
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 528

Session of
1987

INTRODUCED BY FISHER, RHOADES, HELFRICK, REIBMAN, SHUMAKER,
LEWIS, SCANLON, CORMAN, SALVATORE, LEMMOND, ROSS, STAUFFER
AND MUSTO, MARCH 10, 1987

SENATOR TILGHMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,
OCTOBER 5, 1987

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; requiring municipalities to implement
8 recycling programs; requiring Commonwealth agencies to
9 procure recycled materials; imposing duties; granting powers
10 to counties and municipalities; authorizing the Environmental
11 Quality Board to adopt regulations; authorizing the
12 Department of Environmental Resources to implement this act;
13 providing remedies; prescribing penalties; establishing a
14 fund; and making repeals.

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19 The General Assembly of the Commonwealth of Pennsylvania
20 hereby enacts as follows:

21 CHAPTER 1

22 GENERAL PROVISIONS

23 Section 101. Short title.

24 This act shall be known and may be cited as the Municipal
25 Waste Planning, Recycling and Waste Reduction Act.

26 Section 102. Legislative findings; declaration of policy and
27 goals.

28 (a) Legislative findings.--The Legislature hereby
29 determines, declares and finds that:

30 (1) Improper municipal waste practices create public

1 health hazards, environmental pollution and economic loss,
2 and cause irreparable harm to the public health, safety and
3 welfare.

4 (2) Parts of this Commonwealth have inadequate and
5 rapidly diminishing processing and disposal capacity for
6 municipal waste.

7 (3) Virtually every county in this Commonwealth will
8 have to replace existing municipal waste processing and
9 disposal facilities over the next decade.

10 (4) Needed additional municipal waste processing and
11 disposal facilities have not been developed in a timely
12 manner because of diffused responsibility for municipal waste
13 planning, processing and disposal among numerous and
14 overlapping units of local government.

15 (5) It is necessary to give counties the primary
16 responsibility to plan for the processing and disposal of
17 municipal waste generated within their boundaries to insure
18 the timely development of needed processing and disposal
19 facilities.

20 (6) Proper and adequate processing and disposal of
21 municipal waste generated within a county requires the
22 generating county to give first choice to new processing and
23 disposal sites located within that county.

24 (7) It is appropriate to provide those living near
25 municipal waste processing and disposal facilities with
26 additional guarantees of the proper operation of such
27 facilities and to provide incentives for municipalities to
28 host such facilities.

29 (8) Waste reduction and recycling are preferable to the
30 processing or disposal of municipal waste.

1 (9) Prompt payment and efficient collection of the
2 recycling fee created by this act are essential to the
3 administration of the recycling grants provided by this act.

4 (10) Authorizing counties to control the flow of
5 municipal waste and recyclable constituents of municipal
6 waste is necessary to guarantee, among other things, the long
7 term economic viability of resource recovery facilities and
8 municipal waste landfills, ensure that such facilities and
9 landfills can be financed, moderate the cost of such
10 facilities and landfills over the long term, protect existing
11 capacity, and assist in the development of markets for
12 recyclable materials by guaranteeing a steady flow of such
13 materials.

14 (11) Public agencies in the Commonwealth purchase
15 significant quantities of products or materials annually.

16 (12) By purchasing products or materials made from
17 recycled materials, public agencies in the Commonwealth can
18 help stimulate the market for such materials and thereby
19 foster recycling, and can also educate the public concerning
20 the utility and availability of such materials.

21 (13) Removing certain materials from the municipal
22 waste-stream will decrease the flow of solid waste to
23 municipal waste landfills, aid in the conservation and
24 recovery of valuable resources, conserve energy in the
25 manufacturing process, increase the supply of reusable
26 materials for the Commonwealth's industries, and will also
27 reduce substantially the required capacity of proposed
28 resource recovery facilities and contribute to their overall
29 combustion efficiency, thereby resulting in significant cost
30 savings in the planning, construction and operation of these

1 facilities.

2 (14) It is in the public interest to promote the source
3 separation of marketable waste materials on a Statewide basis
4 so that reusable materials may be returned to the economic
5 mainstream in the form of raw materials or products rather
6 than be disposed of at the Commonwealth's overburdened
7 municipal waste processing or disposal facilities.

8 (15) The recycling of marketable materials by
9 municipalities in the Commonwealth and Commonwealth agencies,
10 and the development of public and private sector recycling
11 activities on an orderly and incremental basis, will further
12 demonstrate the Commonwealth's long term commitment to an
13 effective and coherent solid waste management strategy.

14 (16) Operators of municipal waste landfills and resource
15 recovery facilities should give first priority to the
16 disposal or processing of municipal waste generated within
17 the host county because, among other reasons, the host county
18 is most directly affected by operations at the facility, and
19 because local processing or disposal of municipal waste saves
20 energy and transportation costs.

21 (17) The Commonwealth recognizes that both municipal
22 waste landfills and resource recovery facilities will be
23 needed as part of an integrated strategy to provide for the
24 processing and disposal of the Commonwealth's municipal
25 waste.

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

27 (1) Establish and maintain a cooperative State and local
28 program of planning and technical and financial assistance
29 for comprehensive municipal waste management.

30 (2) Encourage the development of waste reduction and

1 recycling as a means of managing municipal waste, conserving
2 resources and supplying energy through planning, grants and
3 other incentives.

4 (3) Protect the public health, safety and welfare from
5 the short and long term dangers of transportation,
6 processing, treatment, storage and disposal of municipal
7 waste.

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

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

13 (6) Establish a recycling fee for municipal waste
14 landfills and resource recovery facilities to provide grants
15 for recycling, planning and related purposes.

16 (7) Establish a host municipality benefit fee for
17 municipal waste landfills and resource recovery facilities
18 that are permitted after the effective date of this act and
19 to provide benefits to host municipalities for the presence
20 of such facilities.

21 (8) Establish a site-specific postclosure fee for
22 currently operating and future permitted municipal waste
23 landfills for remedial measures and emergency actions that
24 are necessary to prevent or abate adverse effects upon the
25 environment after the closure of such landfills.

26 (9) Establish trust funds for municipally operated
27 landfills to ensure that there are sufficient funds available
28 for completing the final closure of such landfills under the
29 Solid Waste Management Act.

30 (10) Shift the primary responsibility for developing and

1 implementing municipal waste management plans from
2 municipalities to counties.

3 (11) Require all public agencies of the Commonwealth to
4 aid and promote the development of recycling through their
5 procurement policies for the general welfare and economy of
6 the Commonwealth.

7 (12) Require certain municipalities to implement
8 recycling programs to return valuable materials to productive
9 use, to conserve energy and to protect capacity at municipal
10 waste processing or disposal facilities.

11 (13) Implement Article 1, section 27 of the Constitution
12 of Pennsylvania.

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

15 (1) At least 25% of all municipal waste generated in
16 this Commonwealth on and after January 1, 1997, should be
17 recycled.

18 (2) The weight or volume of municipal waste generated
19 per capita in this Commonwealth on January 1, 1997, should,
20 to the greatest extent practicable, be less than the weight
21 or volume of municipal waste generated per capita on the
22 effective date of this act.

23 (3) Each person living or working in this Commonwealth
24 shall be taught the economic, environmental, and energy value
25 of recycling and waste reduction, and shall be encouraged
26 through a variety of means to participate in such activities.

27 (4) The Commonwealth should, to the greatest extent
28 practicable, procure and use products and materials with
29 recycled content, and procure and use materials that are
30 recyclable.

1 Section 103. Definitions.

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

5 "Abatement." The restoration, reclamation, recovery, etc.,
6 of a natural resource adversely affected by the activity of a
7 person.

8 "Commission." The Pennsylvania Public Utility Commission and
9 its authorized representatives.

10 "Commonwealth agency." The Commonwealth and its departments,
11 boards, commissions and agencies, Commonwealth owned
12 universities, and the State Public School Building Authority,
13 the State Highway and Bridge Authority, and any other authority
14 now in existence or hereafter created or organized by the
15 Commonwealth.

16 "County." Includes the City of Philadelphia but not
17 Philadelphia County.

18 "Department." The Department of Environmental Resources of
19 the Commonwealth and its authorized representatives.

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

25 "Feasibility study." A study which analyzes a specific
26 municipal waste processing or disposal system to assess the
27 likelihood that the system can be successfully implemented,
28 including, but not limited to, an analysis of the prospective
29 market, the projected costs and revenues of the system, the
30 municipal waste-stream that the system will rely upon and

1 various options available to implement the system.

2 "Host municipality." The municipality other than the county
3 within which a municipal waste landfill or resource recovery
4 facility is located or is proposed to be located.

5 "Leaf waste." Leaves, garden residues, shrubbery and tree
6 trimmings, and similar material, but not including grass
7 clippings.

8 "Local Public agency."

9 (1) Counties, cities, boroughs, towns, townships, school
10 districts, and any other authority now in existence or
11 hereafter created or organized by the Commonwealth.

12 (2) All municipal or school or other authorities now in
13 existence or hereafter created or organized by any county,
14 city, borough, township or school district or any combination
15 thereof.

16 (3) Any and all other public bodies, authorities,
17 councils of government, officers, agencies or
18 instrumentalities of the foregoing, whether exercising a
19 governmental or proprietary function.

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

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

1 treatment plants or water supply treatment plants.

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

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

18 "Municipality." A county, city, borough, incorporated town,
19 township or home rule municipality.

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

24 "Person." Any individual, partnership, corporation,
25 association, institution, cooperative enterprise, municipality,
26 municipal authority, Federal Government or agency, State
27 institution or agency (including, but not limited to, the
28 Department of General Services and the State Public School
29 Building Authority), or any other legal entity whatsoever which
30 is recognized by law as the subject of rights and duties. In any

1 provisions of this act prescribing a fine, imprisonment or
2 penalty, or any combination of the foregoing, the term "person"
3 shall include the officers and directors of any corporation or
4 other legal entity having officers and directors.

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

13 "Post consumer waste material." Any product generated by a
14 business or consumer which has served its intended end use, and
15 which has been separated from solid waste for the purposes of
16 collection, recycling, and disposition. The term includes
17 industrial byproducts that would otherwise go to disposal or
18 processing facilities. The term does not include internally
19 generated scrap that is commonly returned to industrial or
20 manufacturing process.

21 "Processing." Any technology used for the purpose of
22 reducing the volume or bulk of municipal waste or any technology
23 used to convert part or all of such waste materials for offsite
24 reuse. Processing facilities include, but are not limited to,
25 transfer facilities, composting facilities and resource recovery
26 facilities.

27 "Project development." Those activities required to be
28 conducted prior to constructing a processing or disposal
29 facility that has been shown to be feasible, including, but not
30 limited to, public input and participation, siting, procurement

1 and vendor contract negotiations, and market and municipal waste
2 supply assurance negotiations.

3 "Public agency." Any Commonwealth agency or local public
4 agency.

5 "Recycled content." Products or materials containing post
6 consumer waste materials.

7 "Recycling." The collection, separation, recovery and sale
8 or reuse of metals, glass, paper, leaf waste, plastics and other
9 materials which would otherwise be disposed or processed as
10 municipal waste.

11 "Remaining available permitted capacity." The remaining
12 permitted capacity that is actually available for processing or
13 disposal to the county or other municipality that generated the
14 waste.

15 "Remaining permitted capacity." The weight or volume of
16 municipal waste that can be processed or disposed at an existing
17 municipal waste processing or disposal facility. The term shall
18 include only weight or volume capacity for which the department
19 has issued a permit under the Solid Waste Management Act. The
20 term shall not include any facility that the department
21 determines, or has determined, has failed and continues to fail
22 to comply with the provisions of the Solid Waste Management Act,
23 and the regulations promulgated pursuant thereto, or any permit
24 conditions.

25 "Residual waste." Any garbage, refuse, other discarded
26 material or other waste, including solid, liquid, semisolid or
27 contained gaseous materials resulting from industrial, mining
28 and agricultural operations and any sludge from an industrial,
29 mining or agricultural water supply treatment facility, waste
30 water treatment facility or air pollution control facility,

1 provided that it is not hazardous. The term shall not include
2 coal refuse as defined in the act of September 24, 1968
3 (P.L.1040, No.318), known as the Coal Refuse Disposal Control
4 Act. The term shall not include treatment sludges from coal mine
5 drainage treatment plants, disposal of which is being carried on
6 pursuant to and in compliance with a valid permit issued
7 pursuant to the act of June 22, 1937 (P.L.1987, No.394), known
8 as The Clean Streams Law.

9 "Resource recovery facility." A facility that provides for
10 the extraction and utilization of materials or energy from
11 municipal waste that is generated off-site, including, but not
12 limited to, a facility that mechanically extracts materials from
13 municipal waste, a combustion facility that converts the organic
14 fraction of municipal waste to usable energy, and any chemical
15 and biological process that converts municipal waste into a fuel
16 product or other usable materials. The term also includes any
17 facility for the combustion of municipal waste that is generated
18 off-site, whether or not the facility is operated to recover
19 energy. The term does not include methane gas extraction from a
20 municipal waste landfill, nor shall it include any separation
21 and collection center, drop-off point or collection center for
22 recycling municipal waste, or any source separation or
23 collection center for composting leaf waste.

24 "Secretary." The Secretary of Environmental Resources of the
25 Commonwealth.

26 "Solid waste." Solid waste, as defined in the act of July 7,
27 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

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

30 "Solid Waste Management Act." The act of July 7, 1980

1 (P.L.380, No.97).

2 "Storage." The containment of any municipal waste on a
3 temporary basis in such a manner as not to constitute disposal
4 of such waste. It shall be presumed that the containment of any
5 municipal waste in excess of one year constitutes disposal. This
6 presumption can be overcome by clear and convincing evidence to
7 the contrary.

8 "Transportation." The offsite removal of any municipal waste
9 at any time after generation.

10 "Treatment." Any method, technique or process, including,
11 but not limited to, neutralization, designed to change the
12 physical, chemical or biological character or composition of any
13 municipal waste so as to neutralize such waste or so as to
14 render such waste safer for transport, suitable for recovery,
15 suitable for storage or reduced in volume.

16 "Waste reduction." Design, manufacture or use of a product
17 to minimize weight of municipal waste that requires processing
18 or disposal, including, but not limited to:

19 (1) design or manufacturing activities which minimize
20 the weight or volume of materials contained in a product, or
21 increase durability or recyclability; and

22 (2) use of products that contain as little material as
23 possible, are capable of being reused or recycled or have an
24 extended useful life.

25 Section 104. Construction of act.

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

29 (b) Para materia.--This act shall be construed in para
30 materia with the Solid Waste Management Act.

1 CHAPTER 3

2 POWERS AND DUTIES

3 Section 301. Powers and duties of department.

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

7 (1) Administer the municipal waste planning, recycling
8 and waste reduction program pursuant to the provisions of
9 this act and the regulations promulgated pursuant thereto.

10 (2) Cooperate with appropriate Federal, State, interstate
11 and local units of government and with appropriate private
12 organizations in carrying out its duties under this act.

13 (3) Provide technical assistance to municipalities and
14 Commonwealth agencies, including, but not limited to, the
15 training of personnel.

16 (4) Initiate, conduct and support research,
17 demonstration projects and investigations, and coordinate all
18 State agency research programs pertaining to municipal waste
19 management systems.

20 (5) Regulate municipal waste planning, including, but
21 not limited to, the development and implementation of county
22 municipal waste management plans.

23 (6) Approve, conditionally approve or disapprove
24 municipal waste management plans, issue orders, conduct
25 inspections and abate public nuisances to implement the
26 provisions and purposes of this act and the regulations
27 promulgated pursuant to this act.

28 (7) Serve as the agency of the Commonwealth for the
29 receipt of moneys from the Federal Government or other public
30 agencies or private agencies and expend such moneys for

1 studies and research with respect to, and for the enforcement
2 and administration of, the provisions and purposes of this
3 act and the regulations promulgated pursuant thereto.

4 (8) Institute, in a court of competent jurisdiction,
5 proceedings against any person to compel compliance with the
6 provisions of this act, any regulation promulgated pursuant
7 thereto, any order of the department, or the terms and
8 conditions of any approved municipal waste management plan.

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

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

17 (11) Encourage and, where the department determines it
18 is appropriate, require counties and other municipalities to
19 carry out their duties under this act, using the full range
20 of incentives and enforcement authority provided in this act.

21 (12) Take any action not inconsistent with this act that
22 the department may deem necessary or proper to collect the
23 recycling fee provided by this act, and to insure the payment
24 of the host municipality benefit fee and to ensure the
25 payment of the site-specific postclosure fee and moneys for
26 the trust fund for municipally operated landfills provided by
27 this act.

28 (13) Administer and distribute moneys in the Recycling
29 Fund for any public educational programs on recycling and
30 waste reduction that the department believes to be

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

6 (14) To promote and emphasize recycling and waste
7 reduction in the Commonwealth by, among other things:

8 (i) Conducting a comprehensive, innovative and
9 effective public education program concerning the value
10 of recycling and waste reduction, and of public
11 opportunities to participate in such activities, in
12 cooperation with the Department of Education.

13 (ii) Developing and maintaining a data base on
14 recycling and waste reduction in the Commonwealth, and
15 making the information in that data base available to the
16 public.

17 (iii) Coordinating recycling and waste reduction
18 efforts among Commonwealth agencies.

19 (iv) Providing financial and other assistance to
20 municipalities that are required by section 1501 to
21 implement recycling programs.

22 (15) Do any and all other acts and things, not
23 inconsistent with any provision of this act, which it may
24 deem necessary or proper for the effective enforcement of
25 this act and the regulations promulgated pursuant thereto
26 after consulting with the Department of Health regarding
27 matters of public health significance.

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

29 The Environmental Quality Board shall have the power and its
30 duty shall be to adopt the regulations of the department to

1 accomplish the purposes and to carry out the provisions of this
2 act.

3 Section 303. Powers and duties of counties.

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

9 (1) May require all persons collecting or transporting
10 municipal waste within the county to obtain licenses for the
11 purpose of directing waste to facilities designated pursuant
12 to subsection (e).

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

16 (3) May plan for the processing and disposal of
17 municipal waste generated outside its boundaries and to
18 implement its approved plan as it relates to the processing
19 and disposal of such waste.

20 (b) Joint planning.--Any two or more counties may adopt and
21 implement a single municipal waste management plan for the
22 municipal waste generated within the combined area of the
23 counties.

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

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

10 (e) Designated sites.--A county with an approved municipal
11 waste management plan that was submitted pursuant to section
12 501(a) or (c) of this act 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 permitted by
16 the department under the act of July 7, 1980 (P.L.380, No.97),
17 known as the Solid Waste Management Act. No county shall direct
18 municipal waste that would otherwise be recycled to any resource
19 recovery facility or other facility for purposes other than
20 recycling such waste.

21 (f) Report.--On or before April 1 of each year, each county
22 shall submit a report to the department describing:

23 (1) Its progress in implementing its department-approved
24 municipal waste management plan or in developing such a plan.

25 (2) The weight or volume of materials that were recycled
26 by municipal recycling programs in the county in the
27 preceding calendar year.

28 Section 304. Powers and duties of municipalities other than
29 counties.

30 (a) Responsibility of other municipalities.--Each

1 municipality other than a county shall have the power and its
2 duty shall be to assure the proper and adequate transportation,
3 collection and storage of municipal waste which is generated or
4 present within its boundaries and to adopt and implement
5 programs for the collection and recycling of municipal waste as
6 provided in this act.

7 (b) Ordinances.--In carrying out its duties under this
8 section, a municipality other than a county may adopt
9 resolutions, ordinances, regulations and standards for the
10 transportation, storage and collection of municipal wastes,
11 which shall not be less stringent than, and not in violation of
12 or inconsistent with, the provisions and purposes of the Solid
13 Waste Management Act, this act and the regulations promulgated
14 pursuant thereto.

15 (c) Delegation of responsibility.--A municipality other than
16 a county may contract with any municipality or municipal
17 authority to carry out its duties for the transportation,
18 collection and storage of municipal waste, if the
19 transportation, collection or storage activity or facility is
20 conducted or operated in a manner that is consistent with the
21 Solid Waste Management Act, this act and the regulations
22 promulgated pursuant thereto.

23 (d) Designated sites.--A municipality other than a county
24 may require by ordinance that all municipal waste generated
25 within its jurisdiction shall be disposed of at a designated
26 permitted facility. Such ordinance shall remain in effect until
27 the county in which the municipality is located adopts a waste
28 flow control ordinance as part of a plan submitted to the
29 department pursuant to section 501(a) or (c) and approved by the
30 department. Except as provided in section 502(m), any such

1 county ordinance shall supersede any such municipal ordinance to
2 the extent that the municipal ordinance is inconsistent with the
3 county ordinance.

4 (e) Term and renewals of certain contracts.--The governing
5 body of a municipality other than a county shall have the power
6 to, and may, enter into contracts having an initial term of five
7 years with optional renewal periods of up to five years with
8 persons responsible for the collection or transportation of
9 municipal waste generated within the municipality. The
10 provisions of this subsection shall not apply to the disposal of
11 municipal solid waste. The limitations imposed on contracts by
12 section 1502(XXVII) of the act of June 24, 1931 (P.L.1206,
13 No.331), known as The First Class Township Code, and section 702
14 (VIII) of the act of May 1, 1933 (P.L.103, No.69), known as The
15 Second Class Township Code, shall not apply to contracts entered
16 into pursuant to this act.

17 (f) Report.--On or before February 15 of each year, each
18 municipality other than a county that is implementing a
19 recycling program shall submit a report to the county in which
20 the municipality is located. The report shall describe the
21 weight or volume of materials that were recycled by the
22 municipal recycling program in the preceding calendar year.

23 CHAPTER 5

24 MUNICIPAL WASTE PLANNING

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

27 (a) Submission of plan.--Except as provided in subsections
28 (b) and (c), each county shall submit to the department within
29 two and one-half years of the effective date of this act an
30 officially adopted plan for a municipal waste management plan

1 for municipal waste generated within its boundaries. Such plan
2 shall be consistent with the requirements of this act.

3 (b) Existing plans.--A county that has submitted a complete
4 municipal waste management plan to the department for approval
5 on or before 30 days from the effective date of this act, shall
6 be deemed to have a plan approved pursuant to section 505 if, on
7 or before the effective date of this act:

8 (1) The department has granted technical or preliminary
9 approval of such plan under 25 Pa. Code §§ 75.11 through
10 75.13.

11 (2) More than one-half of the municipalities within the
12 county, representing more than one-half of the county's
13 population as determined by the most recent decennial census
14 by the United States Bureau of the Census, have adopted
15 resolutions approving such plan.

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

19 (1) At least three years prior to the time all remaining
20 available permitted capacity for the county will be
21 exhausted.

22 (2) For plans approved pursuant to subsection (b),
23 within two years of the effective date of this act. Such plan
24 revisions shall be consistent with the requirements of this
25 chapter except to the extent that the county demonstrates to
26 the department's satisfaction that irrevocable contracts made
27 by or pursuant to the approved plan preclude compliance with
28 the requirements of this chapter.

29 (3) When otherwise required by the department.

30 (d) Procedure for considering plan revisions.--At least 30

1 days before submitting any proposed plan revision to the
2 department, the county shall submit a copy of the proposed
3 revision to the advisory committee established pursuant to
4 section 503 and to each municipality within the county. All plan
5 revisions that are determined by the county or by the department
6 to be substantial shall be subject to the requirements of
7 sections 503 and 504. The plan revisions required by subsection
8 (c)(2) shall be considered substantial plan revisions.

9 Section 502. Content of municipal waste management plans.

10 (a) General rule.--Except as provided in section 501(b),
11 every plan submitted after the effective date of this act shall
12 comply with the provisions of this section.

13 (b) Description of waste.--The plan shall describe and
14 explain the origin, content and weight or volume of municipal
15 waste currently generated within the county's boundaries, and
16 the origin, content and weight or volume of municipal waste that
17 will be generated within the county's boundaries during the next
18 ten years.

19 (c) Description of facilities.--The plan shall identify and
20 describe the facilities where municipal waste is currently being
21 disposed or processed and the remaining available permitted
22 capacity of such facilities and the capacity which could be made
23 available through expansion of such facilities. The plan shall
24 contain an analysis of the effect of current and planned
25 recycling on waste generated within the county. The plan shall
26 also explain the extent to which existing facilities will be
27 used during the life of the plan, and shall not substantially
28 impair the use of their remaining permitted capacity or of
29 capacity which could be made available through expansion of such
30 facilities. For purposes of this subsection, existing facilities

1 shall include facilities for which a permit application under
2 the Solid Waste Management Act is filed with the department
3 within one year from the effective date of this act or the date
4 a plan is approved, whichever is the later, unless such permit
5 application is denied by the department. In addition, the plan
6 shall give consideration to the potential expansion of existing
7 municipal waste processing or disposal facilities located in the
8 county. For the purposes of this subsection, the department
9 shall determine whether applications are complete within 90 days
10 of their receipt and, if incomplete, specify to the applicant
11 all deficiencies of the application.

12 (d) Estimated future capacity.--The plan shall estimate the
13 processing or disposal capacity needed for the municipal waste
14 that will be generated in the county during the next ten years.
15 The assessment shall describe the primary variables affecting
16 this estimate and the extent to which they can reasonably be
17 expected to affect the estimate, including, but not limited to,
18 the amount of residual waste disposed or processed at municipal
19 waste disposal or processing facilities in the county and the
20 extent to which residual waste may be disposed or processed at
21 such facilities during the next ten years.

22 (e) Description of recyclable waste.--

23 (1) The plan shall describe and evaluate:

24 (i) The kind and weight or volume of municipal waste
25 that could be recycled, giving consideration at a minimum
26 to the following materials: clear glass, colored glass,
27 aluminum, steel and bimetallic cans, high grade office
28 paper, newsprint, corrugated paper, plastics, leaf waste
29 and grass clippings.

30 (ii) Potential benefits of recycling, including the

1 potential solid waste reduction and the avoided cost of
2 municipal waste processing or disposal.

3 (iii) Existing materials recovery operations and the
4 kind and weight or volume of materials recycled by the
5 operations, whether public or private.

6 (iv) The compatibility of recycling with other
7 municipal waste processing or disposal methods, giving
8 consideration to and describing anticipated and available
9 markets for materials collected through municipal
10 recycling programs.

11 (v) Proposed or existing collection methods for
12 recyclable materials.

13 (vi) Options for ensuring the collection of
14 recyclable materials.

15 (vii) Options for the processing, storage and sale
16 of recyclable materials, including market commitments.
17 The plan shall consider the results of the market
18 development study required by section 508, if the results
19 are available.

20 (viii) Options for municipal cooperation or
21 agreement for the collection, processing and sale of
22 recyclable materials.

23 (ix) A schedule for implementation of the recycling
24 program.

25 (x) Estimated costs of operating and maintaining a
26 recycling program, estimated revenue from the sale or use
27 of materials and avoided costs of processing or disposal.

28 (xi) What consideration for the collection,
29 marketing and disposition of recyclable materials will be
30 accorded to persons engaged in the business of recycling

1 on the effective date of this act, whether or not the
2 persons are operating for profit.

3 (2) Any county containing municipalities that are
4 required by section 1501 to implement recycling programs
5 shall take the provisions of that section into account in
6 preparing the recycling portion of its plan.

7 (3) Nothing in this chapter shall be construed or
8 understood to require preparation of a county municipal waste
9 management plan prior to developing and implementing any
10 recycling program required by Chapter 15.

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

19 (1) Explain in detail the reason for selecting such
20 facility or program.

21 (2) Describe alternative facilities or programs,
22 including, but not limited to, waste reduction, recycling, or
23 resource recovery facilities or programs, that were
24 considered.

25 (3) Evaluate the environmental, energy, life cycle cost
26 and economic advantages and disadvantages of the proposed
27 facility or program as well as the alternatives considered.

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

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

4 (g) Location.--The plan shall identify the general location
5 within a county where each municipal waste processing or
6 disposal facility and each recycling operation identified in
7 subsection (f) will be located, and either identify the site of
8 each facility if the site has already been chosen or explain how
9 the site will be chosen. For any facility that is proposed to be
10 located outside the county, the plan shall explain in detail the
11 reasons for selecting such a facility.

12 (h) Implementing entity identification.--The plan shall
13 identify the governmental entity that will be responsible for
14 implementing the plan on behalf of the county and describe the
15 legal basis for that entity's authority to do so.

16 (i) Public function.--Where the county determines that it is
17 in the public interest for municipal waste transportation,
18 processing and disposal to be a public function, the plan shall
19 provide for appropriate mechanisms.

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

27 (k) Orderly extension.--The plan shall provide for the
28 orderly extension of municipal waste management systems in a
29 manner that is consistent with the needs of the area and is also
30 consistent with any existing State, regional or local plans

1 affecting the development, use and protection of air, water,
2 land or other natural resources. The plan shall also take into
3 consideration planning, zoning, population estimates,
4 engineering and economics.

5 (l) Other information.--The plan shall include any other
6 information that the department may require.

7 (m) Noninterference with certain resource recovery
8 facilities and landfills.--

9 (1) No county municipal waste management plan shall
10 interfere with any of the following:

11 (i) The design, construction or operation of any
12 municipal waste processing, disposal or resource recovery
13 facility or the reasonable expansion of such facility or
14 municipal waste landfill that is part of a complete
15 municipal waste management plan submitted by a
16 municipality or organization of municipalities under the
17 Solid Waste Management Act prior to the effective date of
18 this act or the date such plan is undertaken, whichever
19 is the later, and for which a complete permit application
20 under the Solid Waste Management Act is submitted to the
21 department within one year of the effective date of this
22 act.

23 (ii) The projects, plans or operations of a
24 municipality authority created under the act of May 2,
25 1945 (P.L.382, No.164), known as the Municipality
26 Authorities Act of 1945, or of an organization of
27 municipalities which (municipality authority or
28 organization of municipalities) is created by two or more
29 municipalities prior to the effective date of this act
30 for the purposes of providing for collection, storage,

1 transportation, processing or disposal of solid waste
2 generated within the municipalities and which
3 (municipality authority or organization of
4 municipalities) submits to the department within two
5 years of the effective date of this act, and has approved
6 by the department, a solid waste management plan,
7 consistent with the other provisions of this section,
8 that includes each member municipality. This subparagraph
9 applies to the projects, plans and operations of
10 municipalities which are members of the municipality
11 authority or organization of municipalities.

12 (2) Within 120 days after receiving a complete plan, the
13 department shall give it preliminary or technical approval
14 under 25 Pa. Code §§ 75.11 through 75.13 or disapprove it.
15 For the purposes of this subsection, the department shall
16 determine whether applications are complete within 90 days of
17 their receipt and, if incomplete, specify to the applicant
18 all deficiencies of the application.

19 Section 503. Development of municipal waste management plans.

20 (a) Advisory committee.--Prior to preparing a plan or
21 substantial plan revisions for submission to the department in
22 accordance with the provisions of this act, the county shall
23 form an advisory committee, which shall include representatives
24 of all classes of municipalities within the county, citizen
25 organizations, industry, the county recycling coordinator, if
26 one exists, and any other persons deemed appropriate by the
27 county. The advisory committee shall review the plan during its
28 preparation, make suggestions and propose any changes it
29 believes appropriate.

30 (b) Written notice.--The county shall provide written notice

1 to all municipalities within the county when plan development
2 begins and shall provide periodic written progress reports to
3 such municipalities concerning the preparation of the plan.

4 (c) Review and comment.--Prior to adoption by the governing
5 body of the county, the county shall submit copies of the
6 proposed plan for review and comment to the department, all
7 municipalities within the county, all areawide planning agencies
8 and the county health department, if one exists. The county
9 shall also make the proposed plan available for public review
10 and comment. The period for review and comment shall be 90 days.
11 The county shall hold at least one public hearing on the
12 proposed plan during this period. The plan subsequently
13 submitted to the governing body of the county for adoption shall
14 be accompanied by a document containing written responses to
15 comments made during the comment period.

16 (d) Adoption and ratification of plan.--The governing body
17 of the county shall adopt a plan within 60 days from the end of
18 the public comment period. Not later than ten days following
19 adoption of a plan by the governing body of the county, the plan
20 shall be sent to municipalities within the county for
21 ratification. If a municipality does not act on the plan within
22 90 days of its submission to such municipality, it shall be
23 deemed to have ratified the plan. If more than one-half of the
24 municipalities, representing more than one-half of the county's
25 population as determined by the most recent decennial census by
26 the United States Bureau of the Census, ratify the plan, then
27 the county within ten days of ratification shall submit the plan
28 to the department for approval.

29 (e) Statement of objections.--A municipality may not
30 disapprove of a proposed county plan unless the municipality's

1 resolution of disapproval contains a concise statement of its
2 objections to the plan. Each municipality disapproving a plan
3 shall immediately transmit a copy of its resolution of
4 disapproval to the county and the advisory committee. a
5 conditional approval shall be considered a disapproval.

6 Section 504. Failure to ratify plan.

7 (a) Submission.--If the plan is not ratified as provided in
8 section 503(d), the county shall meet with the advisory
9 committee to discuss the reasons that the plan was not ratified.
10 The advisory committee shall submit a recommendation concerning
11 a revised county plan to the county within 45 days after it
12 becomes apparent that the plan has failed to obtain
13 ratification. The advisory committee's recommendation shall
14 specifically address the objections stated by municipalities in
15 their resolutions of disapproval of the county plan.

16 (b) Adoption of revised plan by county.--The governing body
17 of the county shall adopt a revised plan within 75 days after it
18 has become apparent that the original plan has failed to obtain
19 ratification. Not later than five days following adoption of a
20 revised plan by the governing body of the county, the plan shall
21 be sent to municipalities within the county for ratification. If
22 a municipality does not act on the revised plan within 45 days
23 of its submission to such municipality, it shall be deemed to
24 have ratified the plan. If more than one-half of the
25 municipalities, representing more than one-half of the county's
26 population as determined by the most recent decennial census by
27 the United States Bureau of the Census, ratify the revised plan,
28 then the county within ten days of ratification shall submit the
29 revised plan to the department for approval.

30 (c) Statement of objections.--A municipality may not

1 disapprove of a proposed revised county plan unless the
2 municipality's resolution of disapproval contains a concise
3 statement of its objections to the plan. Each municipality shall
4 immediately transmit a copy of its resolution of disapproval to
5 the county.

6 (d) Failure to ratify revised plan.--If the plan is not
7 ratified as provided in subsection (b), the county shall submit
8 the revised plan to the department for approval. The revised
9 plan shall be submitted within ten days after it is apparent
10 that the plan has failed to obtain ratification and shall be
11 accompanied by the county's written response to the objections
12 stated by municipalities in the resolutions of disapproval.

13 Section 505. Review of municipal waste management plans.

14 (a) Departmental approval options.--Within 30 days after
15 receiving a complete plan, the department shall approve,
16 conditionally approve or disapprove it, unless the department
17 gives written notice that additional time is necessary to
18 complete its review. If the department gives such notice, it
19 shall have 30 additional days to render a decision.

20 (b) Minimum plan requirement.--The department shall not
21 approve any county plan unless the plan demonstrates to the
22 satisfaction of the department that:

23 (1) The plan is complete and accurate.

24 (2) The plan provides for the maximum feasible
25 development and implementation of recycling programs.

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

30 (4) The plan provides for the processing and disposal of

1 municipal waste for at least ten years.

2 (c) Zoning powers unaffected.--Nothing in this act shall be
3 construed or understood to enlarge or diminish the authority of
4 municipalities to adopt ordinances pursuant to, or to exempt
5 persons acting under the authority of this act from the
6 provisions of the act of July 31, 1968 (P.L.805, No.247), known
7 as the Pennsylvania Municipalities Planning Code.

8 Section 506. Contracts.

9 (a) General rule.--Except as otherwise provided in this act,
10 nothing in this act shall be construed to interfere with, or in
11 any way modify, the provisions of any contract for municipal
12 waste disposal, processing or collection in force in any county,
13 other municipality or municipal authority upon the effective
14 date of this act.

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

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

28 Section 507. Relationship between plans and permits.

29 After the date of departmental approval of a county municipal
30 waste management plan under section 505, the department may not

1 issue any new permit, or any permit that results in additional
2 capacity, for a municipal waste landfill or resource recovery
3 facility under the act of July 7, 1980 (P.L.380, No.97), known
4 as the Solid Waste Management Act, in the county unless the
5 applicant demonstrates to the department's satisfaction that the
6 proposed facility:

7 (1) is provided for in the plan for the county; or

8 (2) meets all of the following requirements:

9 (i) The proposed facility will not interfere with
10 implementation of the approved plan.

11 (ii) The proposed facility will not interfere with
12 municipal waste collection, storage, transportation,
13 processing or disposal in the host county.

14 (iii) The governing body of the proposed host county
15 has provided a written statement approving the location
16 of the proposed facility, or the proposed location of the
17 facility is preferable to alternative locations, giving
18 consideration to environmental and economic factors.

19 Section 508. Studies.

20 (a) Market development for recyclable municipal waste.--
21 Within 15 months after the effective date of this act, the
22 department shall submit to the General Assembly a report that
23 describes:

24 (1) The current and projected capacity of existing
25 markets to absorb materials generated by municipal recycling
26 programs in this Commonwealth.

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

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

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

5 (b) Update of market study.--Within three years after the
6 completion of the market development study described in
7 subsection (a), the department shall submit to the General
8 Assembly an update of the study, taking into account information
9 developed since its completion.

10 (c) Waste reduction.--Within 24 months after the effective
11 date of this act, the department shall submit to the General
12 Assembly a report:

13 (1) That describes various mechanisms that could be
14 utilized to stimulate and enhance waste reduction, including
15 their advantages and disadvantages. The mechanisms to be
16 analyzed shall include, but not be limited to, incentives for
17 prolonging product life, methods for ensuring product
18 recyclability, labeling requirements for recyclable products
19 and products with recycled content, taxes for excessive
20 packaging, tax incentives, prohibitions on the use of certain
21 products and performance standards for products.

22 (2) That includes recommendations to stimulate and
23 enhance waste reduction, including, but not limited to,
24 proposed legislation if necessary.

25 (d) Update of waste reduction study.--Within three years
26 after the completion of the waste reduction study described in
27 subsection (c), the department shall submit to the General
28 Assembly an update of the study, taking into account information
29 developed since its completion.

30 Section 509. Best available technology.

1 (a) Publication of criteria.--The department, after public
2 notice and an opportunity for comment, shall publish in the
3 Pennsylvania Bulletin criteria for best available technology (as
4 defined in 25 Pa. Code § 121.1 (relating to definitions)) for
5 new resource recovery facilities.

6 (b) Restriction on issuance of certain permits.--The
7 department shall not issue any approval or permit for a resource
8 recovery facility under the act of January 8, 1960 (1959
9 P.L.2119, No.787), known as the Air Pollution Control Act, that
10 is less stringent than any provision of the applicable best
11 available technology criteria. The department shall require any
12 resource recovery facility to operate in compliance with the
13 applicable best available technology criteria.

14 (c) Operation tests and reports.--The operator of any
15 resource recovery facility shall conduct tests for emissions of
16 particulate matter in accordance with standards of performance
17 for new sources specified by the United States Environmental
18 Protection Agency for incinerators, resource recovery facilities
19 and associated control devices and shall report the results in a
20 manner established by the department.

21 Section 510. Permit requirements.

22 The department shall not issue any approval or permit for a
23 resource recovery facility under the act of July 7, 1980
24 (P.L.380, No.97), known as the Solid Waste Management Act,
25 unless the applicant has provided the department with adequate
26 documentation and assurances that all ash residue produced from
27 or by a resource recovery facility will be disposed at a
28 permitted landfill. Prior to the approval of any permit
29 application for a resource recovery facility, the operator shall
30 submit a plan to the department for the alternate disposal of

1 municipal waste designated for disposal at the resource recovery
2 facility.

3 SECTION 511. SITE LIMITATION. ←

4 NO MUNICIPAL WASTE LANDFILL OR RESOURCE RECOVERY FACILITY
5 SHALL BE LOCATED WITHIN 300 YARDS OF A PARK, PLAYGROUND OR
6 SCHOOL. THE DEPARTMENT SHALL NOT ISSUE A PERMIT TO ANY OPERATOR
7 OF SUCH A LANDFILL OR FACILITY AS DEFINED IN THIS SECTION. FOR
8 PURPOSES OF THIS SECTION, A MUNICIPAL WASTE LANDFILL OR RESOURCE
9 RECOVERY FACILITY SHALL INCLUDE THE PROCESSING, COMPACTING,
10 TREATMENT, STORAGE, OFF-LOADING, TRANSFERRING OR IN ANY OTHER
11 WAY DEALING WITH MUNICIPAL WASTE.

12 CHAPTER 7

13 RECYCLING FEE

14 Section 701. Recycling fee for municipal waste landfills and
15 resource recovery facilities.

16 (a) Imposition.--There is imposed a recycling fee of \$1.25
17 per ton for all solid waste processed at resource recovery
18 facilities and for all solid waste except process residue and
19 nonprocessable waste from a resource recovery facility that is
20 disposed of at municipal waste landfills. Such fee shall be paid
21 by the operator of each municipal waste landfill and resource
22 recovery facility.

23 (b) Alternative calculation.--The fee for operators of
24 municipal waste landfills and resource recovery facilities that
25 do not weigh solid waste when it is received shall be calculated
26 as if three cubic yards were equal to one ton of solid waste.

27 (c) Waste weight requirement.--On and after January 1, 1988,
28 each operator of a municipal waste landfill and resource
29 recovery facility that has received 30,000 or more cubic yards
30 of solid waste in the previous calendar year shall weigh all

1 solid waste when it is received. The scale used to weigh solid
2 waste shall conform to the requirements of the act of December
3 1, 1965 (P.L.988, No.368), known as the Weights and Measures Act
4 of 1965, and the regulations promulgated pursuant thereto. The
5 operator of the scale shall be a licensed public weighmaster
6 under the act of April 28, 1961 (P.L.135, No.64), known as the
7 Public Weighmaster's Act, and the regulations promulgated
8 pursuant thereto.

9 (d) Sunset for fee.--No fee shall be imposed under this
10 section on and after the first day of the eleventh year
11 following the effective date of this act.

12 Section 702. Form and timing of recycling fee payment.

13 (a) Quarterly payments.--Each operator of a municipal waste
14 landfill and resource recovery facility shall make the recycling
15 fee payment quarterly. The fee shall be paid on or before the
16 20th day of April, July, October and January for the three
17 months ending the last day of March, June, September and
18 December.

19 (b) Quarterly reports.--Each recycling fee payment shall be
20 accompanied by a form prepared and furnished by the department
21 and completed by the operator. The form shall state the total
22 weight or volume of solid waste received by the facility during
23 the payment period and provide any other aggregate information
24 deemed necessary by the department to carry out the purposes of
25 this act. The form shall be signed by the operator.

26 (c) Timeliness of payment.--The operator shall be deemed to
27 have made a timely payment of the recycling fee if the operator
28 complies with all of the following:

29 (1) The enclosed payment is for the full amount owed
30 pursuant to this section and no further departmental action

1 is required for collection.

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

4 (3) The letter transmitting the payment that is received
5 by the department is postmarked by the United States Postal
6 Service on or prior to the final day on which the payment is
7 to be received.

8 (d) Discount.--Any operator that makes a timely payment of
9 the recycling fee as provided in this section shall be entitled
10 to credit and apply against the fee payable, a discount of 1% of
11 the amount of the fee collected.

12 (e) Refunds.--Any operator that believes he has overpaid the
13 recycling fee may file a petition for refund to the department.
14 If the department determines that the operator has overpaid the
15 fee, the department shall refund to the operator the amount due
16 him, together with interest at a rate established pursuant to
17 section 806.1 of the act of April 9, 1929 (P.L.343, No.176),
18 known as The Fiscal Code, from the date of overpayment. No
19 refund of the recycling fee shall be made unless the petition
20 for the refund is filed with the department within six months of
21 the date of the overpayment.

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

26 Section 703. Collection and enforcement of fee.

27 (a) Interest.--If an operator fails to make a timely payment
28 of the recycling fee, the operator shall pay interest on the
29 unpaid amount due at the rate established pursuant section 806
30 of the act of April 9, 1929 (P.L.343, No.176), known as The

1 Fiscal Code, from the last day for timely payment to the date
2 paid.

3 (b) Additional penalty.--In addition to the interest
4 provided in subsection (a), if an operator fails to make timely
5 payment of the recycling fee, there shall be added to the amount
6 of fee actually due 5% of the amount of such fee, if the failure
7 to file a timely payment is for not more than one month, with an
8 additional 5% for each additional month, or fraction thereof,
9 during which such failure continues, not exceeding 25% in the
10 aggregate.

11 (c) Assessment notices.--

12 (1) If the department determines that any operator has
13 not made a timely payment of the recycling fee, it will send
14 the operator a written notice of the amount of the
15 deficiency, within 30 days of determining such deficiency.
16 When the operator has not provided a complete and accurate
17 statement of the weight or volume of solid waste received at
18 the facility for the payment period, the department may
19 estimate the weight or volume in its notice.

20 (2) The operator charged with the deficiency shall have
21 30 days to pay the deficiency in full or, if the operator
22 wishes to contest the deficiency, forward the amount of the
23 deficiency to the department for placement in an escrow
24 account with the State Treasurer or any Pennsylvania bank, or
25 post an appeal bond in the amount of the deficiency. Such
26 bond shall be executed by a surety licensed to do business in
27 this Commonwealth and be satisfactory to the department.
28 Failure to forward the money or the appeal bond to the
29 department within 30 days shall result in a waiver of all
30 legal rights to contest the deficiency.

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

6 (4) The amount determined after administrative hearing
7 or after waiver of administrative hearing shall be payable to
8 the Commonwealth and shall be collectible in the manner
9 provided in section 1709.

10 (5) Any other provision of law to the contrary
11 notwithstanding, there shall be a statute of limitations of
12 five years upon actions brought by the Commonwealth pursuant
13 to this section.

14 (6) If any amount due hereunder remains unpaid 30 days
15 after receipt of notice thereof, the department may order the
16 operator of the facility to cease receiving any solid waste
17 until the amount of the deficiency is completely paid.

18 (d) Filing of appeals.--Notwithstanding any other provision
19 of law, all appeals of final department actions concerning the
20 resource recovery fee, including, but not limited to, petitions
21 for refunds, shall be filed with the Environmental Hearing
22 Board.

23 (e) Constructive trust.--All recycling fees collected by an
24 operator and held by such operator prior to payment to the
25 department shall constitute a trust fund for the Commonwealth,
26 and such trust shall be enforceable against such operator, its
27 representatives and any person receiving any part of such fund
28 without consideration or with knowledge that the operator is
29 committing a breach of the trust. However, any person receiving
30 payment of lawful obligation of the operator from such fund

1 shall be presumed to have received the same in good faith and
2 without any knowledge of the breach of trust.

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

6 Section 704. Records.

7 Each operator shall keep daily records of all deliveries of
8 solid waste to the facility as required by the department,
9 including, but not limited to, the name and address of the
10 hauler, the source of the waste, the kind of waste received and
11 the weight or volume of the waste. A copy of these records shall
12 be maintained at the site by the operator for no less than five
13 years and shall be made available to the department for
14 inspection, upon request.

15 Section 705. Surcharge.

16 The provisions of any law to the contrary notwithstanding,
17 the operator may collect the fee imposed by this section as a
18 surcharge on any fee schedule established pursuant to law,
19 ordinance, resolution or contract for solid waste processing or
20 disposal operations at the facility. In addition, any person who
21 collects or transports solid waste subject to the recycling fee
22 to a municipal waste landfill or resource recovery facility may
23 impose a surcharge on any fee schedule established pursuant to
24 law, ordinance, resolution or contract for the collection or
25 transportation of solid waste to the facility. The surcharge
26 shall be equal to the increase in disposal fees at the facility
27 attributable to the recycling fee. However, interest and
28 penalties on the fee under section 703(a) and (b) may not be
29 collected as a surcharge.

30 Section 706. Recycling Fund.

1 (a) Establishment.--All fees received by the department
2 pursuant to section 701 shall be paid into the State Treasury
3 into a special fund to be known as the Recycling Fund, which is
4 hereby established.

5 (b) Appropriation.--All moneys placed in the Recycling Fund
6 are hereby appropriated to the department for the purposes set
7 forth in this section. The department shall, from time to time,
8 submit to the Governor for his approval estimates of amounts to
9 be expended under this act.

10 (c) Allocations.--The department shall, to the extent
11 practicable, allocate the moneys received by the Recycling Fund,
12 including all interest generated thereon, in the following
13 manner over the life of the fund:

14 (1) At least 70% shall be expended by the department for
15 grants to municipalities for the development and
16 implementation of recycling programs as set forth in section
17 902, recycling coordinators as provided in section 903, and
18 market development and waste reduction studies as set forth
19 in section 508; for implementation of the recommendations in
20 the studies required by section 508; and for research
21 conducted or funded by the Department of Transportation
22 pursuant to section 1505.

23 (2) Up to 10% may be expended by the department for
24 grants for feasibility studies for municipal waste processing
25 and disposal facilities, except for facilities for the
26 combustion of municipal waste that are not proposed to be
27 operated for the recovery of energy as set forth in section
28 901.

29 (3) Up to 30% may be expended by the department for
30 public information, public education and technical assistance

1 programs concerning recycling and waste reduction, including
2 technical assistance programs for counties and other
3 municipalities, for research and demonstration projects, for
4 planning grants as set forth in section 901, for the host
5 inspector training program as set forth in section 1102, and
6 for other purposes consistent with this act.

7 (4) No more than 3% may be expended for the collection
8 and administration of moneys in the fund.

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

19 (e) Advisory committee.--The secretary shall establish a
20 Recycling Fund Advisory Committee composed of representatives of
21 counties, other municipalities, municipal authorities, the
22 municipal waste management industry, the municipal waste
23 recycling industry and the general public. The committee shall
24 meet at least annually to review the Commonwealth's progress in
25 meeting the goals under section 102(c), to recommend priorities
26 on expenditures from the fund, and to advise the secretary on
27 associated activities concerning the administration of the fund.
28 The department shall reimburse members of the committee for
29 reasonable travel, hotel and other necessary expenses incurred
30 in performance of their duties under this section.

1 (f) Annual reports.--The department shall submit an annual
2 report to the General Assembly on receipts to and disbursements
3 from the Recycling Fund in the previous fiscal year, projections
4 for revenues and expenditures in the coming fiscal year, and the
5 Commonwealth's progress in achieving the goals set forth in
6 section 102(c).

7 CHAPTER 9

8 GRANTS

9 Section 901. Planning grants.

10 The department may, upon application from a county, award
11 grants for the cost of preparing municipal waste management
12 plans in accordance with this act; for carrying out related
13 studies, surveys, investigations, inquiries, research and
14 analyses, including those related by siting; and for
15 environmental ~~action~~ MEDIATION. The department may also award ←
16 grants under this section for feasibility studies and project
17 development for municipal waste processing or disposal
18 facilities, except for facilities for the combustion of
19 municipal waste that are not proposed to be operated for the
20 recovery of energy. The application shall be made on a form
21 prepared and furnished by the department. The application shall
22 contain such information as the department deems necessary to
23 carry out the provisions and purposes of this act. The grant to
24 any county under this section shall be 50% of the approved cost
25 of such plans and studies.

26 Section 902. Grants for development and implementation of
27 municipal recycling programs.

28 (a) Authorization.--The department may award grants for
29 development and implementation of municipal recycling programs,
30 upon application from any municipality. The grant provided by

1 this section may be used to identify markets, develop a public
2 education campaign, purchase collection and storage equipment,
3 and do other things necessary to establish a municipal recycling
4 program. The grant may be used to purchase collection equipment,
5 only to the extent needed for collection of recyclable
6 materials, and mechanical processing equipment, only to the
7 extent that such equipment is not available to the program in
8 the private sector. The application shall be made on a form
9 prepared and furnished by the department. The application shall
10 explain the structure and operation of the program and shall
11 contain such other information as the department deems necessary
12 to carry out the provisions and purposes of this act. The grant
13 under this section to a municipality required by section 1501 to
14 implement a recycling program shall be 50% of the approved cost
15 of establishing a municipal recycling program. The grant under
16 this section to a municipality not required by section 1501 to
17 implement a recycling program shall be up to 50% of the approved
18 cost of establishing a municipal recycling program.

19 (b) Prerequisites.--The department shall not award any grant
20 under this section unless the application is complete and
21 accurate and demonstrates to the department's satisfaction that:

22 (1) The application is complete and accurate.

23 (2) The recycling program for which the grant is sought
24 does not duplicate any other recycling programs operating
25 within the municipality.

26 (3) If the application is not required to implement a
27 recycling program by section 1501, the application describes
28 the collection system for the program, including:

29 (i) materials collected and persons affected;

30 (ii) contracts for the operation of the program;

1 (iii) markets or uses for collected materials,
2 giving consideration to the results of the market
3 development study required by section 508 if the results
4 are available;

5 (iv) ordinances or other mechanisms that will be
6 used to ensure that materials are collected;

7 (v) public information and education;

8 (vi) program economics, including avoided processing
9 or disposal costs; and

10 (vii) other information deemed necessary by the
11 department.

12 (c) Municipal retroactive grants with restrictions.--The
13 grant authorized by this section may be awarded to any
14 municipality for eligible costs incurred for a municipal
15 recycling program after 60 days prior to the effective date of
16 this act. However, no grant may be authorized under this section
17 for a municipal recycling program that has received a grant from
18 the department under the act of July 20, 1974 (P.L.572, No.198),
19 known as the Pennsylvania Solid Waste - Resource Recovery
20 Development Act, except for costs that were not paid by such
21 grant.

22 (d) Priority.--In awarding grants under this section, the
23 department shall give priority to municipalities that are
24 required by section 1501 to implement recycling programs.
25 Section 903. Grants for recycling coordinators.

26 (a) Authorization.--The department may award grants for the
27 salary and expenses of recycling coordinators, upon application
28 from any county. The application shall be made on a form
29 prepared and furnished by the department. The application shall
30 explain the duties and activities of the county recycling

1 coordinator. If a recycling coordinator has been active prior to
2 the year for which the grant is sought, the application shall
3 also explain the coordinator's activities and achievements in
4 the previous year.

5 (b) Limit on grant.--The grant under this section shall not
6 exceed 50% of the approved cost of the recycling coordinator's
7 salary and expenses.

8 Section 904. General limitations.

9 (a) Content of application.--Each grant application under
10 this chapter shall include provisions for an independent
11 performance audit, which shall be completed within six months
12 after all reimbursable work under the grant has been completed.

13 (b) Monetary limit on grant.--The department may not award
14 more than 10% of the moneys available under any grant under this
15 chapter in any fiscal year to any county, including
16 municipalities within the county.

17 (c) Other limitations on grants.--The department may not
18 award any grant under this chapter to any county or municipality
19 that has failed to comply with the conditions set forth in
20 previously awarded grants under this chapter, the requirements
21 of this chapter, and any regulations promulgated pursuant
22 thereto.

23 (d) Lapse of grant.--A grant offering pursuant to this
24 chapter shall lapse automatically if funds for the grant are not
25 encumbered within one year of the offering. To obtain the grant
26 after an offering has lapsed, the grantee must submit a new
27 application in a subsequent funding period.

28 (e) Lapse of encumbered funds.--Grant funds that have been
29 encumbered shall lapse automatically to the recycling fund if
30 the funds are not expended within two years after they have been

1 encumbered. The department may, upon written request from the
2 grantee, extend the two-year period for an additional period of
3 up to three months. To obtain any funds that have lapsed to the
4 recycling fund, the grantee must submit a new application in a
5 subsequent funding period.

6 CHAPTER 11

7 ASSISTANCE TO MUNICIPALITIES

8 Section 1101. Information provided to host municipalities.

9 (a) Departmental information.--The department will provide
10 all of the following information to the governing body of host
11 municipalities for municipal waste landfills and resource
12 recovery facilities:

13 (1) Copies of each department inspection report for such
14 facilities under the Solid Waste Management Act, the act of
15 June 22, 1937 (P.L.1987, No.394), known as The Clean Streams
16 Law, the act of January 8, 1960 (1959 P.L.2119, No.787),
17 known as the Air Pollution Control Act, and the act of
18 November 26, 1978 (P.L.1375, No.325), known as the Dam Safety
19 and Encroachments Act, within five working days after the
20 preparation of such reports.

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

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

29 (b) Operator information.--Every operator of a municipal
30 waste landfill or resource recovery facility shall provide to

1 the host municipality copies of all air and water quality
2 monitoring data as required by the department for the facility
3 conducted by or on behalf of the operator, within five days
4 after such data becomes available to the operator.

5 (c) Public information.--All information provided to the
6 host municipality under this section shall be made available to
7 the public for review upon request.

8 (d) Information to county.--If the host municipality owns or
9 operates the municipal waste landfill or resource recovery
10 facility, or proposes to own or operate such landfill or
11 facility, the information required by this section shall be
12 provided to the county within which the landfill or facility is
13 located or proposed to be located instead of the host
14 municipality.

15 Section 1102. Joint inspections with host municipalities.

16 (a) Training of inspectors.--

17 (1) The department shall establish and conduct a
18 training program to certify host municipality inspectors for
19 municipal waste landfills and resource recovery facilities.
20 This program will be available to no more than two persons
21 who have been designated in writing by the host municipality.
22 The department shall hold training programs at least twice a
23 year. The department shall certify host municipality
24 inspectors upon completion of the training program and
25 satisfactory performance in an examination administered by
26 the department.

27 (2) Certified municipal inspectors are authorized to
28 enter property, inspect records, take samples and conduct
29 inspections. However, certified municipal inspectors may not
30 issue orders.

1 (3) The department is authorized to pay for the host
2 inspection training program and to pay 50% of the approved
3 cost of employing a certified host municipality inspector for
4 a period not to exceed five years.

5 (b) Departmental information.--

6 (1) Whenever any host municipality presents information
7 to the department which gives the department reason to
8 believe that any municipal waste landfill or resource
9 recovery facility is in violation of any requirement of the
10 act of June 22, 1937 (P.L.1987, No.394), known as The Clean
11 Streams Law, the act of January 8, 1960 (1959 P.L.2119,
12 No.787), known as the Air Pollution Control Act, the act of
13 November 26, 1978 (P.L.1375, No.325), known as the Dam Safety
14 and Encroachments Act, and the Solid Waste Management Act,
15 any regulation promulgated pursuant thereto, or the condition
16 of any permit issued pursuant thereto, the department will
17 promptly conduct an inspection of such facility.

18 (2) The department will notify the host municipality of
19 this inspection and will allow a certified municipal
20 inspector from the host municipality to accompany the
21 inspector during the inspection.

22 (3) If there is not sufficient information to give the
23 department reasons to believe that there is a violation, the
24 department will provide a written explanation to the host
25 municipality of its decision not to conduct an inspection
26 within 30 days of the request for inspection.

27 (4) Upon written request of a host municipality to the
28 department, the department will allow a certified inspector
29 of such municipality to accompany department inspectors on
30 routine inspections of municipal waste landfills and resource

1 recovery facilities.

2 (c) County involvement.--If the host municipality owns or
3 operates the municipal waste landfill or resource recovery
4 facility, the training and inspection requirements of this
5 section shall be available to the county within which the
6 landfill or facility is located instead of the host
7 municipality.

8 Section 1103. Water supply testing for contiguous landowners.

9 (a) Required water sampling.--Upon written request from
10 persons owning land contiguous to a municipal waste landfill,
11 the operator of such landfill shall have quarterly sampling and
12 analysis conducted of private water supplies used by such
13 persons for drinking water. Such sampling and analysis shall be
14 conducted by a laboratory certified pursuant to the act of May
15 1, 1984 (P.L.206, No.43), known as the Pennsylvania Safe
16 Drinking Water Act. The laboratory shall be chosen by the
17 landowners from a list of regional laboratories supplied by the
18 department. Sampling and analysis shall be at the expense of the
19 landfill operator. Upon request the landfill operator shall
20 provide copies of the analyses to persons operating resource
21 recovery facilities that dispose of the residue from the
22 facilities at the landfill.

23 (b) Extent of analysis.--Water supplies shall be analyzed
24 for all parameters or chemical constituents determined by the
25 department to be indicative of typical contamination from
26 municipal waste landfills. The laboratory performing such
27 sampling and analysis shall provide written copies of sample
28 results to the landowner and to the department.

29 (c) Additional sampling required.--If the analysis indicates
30 possible contamination from a municipal waste landfill, the

1 department may conduct, or require the landfill operator to have
2 the laboratory conduct, additional sampling and analysis to
3 determine more precisely the nature, extent and source of
4 contamination.

5 (d) Written notice of rights.--On or before 60 days from the
6 effective date of this act for permits issued under the Solid
7 Waste Management Act prior to the effective date of this act,
8 and at or before the time of permit issuance for permits issued
9 under the Solid Waste Management Act after the effective date of
10 this act, the operator of each municipal waste landfill shall
11 provide contiguous landowners with written notice of their
12 rights under this section on a form prepared by the department.
13 Section 1104. Water supply protection.

14 (a) Alternative water supply requirement.--Any person owning
15 or operating a municipal waste management facility that affects
16 a public or private water supply by pollution, contamination or
17 diminution shall restore or replace the affected supply with an
18 alternate source of water adequate in quantity or quality for
19 the purposes served by the water supply. If any person shall
20 fail to comply with this requirement, the department may issue
21 such orders to the person as are necessary to assure compliance.

22 (b) Notification to department.--Any landowner or water
23 purveyor suffering pollution, contamination or diminution of a
24 public or private water supply as a result of solid waste
25 disposal activities at a municipal waste management facility may
26 so notify the department and request that an investigation be
27 conducted. Within ten days of such notification, the department
28 shall begin investigation of any such claims and shall, within
29 120 days of the notification, make a determination. If the
30 department finds that the pollution or diminution was caused by

1 the operation of a municipal waste management facility or if it
2 presumes the owner or operator of a municipal waste facility
3 responsible for pollution, contamination or diminution pursuant
4 to subsection (c), then it shall issue such orders to the owner
5 or operator as are necessary to insure compliance with
6 subsection (a).

7 (c) Rebuttable presumption.--Unless rebutted by one of the
8 four defenses established in subsection (d), it shall be
9 presumed that the owner or operator of a municipal waste
10 landfill is responsible for the pollution, contamination or
11 diminution of a public or private water supply that is within
12 one-quarter mile of the perimeter of the area where solid waste
13 disposal activities have been carried out.

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

18 (1) The pollution, contamination or diminution existed
19 prior to any municipal waste landfill operations on the site
20 as determined by a preoperation survey.

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

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

26 (4) The owner or operator did not cause the pollution,
27 contamination or diminution.

28 (e) Independent testing.--Any owner or operator electing to
29 preserve its defenses under subsection (d)(1) or (2) shall
30 retain the services of an independent certified laboratory to

1 conduct the preoperation survey of water supplies. A copy of the
2 results of any survey shall be submitted to the department and
3 the landowner or water purveyor in a manner prescribed by the
4 department.

5 (f) Other remedies preserved.--Nothing in this act shall
6 prevent any landowner or water purveyor who claims pollution,
7 contamination or diminution of a public or private water supply
8 from seeking any other remedy that may be provided at law or in
9 equity.

10 Section 1105. Purchase of cogenerated electricity.

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

22 (b) Limited Public Utility Commission review.--A contract
23 entered into between a resource recovery facility and a public
24 utility in accordance with subsection (a), shall be subject to a
25 one-time review and approval by the commission at the time the
26 contract is entered into, notwithstanding the provisions of 66
27 Pa.C.S. § 508 (relating to power of the commission to vary,
28 reform and revise contracts).

29 Section 1106. Public Utility Commission.

30 (a) Application.--If the owner or operator of a resource

1 recovery facility and a public utility fail to agree upon the
2 terms and conditions of a contract for the purchase of electric
3 energy, or electric energy and capacity, within 90 days of the
4 request by the facility to negotiate such a contract, or if the
5 public utility fails to offer a contract, either the owner or
6 operator of the facility or the public utility may request the
7 commission to establish the terms and conditions of such a
8 contract. Such request may be for an informal consultation, a
9 petition for declaratory order or a formal complaint, as
10 appropriate under the circumstances.

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

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

21 (2) If the request is in the form of petition for
22 declaratory order, the petitioner shall comply with the
23 requirements of 52 Pa. Code § 5.41 et seq. (relating to
24 petitions) and 52 Pa. Code § 57.39 (relating to informal
25 consultation and commission proceedings). Within 30 days
26 after filing such petition, the commission or its staff
27 assigned to the matter may request that the parties file
28 legal memoranda addressing any issues raised therein. Within
29 60 days after filing of such petition or legal memoranda,
30 whichever is later, the commission shall act to grant or deny

1 such petition.

2 (3) If the request is in the form of a formal complaint,
3 the case shall proceed in accordance with 66 Pa.C.S. § 101 et
4 seq. (relating to public utilities). However, the complaint
5 may be withdrawn at any time, and the matter may proceed as
6 set forth in paragraph (1) or (2).

7 (c) Status as public utility.--A resource recovery facility
8 shall not be deemed a public utility, as such is defined in 66
9 Pa.C.S. § 101 et seq., if such facility produces thermal energy
10 for sale to a public utility and/or ten or less retail
11 customers, all of whom agree to purchase from such facility
12 under mutually agreed upon terms, or if such facility produces
13 thermal energy for sale to any number of retail customers, all
14 of which are located on the same site or site contiguous to that
15 of the selling facility.

16 (d) Effect of section.--The provisions of this section shall
17 take effect notwithstanding the adoption or failure to adopt any
18 regulations by the Public Utility Commission regarding the
19 purchase of electric energy from qualifying facilities, as such
20 term is defined in section 210 of the Federal Public Utility
21 Regulatory Policies Act of 1978 (Public Law 95-617, 92 Stat.
22 3117) regulations and commission regulations.
23 Section 1107. Claims resulting from pollution occurrences.

24 (a) Financial responsibility.--

25 (1) Any permit application by a person other than a
26 municipality or municipal authority under the Solid Waste
27 Management Act for a municipal waste landfill or resource
28 recovery facility shall certify that the applicant has in
29 force, or will, prior to the initiation of operations under
30 the permit, have in force, financial assurances for

1 satisfying claims of bodily injury and property damage
2 resulting from pollution occurrences arising from the
3 operation of the landfill or facility. Such financial
4 assurances shall be in place until the effective date of
5 closure certification under the Solid Waste Management Act
6 and the regulations promulgated pursuant thereto, unless the
7 department determines that the landfill or facility may
8 continue to present a significant risk to the public health,
9 safety and welfare or the environment.

10 (2) The form and amount of such financial assurances
11 shall be specified by the department. The required financial
12 assurances may include, but are not limited to, the
13 following:

14 (i) A commercial pollution liability insurance
15 policy.

16 (ii) A secured standby trust to become self-insured
17 that satisfies a financial test established by
18 regulation.

19 (iii) A trust fund financed by the person and
20 administered by an independent trustee approved by the
21 department.

22 (b) Municipal financial responsibility.--

23 (1) Any permit application by a municipality or
24 municipal authority under the Solid Waste Management Act for
25 a municipal waste landfill or resource recovery facility
26 shall certify that the applicant has in force, or will, prior
27 to the initiation of operations under the permit, have in
28 force, financial assurances for satisfying claims of bodily
29 injury and property damage resulting from pollution
30 occurrences arising from the operation of the landfill or

1 facility, to the extent that such claims are allowed by 42
2 Pa.C.S. Ch. 85 Subch. C (relating to actions against local
3 parties). Such financial assurances shall be in place until
4 the effective date of closure certification under the Solid
5 Waste Management Act and the regulations promulgated pursuant
6 thereto, unless the department determines that the landfill
7 or facility may continue to present a significant risk to the
8 public health, safety and welfare or the environment.

9 (2) The form and amount of such financial assurances
10 shall be specified by the department. The required financial
11 assurances may include, but are not limited to, the
12 following:

13 (i) A commercial pollution liability insurance
14 policy.

15 (ii) A trust fund financed by the municipality and
16 administered by an independent trustee approved by the
17 department.

18 (iii) An insurance pool or self-insurance program
19 authorized by 42 Pa.C.S. § 8564 (relating to liability
20 insurance and self-insurance).

21 (3) In no case shall the department establish minimum
22 financial assurance amounts for a municipality that are
23 greater than the damage limitations established in 42 Pa.C.S.
24 Ch. 85 Subch. C.

25 (c) Liability limited.--A host municipality or county or
26 municipality within the planning area may not be held liable for
27 bodily injury or property damage resulting from pollution
28 occurrences solely by reasons of participation in the
29 preparation or adoption of a county or municipal solid waste
30 plan. Nothing herein shall be construed to prevent any host

1 municipality, county or municipality within the planning area
2 from obtaining or giving such indemnities as may be appropriate
3 in connection with the ownership, operation or control of a
4 municipal solid waste facility.

5 (d) Effect on tort claims.--Nothing in this act shall be
6 construed or understood as in any way modifying or affecting the
7 provisions set forth in 42 Pa.C.S. Ch. 85 Subch. C.

8 Section 1108. Site-specific postclosure fund.

9 (a) Establishment by county.--Each county shall establish an
10 interest-bearing trust with an accredited financial institution
11 for every municipal waste landfill that is operating within its
12 boundaries. This trust shall be established within 60 days of
13 the effective date of this act for landfills permitted by the
14 department prior to the effective date of this act. The trust
15 shall be established prior to the operation of any landfill
16 permitted by the department after the effective date of this
17 act.

18 (b) Purpose.--The trust created for any landfill by this
19 section may be used only for remedial measures and emergency
20 actions that are necessary to prevent or abate adverse effects
21 upon the environment after closure of the landfill. However, the
22 county may withdraw actual costs incurred in establishing and
23 administering the fund in an amount not to exceed 0.5% of the
24 moneys deposited in the fund.

25 (c) Amount.--Each operator of a municipal waste landfill
26 shall pay into the trust on a quarterly basis an amount equal to
27 25¢ per ton of weighed waste or 25¢ per three cubic yards of
28 volume measured waste for all solid waste received at the
29 landfill.

30 (d) Trustee.--The trustee shall manage the trust in

1 accordance with all applicable laws and regulations, except that
2 moneys in the trust shall be invested in a manner that will
3 allow withdrawals as provided in subsection (f). The trustee
4 shall be a person whose trust activities are examined and
5 regulated by a State or Federal agency. The trustee may resign
6 only after giving 120 days' notice to the department and after
7 the appointment of a new trustee. The trustee shall have an
8 office located within the county where the landfill is located.

9 (e) Trust agreement.--The provisions of the trust agreement
10 shall be consistent with the requirements of this section and
11 shall be provided by the operator of the landfill on a form
12 prepared and approved by the department. The trust agreement
13 shall be accompanied by a formal certification of
14 acknowledgment.

15 (f) Withdrawal of funds.--The trustee may release moneys
16 from the trust only upon written request of the operator of a
17 landfill and upon prior written approval by the department. Such
18 request shall include the proposed amount and purpose of the
19 withdrawal and a copy of the department's written approval of
20 the expenditure. A copy of the request shall be provided to the
21 county and the host municipality. A copy of any withdrawal
22 document prepared by the trustee shall be provided to the
23 department, the county and the host municipality. No withdrawal
24 from this trust may be made until after the department has
25 certified closure of the landfill.

26 (g) Abandonment of trust.--If the department certifies to
27 the trustee that the operator of a landfill has abandoned the
28 operation of the landfill or has failed or refused to comply
29 with the requirements of the Solid Waste Management Act, the
30 regulations promulgated pursuant thereto or the terms or

1 conditions of its permit, in any respect, the trustee shall
2 forthwith pay the full amount of the trust to the department.
3 The department may not make such certification unless it has
4 given 30 days' written notice to the operator, the county, and
5 the trustee of the department's intent to do so.

6 (h) Use of abandoned trust.--The department shall expend all
7 moneys collected pursuant to subsection (g) for the purposes set
8 forth in subsection (b). The department may expend money
9 collected from a trust for a landfill only for that landfill.

10 (i) Surplus.--Any moneys remaining in a trust subsequent to
11 final closure of a landfill under the Solid Waste Management Act
12 and the regulations promulgated pursuant thereto shall, upon
13 release of the bond by the department, be divided equally
14 between the county and the host municipality.

15 (j) Duty under law.--Nothing in this section shall be
16 understood or construed to in any way relieve the operator of a
17 municipal waste landfill of any duty or obligation imposed by
18 this act, the Solid Waste Management Act any other act
19 administered by the department, the regulations promulgated
20 pursuant thereto or the terms or conditions of any permit.

21 (k) Other remedies.--The remedies provided to the department
22 in this section are in addition to any other remedies provided
23 at law or in equity.

24 (l) County not liable.--Nothing in this section shall be
25 understood or construed as imposing any additional
26 responsibility or liability upon the county for compliance of a
27 municipal waste landfill or resource recovery facility with the
28 requirements of this act, the Solid Waste Management Act and the
29 regulations promulgated pursuant thereto.

30 Section 1109. Trust fund for municipally operated landfills.

1 (a) Establishment of trust.--Except as provided in
2 subsection (b), each municipality or municipal authority
3 operating a landfill solely for municipal waste not classified
4 hazardous shall establish an interest-bearing trust with an
5 accredited financial institution. This trust shall be
6 established within 60 days of the effective date of this act for
7 landfills permitted by the department prior to the effective
8 date of this act. The trust shall be established prior to the
9 operation of any landfill permitted by the department after the
10 effective date of this act.

11 (b) Exemption.--Any municipality or municipal authority that
12 has posted a bond that is consistent with the provisions of the
13 Solid Waste Management Act and the regulations promulgated
14 pursuant thereto shall not be required to establish the trust
15 set forth in this section.

16 (c) Purpose.--The trust created for any landfill by this
17 section may be used only for completing final closure of the
18 landfill according to the permit granted by the department under
19 the Solid Waste Management Act and taking such measures as are
20 necessary to prevent adverse effects upon the environment. Such
21 measures include but are not limited to satisfactory monitoring,
22 postclosure care and remedial measures.

23 (d) Amount.--Each municipality or municipal authority
24 operating a landfill solely for municipal waste not classified
25 hazardous shall pay into the trust on a quarterly basis an
26 amount determined by the department for each ton or cubic yard
27 of solid waste disposed at the landfill. This amount shall be
28 based on the estimated cost of completing final closure of the
29 landfill and the weight or volume of waste to be disposed at the
30 landfill prior to closure.

1 (e) Trustee.--The trustee shall manage the trust in
2 accordance with all applicable laws and regulations, except that
3 moneys in the trust shall be invested in a manner that will
4 allow withdrawals as provided in subsection (g). The trustee
5 shall be a person whose trust activities are examined and
6 regulated by a State or Federal agency. The trustee may resign
7 only after giving 120 days' notice to the department and after
8 the appointment of a new trustee.

9 (f) Trust agreement.--The provisions of the trust agreement
10 shall be consistent with the requirements of this section and
11 shall be provided by the municipality or municipal authority on
12 a form prepared and approved by the department. The trust
13 agreement shall be accompanied by a formal certification of
14 acknowledgment.

15 (g) Withdrawal of funds.--The trustee may release moneys
16 from the trust only upon written request of the municipality or
17 municipal authority and upon prior written approval by the
18 department. Such request shall include the proposed amount and
19 purpose of the withdrawal and a copy of the department's written
20 approval of the expenditure. A copy of the request shall be
21 provided to the host municipality. A copy of any withdrawal
22 document prepared by the trustee shall be provided to the
23 department and to the host municipality. No withdrawal from this
24 trust may be made until after closure of the landfill.

25 (h) Abandonment of trust.--If the department certifies to
26 the trustee that the municipality or municipal authority has
27 abandoned the operation of the landfill or has failed or refused
28 to comply with the requirements of the Solid Waste Management
29 Act or the regulations promulgated pursuant thereto in any
30 respect, the trustee shall forthwith pay the full amount of the

1 trust to the department. The department may not make such
2 certification unless it has given 30 days' written notice to the
3 municipality or municipal authority and the trustee of the
4 department's intent to do so.

5 (i) Use of abandoned trust.--The department shall expend all
6 moneys collected pursuant to subsection (h) for the purposes set
7 forth in subsection (c). The department may expend money
8 collected from a trust for a landfill only for that landfill.

9 (j) Surplus.--Except for trusts that have been abandoned as
10 provided in subsection (h), any moneys remaining in a trust
11 subsequent to final closure of a landfill under the Solid Waste
12 Management Act and the regulations promulgated pursuant thereto
13 shall, upon certification of final closure by the department, be
14 returned to the municipality or municipal authority.

15 (k) Duty under law.--Nothing in this section shall be
16 understood or construed to in any way relieve the municipality
17 or municipal authority of any duty or obligation imposed by this
18 act, the Solid Waste Management Act, any other act administered
19 by the department, the regulations promulgated pursuant thereto,
20 or the terms or conditions of any permit.

21 (l) Other remedies.--The remedies provided to the department
22 in this section are in addition to any other remedies provided
23 at law or in equity.

24 Section 1110. Independent evaluation of permit applications.

25 The department may reimburse host municipalities for costs
26 incurred for professional technical review of a permit
27 application under the act of July 7, 1980 (P.L.380, No.97),
28 known as the Solid Waste Management Act, for a new municipal
29 waste landfill or resource recovery facility or that would
30 result in additional capacity for a municipal waste landfill or

1 resource recovery facility. Reimbursement shall not exceed
2 \$10,000 per complete application.

3 Section 1111. Protection of capacity.

4 (a) New permits.--A permit issued by the department under
5 the act of July 7, 1980 (P.L.380, No.97), known as the Solid
6 Waste Management Act, for a new municipal waste landfill or
7 resource recovery facility or that results in additional
8 capacity for a municipal waste landfill or resource recovery
9 facility shall include a permit condition setting forth the
10 weight or volume of municipal waste generated within the host
11 county that the operator shall allow to be delivered for
12 disposal or processing at the facility for a specified period.

13 (b) Existing permits.--Within six months after the effective
14 date of this act, the department shall modify each municipal
15 waste landfill and resource recovery facility permit issued
16 under the Solid Waste Management Act before the effective date
17 of this act. The permit modification shall consist of a permit
18 condition setting forth the weight or volume of municipal waste
19 generated within the host county that the operator shall allow
20 to be delivered to the facility for disposal or processing at
21 the facility for a specified period.

22 (c) Department.--The department may take any action
23 authorized by statute that the department deems necessary to
24 ensure that operators of municipal waste landfills and resource
25 recovery facilities give priority to the disposal or processing
26 of municipal waste generated within the host county.

27 CHAPTER 13

28 HOST MUNICIPALITY BENEFIT FEE

29 Section 1301. Host municipality benefit fee.

30 (a) Imposition.--There is imposed a host municipality

1 benefit fee upon the operator of each municipal waste landfill
2 or resource recovery facility that receives a new permit or
3 permit that results in additional capacity from the department
4 under the Solid Waste Management Act after the effective date of
5 this act. The fee shall be paid to the host municipality. If the
6 host municipality owns or operates the landfill or facility, the
7 fee shall not be imposed for waste generated within such
8 municipality. If the landfill or facility is located within more
9 than one host municipality, the fee shall be apportioned among
10 them according to the percentage of the permitted area located
11 in each municipality.

12 (b) Amount.--The fee is \$1 per ton of weighed solid waste or
13 \$1 per three cubic yards of volume-measured solid waste for all
14 solid waste received at a landfill or facility.

15 (c) Municipal options.--Nothing in this section or section
16 1302 shall prevent a host municipality from receiving a higher
17 fee or receiving the fee in a different form or at different
18 times than provided in this section and section 1302, if the
19 host municipality and the operator of the municipal waste
20 landfill or resource recovery facility agree in writing.

21 Section 1302. Form and timing of host municipality benefit fee
22 payment.

23 (a) Quarterly payment.--Each operator subject to section
24 1301 shall make the host municipality benefit fee payment
25 quarterly. The fee shall be paid on or before the twentieth day
26 of April, July, October and January for the three months ending
27 the last day of March, June, September and December.

28 (b) Quarterly reports.--Each host municipality benefit fee
29 payment shall be accompanied by a form prepared and furnished by
30 the department and completed by the operator. The form shall

1 state the weight or volume of solid waste received by the
2 landfill or facility during the payment period and provide any
3 other information deemed necessary by the department to carry
4 out the purposes of the act. The form shall be signed by the
5 operator. A copy of the form shall be sent to the department at
6 the same time that the fee and form are sent to the host
7 municipality.

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

11 (1) The enclosed payment is for the full amount owed
12 pursuant to this section, and no further host municipality
13 action is required for collection.

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

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

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

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

28 Section 1303. Collection and enforcement of fee.

29 (a) Interest.--If an operator fails to make a timely payment
30 of the host municipality benefit fee, the operator shall pay

1 interest on the unpaid amount due at the rate established
2 pursuant section 806 of the act of April 9, 1929 (P.L.343,
3 No.176), known as The Fiscal Code, from the last day for timely
4 payment to the date paid.

5 (b) Additional penalty.--In addition to the interest
6 provided in subsection (a), if an operator fails to make timely
7 payment of the host municipality benefit fee, there shall be
8 added to the amount of fee actually due 5% of the amount of such
9 fee, if the failure to file a timely payment is for not more
10 than one month, with an additional 5% for each additional month,
11 or fraction thereof, during which such failure continues, not
12 exceeding 25% in the aggregate.

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

23 (d) Constructive trust.--All host municipality benefit fees
24 collected by an operator and held by such operator prior to
25 payment to the host municipality shall constitute a trust fund
26 for the host municipality, and such trust shall be enforceable
27 against such operator, its representatives and any person
28 receiving any part of such fund without consideration or with
29 knowledge that the operator is committing a breach of the trust.
30 However, any person receiving payment of lawful obligation of

1 the operator from such fund shall be presumed to have received
2 the same in good faith and without any knowledge of the breach
3 of trust.

4 (e) Manner of collection.--The amount due and owing under
5 section 1301 shall be collectible by the host municipality in
6 the manner provided in section 1709.

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

10 Section 1304. Records.

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

20 Section 1305. Surcharge.

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

1 schedule established pursuant to law, ordinance, resolution or
2 contract for the collection or transportation of solid waste to
3 the landfill or facility. The surcharge shall be equal to the
4 increase in processing or disposal fees at the landfill or
5 facility attributable to the host municipality benefit fee.
6 However, interest and penalties on the fee under section 1303(a)
7 and (b) may not be collected as a surcharge.

8 CHAPTER 15

9 RECYCLING AND WASTE REDUCTION

10 Section 1501. Municipal implementation of recycling programs.

11 (a) Large population.--Within two years after the effective
12 date of this act, each municipality other than a county that has
13 a population of 10,000 or more people shall establish and
14 implement a source separation and collection program for
15 recyclable materials in accordance with this section. Population
16 shall be determined by the most recent decennial census by the
17 Bureau of the Census of the United States Department of
18 Commerce.

19 (b) Small population.--Within three years after the
20 effective date of this act, each municipality other than a
21 county that has a population of more than 5,000 people but less
22 than 10,000 people, and which has a population density of more
23 than 300 people per square mile, shall establish and implement a
24 source separation and collection program for recyclable
25 materials in accordance with this section. Population shall be
26 determined based on the most recent decennial census by the
27 Bureau of the Census of the United States Department of
28 Commerce.

29 (c) Contents.--The source separation and collection program
30 shall include, at a minimum, the following elements:

1 (1) An ordinance or regulation adopted by the governing
2 body of the county or municipality, requiring all of the
3 following:

4 (i) Persons to separate clear glass, aluminum and
5 other material deemed appropriate by the municipality
6 from other municipal waste generated at their homes,
7 apartments and other residential establishments and to
8 store such material until collection.

9 (ii) Persons to separate leaf waste from other
10 municipal waste generated at their homes, apartments and
11 other residential establishments until collection unless
12 those persons have otherwise provided for the composting
13 of leaf waste.

14 (iii) Persons to separate high grade office paper,
15 aluminum, corrugated paper and leaf waste and other
16 material deemed appropriate by the municipality generated
17 at commercial, municipal or institutional establishments
18 and from community activities and to store the material
19 until collection. The governing body of a municipality
20 may exempt persons occupying commercial, institutional
21 and municipal premises within its municipal boundaries
22 from the source-separation requirements of the ordinance
23 or regulation if those persons have otherwise provided
24 for the recycling of materials they are required by this
25 section to recycle. To be eligible for an exemption under
26 this subparagraph, a commercial or institutional solid
27 waste generator must annually provide written
28 documentation to the municipality of the total number of
29 tons recycled.

30 (2) A scheduled day, at least once per month, during

1 which separated materials are to be placed at the curbside or
2 a similar location for collection.

3 (3) A system, including trucks and related equipment,
4 that collects recyclable materials from the curbside or
5 similar locations at least once per month from each residence
6 or other person generating municipal waste in the county or
7 municipality.

8 (4) Provisions to ensure compliance with the ordinance,
9 including incentives and penalties.

10 (5) Provisions for the recycling of collected materials.

11 (d) Notice.--Each municipality subject to this section
12 shall, at least 30 days prior to the initiation of the recycling
13 program and at least once every six months thereafter, notify
14 all persons occupying residential, commercial, institutional and
15 municipal premises within its boundaries of the requirements of
16 the ordinance. The governing body of a municipality may, in its
17 discretion as it deems necessary and appropriate, place an
18 advertisement in a newspaper circulating in the municipality,
19 post a notice in public places where public notices are
20 customarily posted, including a notice with other official
21 notifications periodically mailed to residential taxpayers or
22 utilize any combination of the foregoing.

23 (e) Agreements.--A municipality may enter into a written
24 agreement with other persons, including persons transporting
25 municipal waste on the effective date of this act, pursuant to
26 which the persons undertake to fulfill some or all of the
27 municipality's responsibilities under this section. A person who
28 enters an agreement under this subsection shall be responsible
29 with the municipality for implementation of this section.

30 (f) Preference.--In implementing its recycling program, a

1 municipality shall accord consideration for the collection,
2 marketing and disposition of recyclable materials to persons
3 engaged in the business of recycling on the effective date of
4 this act, whether or not the persons were operating for profit.

5 Section 1502. Facilities operation and recycling.

6 (a) Leaf waste.--Two years after the effective date of this
7 act, no municipal waste landfill may accept for disposal, and no
8 resource recovery facility may accept for processing, other than
9 composting, truckloads composed primarily of leaf waste.

10 (b) Drop-off centers.--

11 (1) Two years after the effective date of this act, no
12 person may operate a municipal waste landfill, resource
13 recovery facility or transfer station unless the operator has
14 established at least one drop-off center for the collection
15 and sale of recyclable material, including, at a minimum,
16 clear glass, aluminum, high grade office paper and cardboard.
17 The center must be located at the facility or in a place that
18 is easily accessible to persons generating municipal waste
19 that is processed or disposed at the facility. Each drop-off
20 center must contain bins or containers where recyclable
21 materials may be placed and temporarily stored. If the
22 operation of the drop-off center requires attendants, the
23 center shall be open at least eight hours per week, including
24 four hours during evenings or weekends.

25 (2) Each operator shall, at least 30 days prior to the
26 initiation of the drop-off center program and at least once
27 every six months thereafter, notify all persons generating
28 municipal waste that is processed or disposed at the
29 facility. The operator shall place an advertisement in a
30 newspaper circulating in the municipality or provide notice

1 in another manner approved by the department.

2 Section 1503. Commonwealth recycling and waste reduction.

3 (a) Recycling.--Within two years after the effective date of
4 this act, each Commonwealth agency, in coordination with the
5 Department of General Services, shall establish and implement a
6 source separation and collection program for recyclable
7 materials produced as a result of agency operations, including,
8 at a minimum, aluminum, high grade office paper and corrugated
9 paper. The source separation and collection program shall
10 include, at a minimum, procedures for collecting and storing
11 recyclable materials, bins or containers for storing materials,
12 and contractual or other arrangements with buyers.

13 (b) Waste reduction.--Within two years after the effective
14 date of this act, each Commonwealth agency, in coordination with
15 the department of General Services, shall establish and
16 implement a waste reduction program for materials used in the
17 course of agency operations. The program shall be designed and
18 implemented to achieve the maximum feasible reduction of waste
19 generated as a result of agency operations.

20 (c) Use of composted materials.--All Commonwealth agencies
21 responsible for the maintenance of public lands in this
22 Commonwealth shall, to the maximum extent practicable and
23 feasible, give due consideration and preference to the use of
24 compost materials in all land maintenance activities which are
25 to be paid with public funds.

26 Section 1504. Procurement by Department of General Services.

27 (a) Review of policies.--

28 (1) The Department of General Services shall review and
29 revise its existing procurement procedures and specifications
30 for the purchase of products and materials to eliminate

1 procedures and specifications that explicitly discriminate
2 against products and materials with recycled content. The
3 Department of General Services shall review and revise its
4 procedures and specifications on a continuing basis to
5 encourage the use of products and materials with recycled
6 content and shall, in developing new procedures and
7 specification, encourage the use of products and materials
8 with recycled content.

9 (2) The Department of General Services shall review and
10 revise its procurement procedures and specifications for the
11 purchase of products and materials to ensure, to the maximum
12 extent economically feasible, that the Department of General
13 Services purchases products or materials that may be recycled
14 or reused when these products are discarded. The Department
15 of General Services shall complete an initial review and
16 revision within one year from the effective date of this act.
17 The Department of General Services shall review and revise
18 its procedures and specifications on a continuing basis to
19 encourage the use of products and materials that may be
20 recycled or reused and shall, in developing new procedures
21 and specifications, encourage the use of products and
22 materials that may be recycled or reused.

23 (b) Bidding.

24 (1) A person who submits a bid to the Department of
25 General Services for a contract that includes the purchase of
26 products or materials shall certify, in writing, either the
27 percentage by weight of recycled content in the product that
28 is the subject of the bid or such other measure of recycled
29 content as may be set forth in the Department of General
30 Services' invitation for bids. A person may certify that the

1 products or materials contain no recycled content.

2 (2) The Department of General Services shall, in issuing
3 an invitation for bids, require that all bidders who seek to
4 qualify for the preference set forth in subsection (c)
5 certify that the products or materials that are the subject
6 of the bid contain a minimum percentage of recycled content
7 that is set forth in the invitation for bids.

8 (c) Award of contracts.--Upon evaluation of bids opened for
9 every public contract by the Department of General Services that
10 includes the purchase of products or materials, the Department
11 of General Services shall identify the lowest responsible bidder
12 and any other responsible bidders whose prices exceed that of
13 the lowest responsible bidder by 5% or less who have certified
14 that the products or materials contain at least the minimum
15 percentage of recycled content that is set forth in the
16 Department of General Services' invitation for bids. If no
17 bidders offer products or materials with the minimum prescribed
18 recycled content, the Department of General Services shall award
19 the contract to the lowest responsible bidder. This subsection
20 does not apply to products and materials used in highway and
21 bridge maintenance.

22 (d) Rulemaking.--The Department of General Services may
23 adopt regulations as it deems necessary to carry out the
24 provisions and purposes of this section.

25 (e) Cooperation.--All Commonwealth agencies shall cooperate
26 with the Department of General Services in carrying out this
27 section.

28 (f) Annual report.--The Department of General Services shall
29 submit an annual report to the General Assembly concerning its
30 implementation of this section. This report shall include a

1 description of what actions the Department of General Services
2 has taken in the previous year to implement this section. This
3 report shall be submitted on or before the anniversary of the
4 effective date of this act.

5 (g) Partial repeal.--Sections 2403(b), (c) and 2409(h) of
6 the act of April 9, 1929 (P.L.177, No.175), known as The
7 Administrative Code of 1929, are repealed to the extent that
8 they are inconsistent with subsection (c).

9 Section 1505. Procurement by Department of Transportation.

10 (a) Review of policies.--

11 (1) The Department of Transportation shall review and
12 revise its existing procurement procedures and specifications
13 for the purchase of products and materials to eliminate
14 procedures and specifications that explicitly discriminate
15 against products and materials with recycled content and to
16 encourage the use of products and materials with recycled
17 content. The Department of Transportation shall complete an
18 initial review and revision within one year of the effective
19 date of this act. The Department of Transportation shall
20 review and revise its procedures and specifications on a
21 continuing basis to encourage the use of products and
22 materials with recycled content and shall, in developing new
23 procedures and specifications, encourage the use of products
24 and materials with recycled content.

25 (2) The Department of Transportation shall review and
26 revise its procurement procedures and specifications for the
27 purchase of products and materials to ensure, to the maximum
28 extent economically feasible, that the Department of
29 Transportation purchases products or materials that may be
30 recycled or reused when these products or materials are

1 discarded. The Department of Transportation shall complete an
2 initial review and revision within one year of the effective
3 date of this act. The Department of Transportation shall
4 review and revise its procedures and specifications on a
5 continuing basis to encourage the use of products and
6 materials that may be recycled or reused and shall, in
7 developing new procedures and specifications, encourage the
8 use of products and materials that may be recycled or reused.

9 (b) Rulemaking.--The Department of Transportation may adopt
10 regulations as it deems necessary to carry out the provisions
11 and purposes of this section.

12 (c) Cooperation.--All Commonwealth agencies shall cooperate
13 with the Department of Transportation in carrying out this
14 section.

15 (d) Testing.--A person who believes that a particular
16 constituent of solid waste or any product or material with
17 recycled content may be beneficially used in lieu of another
18 product or material in the Commonwealth's transportation system
19 may request the Department of Transportation to evaluate that
20 constituent, product or material. The Department of
21 Transportation, in consultation with the department, shall
22 conduct a preliminary review of each proposal to identify which
23 proposals merit an evaluation. If the Department of
24 Transportation finds, after an evaluation, that the constituent,
25 product or material may be beneficially used, it shall amend its
26 procedures and specifications to allow the use of the
27 constituent product or material.

28 (e) Grants.--The Department of Transportation may award
29 research and demonstration grants concerning the potential
30 beneficial use of a particular constituent of solid waste, or

1 any product or material with recycled content, in lieu of
2 another product or material in the Commonwealth's transportation
3 system. The application shall be made on a form prepared and
4 furnished by the Department of Transportation and shall contain
5 the information the Department of Transportation deems
6 necessary.

7 (f) Annual report.--The Department of Transportation shall
8 submit an annual report to the General Assembly concerning its
9 implementation of this section. This report shall include a
10 description of what actions the Department of Transportation has
11 taken in the previous year to implement this section. This
12 report shall be submitted on or before the anniversary of the
13 effective date of this act.

14 Section 1506. Procurement options for local public agencies and
15 certain Commonwealth agencies.

16 (a) General rule.--This section sets forth procurement
17 options for local public agencies. These procurement options are
18 also available to Commonwealth agencies for which materials are
19 not purchased by the Department of General Services or the
20 Department of Transportation. Nothing in this act shall be
21 construed to require the agencies to exercise the options set
22 forth in this section.

23 (b) Procedural options.--Each public agency subject to this
24 section may, at its discretion, do any of the following:

25 (1) Review and revise its procurement procedures and
26 specifications for purchases of paper, lubricating oil, tires
27 and other products or materials to eliminate procedures and
28 specifications that discriminate against recycled products or
29 materials.

30 (2) Review and revise its procurement procedures and

1 specifications for purchases of paper, lubricating oil, tires
2 and other products or materials to ensure, to the maximum
3 extent economically feasible, that the agency purchases
4 products or materials that may be recycled or reused when
5 these products are discarded.

6 (3) Require that a person who submits a bid to the
7 agency for a contract for purchase products or materials for
8 use by or on behalf of the agency certify, in writing, either
9 the percentage by weight of recycled content in the product
10 or material that is the subject of the bid, or such other
11 measure of recycled content as may be set forth in the
12 agency's invitation for bids.

13 (4) Establish specifications for bids for public
14 contracts that require all bidders to propose that a stated
15 minimum percentage of products or materials to be used for
16 the contract be made from recycled material.

17 (c) Contract options.--Each public agency that is subject to
18 this section may, at its discretion, award contracts according
19 to one of the following methods, when the method is set forth in
20 the invitation for bids:

21 (1) Upon evaluation of bids opened for a public contract
22 by a public agency for the purchase of products or materials,
23 the public agency shall identify the lowest responsible
24 bidder and any other responsible bidders whose prices exceed
25 that of the lowest responsible bidder by a preference
26 percentage to be set forth in the invitation for bids, but
27 not more than 5% of the bid amount. If no bidders offer
28 products or materials with the minimum prescribed recycled
29 content, the agency shall award the contract to the lowest
30 responsible bidder.

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

3 (1) Violate, or cause or assist in the violation of, any
4 provision of this act, any regulation promulgated hereunder,
5 any order issued hereunder, or the terms or conditions of any
6 municipal waste management plan approved by the department
7 under this act.

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

11 (3) Fail to adhere to the schedule set forth in an
12 approved plan for planning, design, siting, construction or
13 operation of municipal waste processing or disposal
14 facilities.

15 (4) Act in a manner that is contrary to the approved
16 county plan or otherwise fail to act in a manner that is
17 consistent with the approved county plan.

18 (5) Fail to make a timely payment of the recycling fee
19 or host municipality benefit fee.

20 (6) Hinder, obstruct, prevent or interfere with the
21 department or its personnel in the performance of any duty
22 under this act.

23 (7) Hinder, obstruct, prevent or interfere with host
24 municipalities or their personnel in the performance of any
25 duty related to the collection of the host municipality
26 benefit fee or in conducting any inspection authorized by
27 this act.

28 (8) Violate the provisions of 18 Pa.C.S. § 4903
29 (relating to false swearing) or 4904 (relating to unsworn
30 falsification to authorities) in complying with any provision

1 of this act, including, but not limited to, providing or
2 preparing any information required by this act.

3 (9) Fail to make any payment to the site-specific
4 postclosure fund or the trust fund for municipally operated
5 landfills in accordance with the provisions of this act.

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

8 Section 1702. Enforcement orders.

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

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

30 Section 1703. Restraining violations.

1 (a) Injunctions.--In addition to any other remedies provided
2 in this act, the department may institute a suit in equity in
3 the name of the Commonwealth where unlawful conduct or public
4 nuisance exists for an injunction to restrain a violation of
5 this act, the regulations promulgated pursuant thereto, any
6 order issued pursuant thereto, or the terms or conditions of any
7 approved municipal waste management plan, and to restrain the
8 maintenance or threat of a public nuisance. In any such
9 proceeding, the court shall, upon motion of the Commonwealth,
10 issue a prohibitory or mandatory preliminary injunction if it
11 finds that the defendant is engaging in unlawful conduct as
12 defined by this act or is engaged in conduct which is causing
13 immediate and irreparable harm to the public. The Commonwealth
14 shall not be required to furnish bond or other security in
15 connection with such proceedings. In addition to an injunction,
16 the court, in such equity proceedings, may levy civil penalties
17 as specified in section 1704.

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

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

1 (d) Venue.--Actions instituted under this section may be
2 filed in the appropriate court of common pleas or in the
3 Commonwealth Court, which courts are hereby granted jurisdiction
4 to hear such actions.

5 Section 1704. Civil penalties.

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

22 (b) Escrow.--When the department assesses a civil penalty,
23 it shall inform the person of the amount of the penalty. The
24 person charged with the penalty shall then have 30 days to pay
25 the penalty in full or, if the person wishes to contest either
26 the amount of the penalty or the fact of the violation, either
27 to forward the proposed amount to the department for placement
28 in an escrow account with the State Treasurer or with a bank in
29 this Commonwealth or to post an appeal bond in the amount of the
30 penalty. The bond must be executed by a surety licensed to do

1 business in this Commonwealth and must be satisfactory to the
2 department. If, through administrative or judicial review of the
3 proposed penalty, it is determined that no violation occurred or
4 that the amount of the penalty shall be reduced, the department
5 shall, within 30 days, remit the appropriate amount to the
6 person, with an interest accumulated by the escrow deposit.
7 Failure to forward the money or the appeal bond to the
8 department within 30 days shall result in a waiver of all legal
9 rights to contest the violation or the amount of the penalty.

10 (c) Amount.--The maximum civil penalty which may be assessed
11 pursuant to this section is \$10,000 per violation. Each
12 violation for each separate day and each violation of any
13 provision of this act, any regulation promulgated hereunder, any
14 order issued hereunder, or the terms or conditions of any
15 approved municipal waste management plan shall constitute a
16 separate offense under this section.

17 (d) Statute of limitations.--Notwithstanding any other
18 provision of law to the contrary, there shall be a statute of
19 limitations of five years upon actions brought by the
20 Commonwealth under this section.

21 Section 1705. Criminal penalties.

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

1 (b) Misdemeanor offense.--Any person, other than a municipal
2 official exercising his official duties, who violates any
3 provision of this act, any regulation promulgated hereunder, any
4 order issued hereunder, or the terms or conditions of any
5 approved municipal waste management plan, commits a misdemeanor
6 of the third degree and shall, upon conviction, be sentenced to
7 pay a fine of not less than \$1,000 but not more than \$10,000 per
8 day for each violation or to imprisonment for a period of not
9 more than one year, or both.

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

20 (d) Violations to be separate offense.--Each violation for
21 each separate day and each violation of any provision of this
22 act, any regulation promulgated hereunder, any order issued
23 hereunder, or the terms or conditions of any approved municipal
24 waste management plan, shall constitute a separate offense under
25 subsections (a), (b) and (c).

26 Section 1706. Existing rights and remedies preserved;
27 cumulative remedies authorized.

28 Nothing in this act shall be construed as estopping the
29 Commonwealth, or any district attorney of a county or solicitor
30 of a municipality, from proceeding in courts of law or equity to

1 abate pollution forbidden under this act, or abate nuisances
2 under existing law. It is hereby declared to be the purpose of
3 this act to provide additional and cumulative remedies to
4 control municipal waste planning and management within this
5 Commonwealth, and nothing contained in this act shall in any way
6 abridge or alter rights of action or remedies now or hereafter
7 existing in equity, or under the common law or statutory law,
8 criminal or civil. Nothing in this act, or the approval of any
9 municipal waste management plan under this act, or any act done
10 by virtue of this act, shall be construed as estopping the
11 Commonwealth or persons in the exercise of their rights under
12 the common law or decisional law or in equity, from proceeding
13 in courts of law or equity to suppress nuisances, or to abate
14 any pollution now or hereafter existing, or to enforce common
15 law or statutory rights. No court of this Commonwealth having
16 jurisdiction to abate public or private nuisances shall be
17 deprived of such jurisdiction in any action to abate any private
18 or public nuisance instituted by any person for the reason that
19 such nuisance constitutes air or water pollution.

20 Section 1707. Production of materials; recordkeeping
21 requirements.

22 (a) Authority of department.--The department and its agents
23 and employees shall:

24 (1) Have access to, and require the production of, books
25 and papers, documents, and physical evidence pertinent to any
26 matter under investigation.

27 (2) Require any person engaged in the municipal waste
28 management or municipal waste planning to establish and
29 maintain such records and make such reports and furnish such
30 information as the department may prescribe.

1 (3) Have the authority to enter any building, property,
2 premises or place where solid waste is generated, stored,
3 processed, treated or disposed of for the purposes of making
4 an investigation or inspection necessary to ascertain the
5 compliance or noncompliance by any person with the provisions
6 of this act and the regulations promulgated under this act.
7 In connection with the inspection or investigation, samples
8 may be taken of a solid, semisolid, liquid or contained
9 gaseous material for analysis. If, analysis is made of the
10 samples, a copy of the results of the analysis shall be
11 furnished within five business days after receiving the
12 analysis to the person having apparent authority over the
13 building, property, premises or place.

14 (b) Warrants.--An agent or employee of the department may
15 apply for a search warrant to any Commonwealth official
16 authorized to issue a search warrant for the purposes of
17 inspecting or examining any property, building, premises, place,
18 book, record or other physical evidence; of conducting tests; or
19 of taking samples of any solid waste. The warrant shall be
20 issued upon probable cause. It shall be sufficient probable
21 cause to show any of the following:

22 (1) The inspection, examination, test or sampling is
23 pursuant to a general administrative plan to determine
24 compliance with this act.

25 (2) The agent or employee has reason to believe that a
26 violation of this act has occurred or may occur.

27 (3) The agent or employee has been refused access to the
28 property, building, premises, place, book, record or physical
29 evidence or has been prevented from conducting tests or
30 taking samples.

1 Section 1708. Withholding of State funds.

2 In addition to any other penalties provided in this act, the
3 department may notify the State Treasurer to withhold payment of
4 all or any portion of funds payable to the municipality by the
5 department from the General Fund or any other fund if the
6 municipality has engaged in any unlawful conduct under section
7 1701. Upon notification, the State Treasurer shall hold in
8 escrow such moneys due to such municipality until such time as
9 the department notifies the State Treasurer that the
10 municipality has complied with such requirement or schedule.

11 Section 1709. Collection of fines, fees, etc.

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

28 (b) Deposit of fines.--All fines collected pursuant to
29 sections 1704 and 1705 shall be paid into the Solid Waste
30 Abatement Fund.

1 Section 1710. Right of citizen to intervene in proceedings.

2 Any citizen of this Commonwealth having an interest which is
3 or may be adversely affected shall have the right on his own
4 behalf, without posting bond, to intervene in any action brought
5 pursuant to section 1703 or 1704.

6 Section 1711. Remedies of citizens.

7 (a) Commencement of civil action.--Except as provided in
8 subsection (b), any person having an interest that is or may be
9 adversely affected may commence a civil action on his own behalf
10 against any person other than the department to compel
11 compliance with this act, any regulation promulgated under this
12 act, any order of the department issued under this act or any
13 term or condition of an approved municipal waste management
14 plan. The courts of common pleas shall have jurisdiction of
15 actions under this section. Venue shall be as set forth in the
16 Pennsylvania Rules of Civil Procedure concerning civil actions.

17 (b) Notice.--No action under this section may be commenced
18 prior to 60 days after the plaintiff has given the department
19 and the alleged violator written notice of the violation.

20 (c) Multiple actions.--No action under this section may be
21 commenced if the department has commenced and is diligently
22 prosecuting a civil action in a court of the United States or of
23 the Commonwealth, has issued an order, or has entered a consent
24 order and agreement or consent decree to require compliance with
25 this act, any regulation promulgated under this act, any order
26 of the department issued under this act or any term or condition
27 of an approved municipal waste management plan. If the
28 department has commenced and is diligently prosecuting a civil
29 action in a court of the Commonwealth, any person with an
30 interest which is or may be adversely affected may intervene as

1 of right.

2 Section 1712. Affirmative defense.

3 (a) Defense.--It shall be an affirmative defense to any
4 action by the department pursuant to section 1704, 1705 or 1708
5 against any municipality alleged to be in violation of section
6 1501 that such municipality's failure to comply is caused by
7 excessive costs of the program required by section 1501. Program
8 costs are excessive when reasonable and necessary costs of
9 operating the program exceed income from the sale or use of
10 collected material, grant money received from the department
11 pursuant to section 902, and avoided costs of municipal waste
12 processing or disposal.

13 (b) Requirements.--A municipality may not assert the
14 affirmative defense provided by this section if it has failed:

15 (1) To make a timely grant application to the department
16 pursuant to section 902.

17 (2) To exercise its best efforts to implement the
18 program required by section 1501 for at least two years after
19 it was required to establish and implement the program.

20 (c) Construction.--Nothing in this section shall be
21 construed or understood:

22 (1) To create an affirmative defense for a municipality
23 that is alleged to be in violation of any provision of law
24 other than section 1501.

25 (2) To create an affirmative defense for any person
26 other than a municipality.

27 (3) To modify or affect existing statutory and case law
28 concerning affirmative defenses to department actions, except
29 as expressly provided in subsection (a).

30

CHAPTER 19

MISCELLANEOUS PROVISIONS

Section 1901. Severability.

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

Section 1902. Repeals.

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

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

Section 1903. Effective date.

This act shall take effect in 60 days.