commonwealth or their uses; cost of restoration and
25 abatement; savings resulting to the person in consequence of
26 such violation; deterrence of future violations; and other
27 relevant factors. If the violation leads to issuance of a
28 cessation order, a civil penalty shall be assessed.

29 (b) Notice.--When the department assesses a civil penalty,
30 it shall inform the person of the amount of the penalty. The

1 person charged with the penalty shall then have 30 days to pay
2 the penalty in full or, if the person wishes to contest either
3 the amount of the penalty or the fact of the violation, the
4 person shall, within such 30-day period, file an appeal of such
5 action with the Environmental Hearing Board. Failure to appeal
6 within 30 days shall result in a waiver of all legal rights to
7 contest the violation or the amount of the penalty. The maximum
8 civil penalty which may be assessed pursuant to this section is
9 \$10,000 per day per violation. Each violation for each separate
10 day and each violation of any provision of this act, any
11 regulation promulgated hereunder, any order issued hereunder,
12 and the terms or conditions of any approved municipal waste
13 management plan shall constitute a separate offense under this
14 section.

15 Section 1505. Criminal penalties.

16 (a) Summary offense.--Any person, other than a municipal
17 official exercising his official duties, who violates any
18 provision of this act, any regulation promulgated hereunder, any
19 order issued hereunder, or the terms or conditions of any
20 approved municipal waste management plan shall, upon conviction
21 thereof in a summary proceeding, be sentenced to pay a fine of
22 not less than \$100 and not more than \$1,000 and costs and, in
23 default of the payment of such fine and costs, to undergo
24 imprisonment for not more than 30 days.

25 (b) Misdemeanor offense.--Any person, other than a municipal
26 official exercising his official duties, who violates any
27 provision of this act, any regulation promulgated hereunder, any
28 order issued hereunder, or the terms or conditions of any
29 approved municipal waste management plan, commits a misdemeanor
30 of the third degree and shall, upon conviction, be sentenced to

1 pay a fine of not less than \$1,000 but not more than \$10,000 a
2 day for each violation or to imprisonment for a period of not
3 more than one year, or both.

4 (c) Second or subsequent offense.--Any person, other than a
5 municipal official exercising his official duties who, within
6 two years after a conviction of a misdemeanor for any violation
7 of this act, violates any provision of this act, any regulation
8 promulgated hereunder, any order issued hereunder, or the terms
9 or conditions of any approved municipal waste management plan,
10 commits a misdemeanor of the second degree and shall, upon
11 conviction, be sentenced to pay a fine of not less than \$2,500
12 nor more than \$25,000 for each violation or to imprisonment for
13 a period of not more than two years, or both.

14 (d) Violations to be separate offense.--Each violation for
15 each separate day and each violation of any provision of this
16 act, any regulation promulgated hereunder, any order issued
17 hereunder, or the terms or conditions of any approved municipal
18 waste management plan, shall constitute a separate offense under
19 subsections (a), (b) and (c).

20 Section 1506. Existing rights and remedies preserved;

21 cumulative remedies authorized.

22 Nothing in this act shall be construed as estopping the
23 Commonwealth, or any district attorney or solicitor of a county
24 or municipality, from proceeding in courts of law or equity to
25 abate pollution forbidden under this act, or abate nuisances
26 under existing law. It is hereby declared to be the purpose of
27 this act to provide additional and cumulative remedies to
28 control municipal waste planning and management within this
29 Commonwealth, and nothing contained in this act shall in any way
30 abridge or alter rights of action or remedies now or hereafter

1 existing in equity, or under the common law or statutory law,
2 criminal or civil. Nothing in this act, or the approval of any
3 municipal waste management plan under this act, or any act done
4 by virtue of this act, shall be construed as estopping the
5 Commonwealth or persons in the exercise of their rights under
6 the common law or decisional law or in equity, from proceeding
7 in courts of law or equity to suppress nuisances, or to abate
8 any pollution now or hereafter existing, or to enforce common
9 law or statutory rights. No court of this Commonwealth having
10 jurisdiction to abate public or private nuisances shall be
11 deprived of such jurisdiction in any action to abate any private
12 or public nuisance instituted by any person for the reason that
13 such nuisance constitutes air or water pollution.

14 Section 1507. Production of materials; recordkeeping
15 requirements.

16 The department and its agents and employees shall:

17 (1) Have access to, and require the production of, books
18 and papers, documents, and physical evidence pertinent to any
19 matter under investigation.

20 (2) Require any person engaged in the municipal waste
21 management or municipal waste planning to establish and
22 maintain such records and make such reports and furnish such
23 information as the department may prescribe.

24 Section 1508. Withholding of State funds.

25 In addition to any other penalties provided in this act, the
26 department may notify the State Treasurer to withhold payment of
27 all or any portion of funds payable to the county or
28 municipality by the department from the General Fund or any
29 other fund if the county or municipality has engaged in any
30 unlawful conduct under section 1501. Upon notification, the

1 State Treasurer shall hold in escrow such moneys due to such
2 county or municipality until such time as the department
3 notifies the State Treasurer that the county or municipality has
4 complied with such requirement or schedule.

5 Section 1509. Collection of fines, fees, etc.

6 (a) Lien.--All fines, fees, interest and penalties and any
7 other assessments shall be collectible in any manner provided by
8 law for the collection of debts. If the person liable to pay any
9 such amount neglects or refuses to pay the same after demand,
10 the amount, together with interest and any costs that may
11 accrue, shall be a judgment in favor of the Commonwealth or the
12 host municipality, as the case may be, upon the property of such
13 person, but only after same has been entered and docketed of
14 record by the prothonotary of the county where such property is
15 situated. The department or host municipality, as the case may
16 be, may at any time transmit to the prothonotaries of the
17 respective counties certified copies of all such judgments, and
18 it shall be the duty of each prothonotary to enter and docket
19 the same of record in his office, and to index the same as
20 judgments are indexed, without requiring the payment of costs as
21 a condition precedent to the entry thereof.

22 (b) Deposit of fines.--All fines collected pursuant to
23 sections 1504 and 1505 shall be paid into the Solid Waste
24 Abatement Fund.

25 Section 1510. Right of citizen to intervene in proceedings.

26 Any citizen of this Commonwealth having an interest which is
27 or may be adversely affected shall have the right on his own
28 behalf, without posting bond, to intervene in any action brought
29 pursuant to section 1503 or 1504.

PROCUREMENT

Section 1701. Procurement by the Commonwealth.

(a) Application of section.--A procuring agency shall comply with the requirements set forth in this section and any regulations issued under this section, with respect to any purchase or acquisition of a procurement item where the purchase price of the items exceeds \$10,000 or where the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was \$10,000 or more.

(b) Requirements.--

(1) After the date specified in applicable guidelines prepared pursuant to subsection (d) of this section, each procuring agency which procures any items designated in such guidelines shall procure such items composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the postconsumer recovered materials referred to in subsection (g)(1) of this section practicable), consistent with maintaining a satisfactory level of competition, consideration such guidelines. The decision not to procure such items shall be based on a determination that such procurement items:

(i) are not reasonably available within a reasonable period of time;

(ii) fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or

(iii) are only available at any unreasonable price.

Any determination under subparagraph (ii) shall be made on the basis of the guidelines of the National Bureau of

Standards in any case in which such materials are covered by such guidelines.

(2) Agencies that generate heat, mechanical or electric energy from fossil fuel systems that have the technical capability of using energy or fuels derived from solid waste as a primary or supplementary fuel shall use such capability to the maximum extent practicable.

(3) After the date specified in any applicable guidelines prepared pursuant to subsection (d) of this section, contracting officers shall require that vendors:

(i) certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements; and

(ii) estimate the percentage of the total material utilized the performance of the contract which is recovered materials.

(c) Specifications.--All Commonwealth agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Commonwealth agencies shall:

(1) as expeditiously as possible but in any event no later than 18 months after the effective date of this act, eliminate from such specifications any exclusion of recovered materials and any requirement that items be manufactured from virgin materials; and

(2) within one year after the date of publication of applicable guidelines under subsection (d) of this section, or as otherwise specified in such guidelines, assure that such specifications require the use of recovered materials to the maximum extent possible without jeopardizing the intended

1 end use of the item.

2 (d) Guidelines.--The secretary, after consultation with
3 appropriate agencies within the Commonwealth, shall prepare, and
4 from time to time revise, guidelines for the use of procuring
5 agencies in complying with the requirements of this section.

6 Such guidelines shall:

7 (1) designate those items which are or can be produced
8 with recovered materials and whose procurement by procuring
9 agencies will carry out the objectives of this section, and
10 in the case of paper, provide for maximizing the use of
11 postconsumer recovered materials referred to in subsection
12 (g)(1) of this section;

13 (2) set forth recommended practices with respect to the
14 procurement of recovered materials and items containing such
15 materials and with respect to certification by vendors of the
16 percentage of recovered materials used, and shall provide
17 information as to the availability, relative price, and
18 performance of such materials and items and where appropriate
19 shall recommend the level of recovered material to be
20 contained in the procured product. The agency administrator
21 shall prepare final guidelines for paper within 180 days
22 after the effective date of this act, and for a least three
23 additional product categories within one year of the
24 effective date of this act. In making the designation under
25 subparagraph (1), the secretary shall consider, but is not
26 limited in his considerations, to:

27 (i) the availability of such items;

28 (ii) the impact of the procurement of such items by
29 procuring agencies on the volume of solid waste which
30 must be treated, stored or disposed of;

1 (iii) the economic and technological feasibility of
2 producing and using such items; and

3 (iv) other uses for such recovered materials.

4 (e) Procurement of services.--A procuring agency shall, to
5 the maximum extent practicable, manage or arrange for the
6 procurement of solid waste management services in a manner which
7 maximizes energy and resource recovery.

8 (f) Executive office.--Within 60 days of the effective date
9 of this act, the Governor shall designate an office or agency
10 which, in cooperation with the secretary, shall implement the
11 requirements of this section. It shall be the responsibility of
12 said office or agency to coordinate this policy with other
13 policies for procurement in such a way as to maximize the use of
14 recovered resources, and to, every two years, report to the
15 General Assembly on actions taken by Commonwealth agencies and
16 the progress made in the implementation of this section,
17 including agency compliance with subsection (c) of this section.

18 (g) Definitions.--As used in this section, in the case of
19 paper products, the term "recovered materials" includes:

20 (1) postconsumer materials such as:

21 (i) paper, paperboard, and fibrous wastes from
22 retail stores, office buildings, homes, and so forth,
23 after they have passed through their end-usage as a
24 consumer item, including: used corrugated boxes; old
25 newspapers; old magazines; mixed waste paper, tabulating
26 cards; and used cordage; and

27 (ii) all paper, paperboard, and fibrous wastes that
28 enter and are collected from municipal solid waste, and

29 (2) manufacturing, forest residues, and other wastes
30 such as:

1 (i) dry paper and paperboard waste generated after
2 completion of the papermaking process (that is, those
3 manufacturing operations up to and including the cutting
4 and trimming of the papermachine reel into smaller rolls
5 or rough sheets) including; envelope cuttings, bindery
6 trimmings, and other paper and paperboard waste,
7 resulting from printing, cutting, forming, and other
8 converting operations; bag, box, and carton manufacturing
9 wastes; and butt rolls, mill wrappers, and rejected
10 unused stock; and

11 (ii) finished paper and paperboard from obsolete
12 inventories of paper and paperboard manufacturers,
13 merchants, wholesalers, dealers, printers, converters, or
14 others;

15 (iii) fibrous byproducts of harvesting,
16 manufacturing, extractive, or wood-cutting processes,
17 flax, straw, linters, bagasse, slash, and other forest
18 residues;

19 (iv) wastes generated by the conversion of goods
20 made from fibrous material (that is, waste rope from
21 cordage manufacture, textile mill waste, and cuttings);
22 and

23 (v) fibers recovered from waste water which
24 otherwise would enter the waste stream.

25 (h) Procurement program.--

26 (1) Within one year after the date of publication of
27 applicable guidelines under subsection (d) of this section,
28 each procuring agency shall develop an affirmative
29 procurement program which will assure that items composed of
30 recovered materials will be purchased to the maximum extent

1 practicable and which is consistent with applicable
2 provisions of Commonwealth procurement law.

3 (2) Each affirmative procurement program required under
4 this subsection shall, at a minimum, contain:

5 (i) a recovered materials preference program;

6 (ii) an agency promotion program to promote the
7 preference program adopted under subparagraph (i);

8 (iii) a program for requiring estimates of the total
9 percentage of recovered material utilized in the
10 performance of a contract; certification of minimum
11 recovered material content actually utilized, where
12 appropriate; and reasonable verification procedures for
13 estimates and certifications; and

14 (iv) annual review and monitoring of the
15 effectiveness of an agency's affirmative procurement
16 program.

17 In the case of paper, the recovered materials preference
18 program required under subparagraph (i) shall provide for the
19 maximum use of the postconsumer recovered materials referred
20 to in subsection (h)(1).

21 (3) In developing the preference program, the following
22 options shall be considered for adoption:

23 (i) Subject to the limitations of subsection
24 (c)(1)(i) through (iii), a policy of awarding contracts
25 to the vendor offering an item composed of the highest
26 percentage of recovered materials practicable (and in the
27 case of paper, the highest percentage of the postconsumer
28 recovered materials referred to in subsection (h)(1)).

29 Subject to such limitations, agencies may make an award
30 to a vendor offering items with less than the maximum

1 recovered materials content.

2 (ii) Minimum recovered materials content
3 specifications which are set in such a way as to assure
4 that the recovered materials content (and in the case of
5 paper, the content of postconsumer materials referred to
6 in subsection (h)(1)) required is the maximum available
7 without jeopardizing the intended end use of the item, or
8 violating the limitations of subsection (c)(1)(i) through
9 (iii)).

10 Procuring agencies shall adopt one of the options set forth
11 in subparagraphs (i) and (ii) or a substantially equivalent
12 alternative, for inclusion in the affirmative procurement
13 program.

14 Section 1702. Purchase of cogenerated electricity.

15 A resource recovery facility may request that any public
16 utility enter into a contract providing for the interconnection
17 of the facility with the public utility and the purchase of
18 electric energy, or electric energy and capacity, produced and
19 offered for sale by the facility. The terms of any such contract
20 shall be in accordance with the Public Utility Regulatory
21 Policies Act of 1978 (Public Law 95-617, 92 Stat. 3117) and any
22 subsequent amendments, and any applicable Federal regulations
23 promulgated pursuant thereto, and the regulations of the
24 commission.

25 Section 1703. Pennsylvania Public Utility Commission.

26 (a) Application.--If the owner or operator of a resource
27 recovery facility and a public utility fail to agree upon the
28 terms and conditions of a contract for the purchase of electric
29 energy, or electric energy and capacity, within 90 days of the
30 request by the facility to negotiate such a contract, or if the

1 public utility fails to offer a contract, either the owner or
2 operator of the facility or the public utility may request the
3 commission to establish the terms and conditions of such a
4 contract. Such request may be for an informal consultation, a
5 petition for declaratory order or a formal complaint, as
6 appropriate under the circumstances.

7 (b) Commission response.--The commission shall respond to
8 any such request, unless time limits are waived by the owner or
9 operator and utility, as follows:

10 (1) If the request is for an informal consultation, such
11 consultation shall be held within 30 days, and commission
12 staff shall make its recommendation to the parties within 30
13 days after the last consultation or submittal or last
14 requested data, whichever is later. Such recommendation may
15 be oral or written, but shall not be binding on the parties
16 or commission.

17 (2) If the request is in the form of petition for
18 declaratory order, the petitioner shall comply with the
19 requirements of 52 Pa. Code §§ 5.41 et seq. (relating to
20 petitions) and 57.39 (relating to informal consultation and
21 commission proceedings). Within 30 days after filing such
22 petition, the commission or its staff assigned to the matter
23 may request that the parties file legal memoranda addressing
24 any issues raised therein. Within 60 days after filing of
25 such petition or legal memoranda, whichever is later, the
26 commission shall act to grant or deny such petition.

27 (3) If the request is in the form of a formal complaint,
28 the case shall proceed in accordance with Title 66 of the
29 Pennsylvania Consolidated Statutes (relating to public
30 utilities). However, the complaint may be withdrawn at any

1 time and the matter proceed as set forth in paragraph (1) or
2 (2).

3 (c) Status as public utility.--A resource recovery facility
4 shall not be deemed a public utility, as such is defined in
5 section 101 of Title 66 under the following circumstances:

6 (1) if such facility produces electric energy for sale
7 to a public utility and one retail customer;

8 (2) if such facility produces thermal energy for sale to
9 a public utility and ten or less retail customers, all of
10 whom agree to purchase from such facility under mutually
11 agreed upon terms, or if such facility produces thermal
12 energy for sale to any number of retail customers all of
13 which are located on the same site or site contiguous to that
14 of the selling facility; or

15 (3) if the commission, upon petition of any affected
16 party, expressly exempts such municipal waste facility from
17 control or regulation as a public utility, upon a finding
18 that, regardless of the number of retail customers, such
19 service does not constitute public utility service, which is
20 in the public interest to be regulated by the commission.

21 (d) Effect of section.--The provisions of this section shall
22 take effect notwithstanding the adoption or failure to adopt any
23 regulations by the Public Utility Commission regarding the
24 purchase of electric energy from qualifying facilities, as such
25 term is defined in section 210 of the Public Utility Regulatory
26 Policies Act of 1978 (Public Law 95-617, 92 Stat. 3117)
27 regulations and commission regulations.

28 CHAPTER 19

29 CONSTRUCTION

30 Section 1901. Construction of act.

1 (a) Liberal construction.--The terms and provisions of this
2 act are to be liberally construed, so as to best achieve and
3 effectuate the goals and purposes hereof.

4 (b) Para materia.--This act shall be construed in para
5 materia with the act of July 7, 1980 (P.L.380, No.97), known as
6 the Solid Waste Management Act.

7 CHAPTER 21

8 MISCELLANEOUS PROVISIONS

9 Section 2101. Severability.

10 The provisions of this act are severable. If any provision of
11 this act or its application to any person or circumstance is
12 held invalid, the invalidity shall not affect other provisions
13 or applications of this act which can be given effect without
14 the invalid provision or application.

15 Section 2102. Repeals.

16 (a) Absolute repeals.--The last sentence in section 201(b),
17 section 201(f) through (l) and sections 202 and 203 of the act
18 of July 7, 1980 (P.L.380, No.97), known as the Solid Waste
19 Management Act, are repealed.

20 (b) Delayed repeal.--The act of July 20, 1974 (P.L.572,
21 No.198), known as the Pennsylvania Solid Waste - Resource
22 Recovery Development Act, is repealed, effective five years from
23 the effective date of this act.

24 (c) Inconsistent repeals.--Except as provided in section
25 501(c) of this act, the first through fourth sentences of
26 section 201(b) and section 201(c), (d) and (e) of the act of
27 July 7, 1980 (P.L.380, No.97), known as the Solid Waste
28 Management Act, are repealed insofar as they are inconsistent
29 with this act.

30 Section 2103. Effective date.

1 This act shall take effect in 60 days.