

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

AS AMENDED ON THIRD CONSIDERATION, OCTOBER 19, 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 "REASONABLE EXPANSION." THE GROWTH OF AN EXISTING PERMITTED <—  
6 LANDFILL TO LAND WHICH IS CONTIGUOUS TO THE EXISTING LANDFILL  
7 WHICH CONTIGUOUS LAND IS OWNED IN FEE BY THE OWNER OF THE  
8 LANDFILL OR WHICH LAND IS SUBJECT TO AN IRREVOCABLE OPTION  
9 EXERCISABLE WITHIN ONE YEAR IN FAVOR OF THE OWNER OF THE  
10 LANDFILL ON THE DATE THAT THE PLAN IS SUBMITTED AND WHICH  
11 CONTIGUOUS LAND CONTAINS THE SAME GEOLOGICAL FEATURES WHICH ARE  
12 PRESENT AT THE EXISTING LANDFILL.

13 "Recycled content." Products or materials containing post  
14 consumer waste materials.

15 "Recycling." The collection, separation, recovery and sale  
16 or reuse of metals, glass, paper, leaf waste, plastics and other  
17 materials which would otherwise be disposed or processed as  
18 municipal waste.

19 "Remaining available permitted capacity." The remaining  
20 permitted capacity that is actually available for processing or  
21 disposal to the county or other municipality that generated the  
22 waste.

23 "Remaining permitted capacity." The weight or volume of  
24 municipal waste that can be processed or disposed at an existing  
25 municipal waste processing or disposal facility. The term shall  
26 include only weight or volume capacity for which the department  
27 has issued a permit under the Solid Waste Management Act. The  
28 term shall not include any facility that the department  
29 determines, or has determined, has failed and continues to fail  
30 to comply with the provisions of the Solid Waste Management Act,

1 and the regulations promulgated pursuant thereto, or any permit  
2 conditions.

3 "Residual waste." Any garbage, refuse, other discarded  
4 material or other waste, including solid, liquid, semisolid or  
5 contained gaseous materials resulting from industrial, mining  
6 and agricultural operations and any sludge from an industrial,  
7 mining or agricultural water supply treatment facility, waste  
8 water treatment facility or air pollution control facility,  
9 provided that it is not hazardous. The term shall not include  
10 coal refuse as defined in the act of September 24, 1968  
11 (P.L.1040, No.318), known as the Coal Refuse Disposal Control  
12 Act. The term shall not include treatment sludges from coal mine  
13 drainage treatment plants, disposal of which is being carried on  
14 pursuant to and in compliance with a valid permit issued  
15 pursuant to the act of June 22, 1937 (P.L.1987, No.394), known  
16 as The Clean Streams Law.

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

1 collection center for composting leaf waste.

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

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

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

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

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

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

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

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

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

30 (2) use of products that contain as little material as

1 possible, are capable of being reused or recycled or have an  
2 extended useful life.

3 Section 104. Construction of act.

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

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

9 CHAPTER 3

10 POWERS AND DUTIES

11 Section 301. Powers and duties of department.

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

15 (1) Administer the municipal waste planning, recycling  
16 and waste reduction program pursuant to the provisions of  
17 this act and the regulations promulgated pursuant thereto.

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

21 (3) Provide technical assistance to municipalities and  
22 Commonwealth agencies, including, but not limited to, the  
23 training of personnel.

24 (4) Initiate, conduct and support research,  
25 demonstration projects and investigations, and coordinate all  
26 State agency research programs pertaining to municipal waste  
27 management systems.

28 (5) Regulate municipal waste planning, including, but  
29 not limited to, the development and implementation of county  
30 municipal waste management plans.

1           (6) Approve, conditionally approve or disapprove  
2           municipal waste management plans, issue orders, conduct  
3           inspections and abate public nuisances to implement the  
4           provisions and purposes of this act and the regulations  
5           promulgated pursuant to this act.

6           (7) Serve as the agency of the Commonwealth for the  
7           receipt of moneys from the Federal Government or other public  
8           agencies or private agencies and expend such moneys for  
9           studies and research with respect to, and for the enforcement  
10          and administration of, the provisions and purposes of this  
11          act and the regulations promulgated pursuant thereto.

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

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

19          (10) Appoint such advisory committees as the secretary  
20          deems necessary and proper to assist the department in  
21          carrying out the provisions of this act. The secretary is  
22          authorized to pay reasonable and necessary expenses incurred  
23          by the members of such advisory committees in carrying out  
24          their functions.

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

29          (12) Take any action not inconsistent with this act that  
30          the department may deem necessary or proper to collect the

1 recycling fee provided by this act, and to insure the payment  
2 of the host municipality benefit fee and to ensure the  
3 payment of the site-specific postclosure fee and moneys for  
4 the trust fund for municipally operated landfills provided by  
5 this act.

6 (13) Administer and distribute moneys in the Recycling  
7 Fund for any public educational programs on recycling and  
8 waste reduction that the department believes to be  
9 appropriate, for technical assistance to counties in the  
10 preparation of municipal waste management plans, for  
11 technical assistance to municipalities concerning recycling  
12 and waste reduction, to conduct research, and for other  
13 purposes consistent with this act.

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

16 (i) Conducting a comprehensive, innovative and  
17 effective public education program concerning the value  
18 of recycling and waste reduction, and of public  
19 opportunities to participate in such activities, in  
20 cooperation with the Department of Education.

21 (ii) Developing and maintaining a data base on  
22 recycling and waste reduction in the Commonwealth, and  
23 making the information in that data base available to the  
24 public.

25 (iii) Coordinating recycling and waste reduction  
26 efforts among Commonwealth agencies.

27 (iv) Providing financial and other assistance to  
28 municipalities that are required by section 1501 to  
29 implement recycling programs.

30 (15) Do any and all other acts and things, not

1 inconsistent with any provision of this act, which it may  
2 deem necessary or proper for the effective enforcement of  
3 this act and the regulations promulgated pursuant thereto  
4 after consulting with the Department of Health regarding  
5 matters of public health significance.

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

7 The Environmental Quality Board shall have the power and its  
8 duty shall be to adopt the regulations of the department to  
9 accomplish the purposes and to carry out the provisions of this  
10 act.

11 Section 303. Powers and duties of counties.

12 (a) Primary responsibility of county.--Each county shall  
13 have the power and its duty shall be to insure the availability  
14 of adequate permitted processing and disposal capacity for the  
15 municipal waste which is generated within its boundaries. As  
16 part of this power, a county:

17 (1) May require all persons collecting or transporting  
18 municipal waste within the county to obtain licenses for the  
19 purpose of directing waste to facilities designated pursuant  
20 to subsection (e).

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

24 (3) May plan for the processing and disposal of  
25 municipal waste generated outside its boundaries and to  
26 implement its approved plan as it relates to the processing  
27 and disposal of such waste.

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

1 counties.

2 (c) Ordinances and resolutions.--In carrying out its duties  
3 under this section, a county may adopt ordinances, resolutions,  
4 regulations and standards for the processing and disposal of  
5 municipal waste, which shall not be less stringent than, and not  
6 in violation of or inconsistent with, the provisions and  
7 purposes of the Solid Waste Management Act, this act and the  
8 regulations promulgated pursuant thereto.

9 (d) Delegation of county responsibility.--A county may enter  
10 into a written agreement with another municipality or municipal  
11 authority pursuant to which the person undertakes to fulfill  
12 some or all of the county's responsibilities under this act for  
13 municipal waste planning and implementation of the approved  
14 county plan. Any such person shall be jointly and severally  
15 responsible with the county for municipal waste planning and  
16 implementation of the approved county plan in accordance with  
17 this act and the regulations promulgated pursuant thereto.

18 (e) Designated sites.--A county with an approved municipal  
19 waste management plan that was submitted pursuant to section  
20 501(a) or (c) of this act is also authorized to require that all  
21 municipal wastes generated within its boundaries shall be  
22 processed or disposed at a designated processing or disposal  
23 facility that is contained in the approved plan and permitted by  
24 the department under the act of July 7, 1980 (P.L.380, No.97),  
25 known as the Solid Waste Management Act. No county shall direct  
26 municipal waste that would otherwise be recycled to any resource  
27 recovery facility or other facility for purposes other than  
28 recycling such waste.

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

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

3           (2) The weight or volume of materials that were recycled  
4           by municipal recycling programs in the county in the  
5           preceding calendar year.

6 Section 304. Powers and duties of municipalities other than  
7           counties.

8           (a) Responsibility of other municipalities.--Each  
9           municipality other than a county shall have the power and its  
10          duty shall be to assure the proper and adequate transportation,  
11          collection and storage of municipal waste which is generated or  
12          present within its boundaries and to adopt and implement  
13          programs for the collection and recycling of municipal waste as  
14          provided in this act.

15          (b) Ordinances.--In carrying out its duties under this  
16          section, a municipality other than a county may adopt  
17          resolutions, ordinances, regulations and standards for the  
18          transportation, storage and collection of municipal wastes,  
19          which shall not be less stringent than, and not in violation of  
20          or inconsistent with, the provisions and purposes of the Solid  
21          Waste Management Act, this act and the regulations promulgated  
22          pursuant thereto.

23          (c) Delegation of responsibility.--A municipality other than  
24          a county may contract with any municipality or municipal  
25          authority to carry out its duties for the transportation,  
26          collection and storage of municipal waste, if the  
27          transportation, collection or storage activity or facility is  
28          conducted or operated in a manner that is consistent with the  
29          Solid Waste Management Act, this act and the regulations  
30          promulgated pursuant thereto.

1 (d) Designated sites.--A municipality other than a county  
2 may require by ordinance that all municipal waste generated  
3 within its jurisdiction shall be disposed of at a designated  
4 permitted facility. Such ordinance shall remain in effect until  
5 the county in which the municipality is located adopts a waste  
6 flow control ordinance as part of a plan submitted to the  
7 department pursuant to section 501(a) or (c) and approved by the  
8 department. Except as provided in section 502(m), any such  
9 county ordinance shall supersede any such municipal ordinance to  
10 the extent that the municipal ordinance is inconsistent with the  
11 county ordinance.

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

25 (f) Report.--On or before February 15 of each year, each  
26 municipality other than a county that is implementing a  
27 recycling program shall submit a report to the county in which  
28 the municipality is located. The report shall describe the  
29 weight or volume of materials that were recycled by the  
30 municipal recycling program in the preceding calendar year.

1 CHAPTER 5

2 MUNICIPAL WASTE PLANNING

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

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

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

16 (1) The department has granted technical or preliminary  
17 approval of such plan under 25 Pa. Code §§ 75.11 through  
18 75.13.

19 (2) More than one-half of the municipalities within the  
20 county, representing more than one-half of the county's  
21 population as determined by the most recent decennial census  
22 by the United States Bureau of the Census, have adopted  
23 resolutions approving such plan.

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

27 (1) At least three years prior to the time all remaining  
28 available permitted capacity for the county will be  
29 exhausted.

30 (2) For plans approved pursuant to subsection (b),

1 within two years of the effective date of this act. Such plan  
2 revisions shall be consistent with the requirements of this  
3 chapter except to the extent that the county demonstrates to  
4 the department's satisfaction that irrevocable contracts made  
5 by or pursuant to the approved plan preclude compliance with  
6 the requirements of this chapter.

7 (3) When otherwise required by the department.

8 (d) Procedure for considering plan revisions.--At least 30  
9 days before submitting any proposed plan revision to the  
10 department, the county shall submit a copy of the proposed  
11 revision to the advisory committee established pursuant to  
12 section 503 and to each municipality within the county. All plan  
13 revisions that are determined by the county or by the department  
14 to be substantial shall be subject to the requirements of  
15 sections 503 and 504. The plan revisions required by subsection  
16 (c)(2) shall be considered substantial plan revisions.

17 Section 502. Content of municipal waste management plans.

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

21 (b) Description of waste.--The plan shall describe and  
22 explain the origin, content and weight or volume of municipal  
23 waste currently generated within the county's boundaries, and  
24 the origin, content and weight or volume of municipal waste that  
25 will be generated within the county's boundaries during the next  
26 ten years.

27 (c) Description of facilities.--The plan shall identify and  
28 describe the facilities where municipal waste is currently being  
29 disposed or processed and the remaining available permitted  
30 capacity of such facilities and the capacity which could be made

1 available through THE REASONABLE expansion of such facilities. <—  
2 The plan shall contain an analysis of the effect of current and  
3 planned recycling on waste generated within the county. The plan  
4 shall also explain the extent to which existing facilities will  
5 be used during the life of the plan, and shall not substantially  
6 impair the use of their remaining permitted capacity or of  
7 capacity which could be made available through THE REASONABLE <—  
8 expansion of such facilities. For purposes of this subsection,  
9 existing facilities shall include facilities for which a permit  
10 application under the Solid Waste Management Act is filed with  
11 the department within one year from the effective date of this  
12 act or the date a plan is approved, whichever is the later,  
13 unless such permit application is denied by the department. In  
14 addition, the plan shall give consideration to the potential  
15 expansion of existing municipal waste processing or disposal  
16 facilities located in the county. For the purposes of this  
17 subsection, the department shall determine whether applications  
18 are complete within 90 days of their receipt and, if incomplete,  
19 specify to the applicant all deficiencies of the application.

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

30 (e) Description of recyclable waste.--

1 (1) The plan shall describe and evaluate:

2 (i) The kind and weight or volume of municipal waste  
3 that could be recycled, giving consideration at a minimum  
4 to the following materials: clear glass, colored glass,  
5 aluminum, steel and bimetallic cans, high grade office  
6 paper, newsprint, corrugated paper, plastics, leaf waste  
7 and grass clippings.

8 (ii) Potential benefits of recycling, including the  
9 potential solid waste reduction and the avoided cost of  
10 municipal waste processing or disposal.

11 (iii) Existing materials recovery operations and the  
12 kind and weight or volume of materials recycled by the  
13 operations, whether public or private.

14 (iv) The compatibility of recycling with other  
15 municipal waste processing or disposal methods, giving  
16 consideration to and describing anticipated and available  
17 markets for materials collected through municipal  
18 recycling programs.

19 (v) Proposed or existing collection methods for  
20 recyclable materials.

21 (vi) Options for ensuring the collection of  
22 recyclable materials.

23 (vii) Options for the processing, storage and sale  
24 of recyclable materials, including market commitments.  
25 The plan shall consider the results of the market  
26 development study required by section 508, if the results  
27 are available.

28 (viii) Options for municipal cooperation or  
29 agreement for the collection, processing and sale of  
30 recyclable materials.

1 (ix) A schedule for implementation of the recycling  
2 program.

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

6 (xi) What consideration for the collection,  
7 marketing and disposition of recyclable materials will be  
8 accorded to persons engaged in the business of recycling  
9 on the effective date of this act, whether or not the  
10 persons are operating for profit.

11 (2) Any county containing municipalities that are  
12 required by section 1501 to implement recycling programs  
13 shall take the provisions of that section into account in  
14 preparing the recycling portion of its plan.

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

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

27 (1) Explain in detail the reason for selecting such  
28 facility or program.

29 (2) Describe alternative facilities or programs,  
30 including, but not limited to, waste reduction, recycling, or

1 resource recovery facilities or programs, that were  
2 considered.

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

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

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

12 (g) Location.--The plan shall identify the general location  
13 within a county where each municipal waste processing or  
14 disposal facility and each recycling operation identified in  
15 subsection (f) will be located, and either identify the site of  
16 each facility if the site has already been chosen or explain how  
17 the site will be chosen. For any facility that is proposed to be  
18 located outside the county, the plan shall explain in detail the  
19 reasons for selecting such a facility.

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

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

28 (j) Copies of ordinances and resolutions.--The plan shall  
29 include any proposed waste flow control ordinances or  
30 requirements that will be used to insure the operation of any

1 facilities proposed in the plan. For each ordinance or  
2 requirement, the plan shall identify the areas of the county to  
3 be affected, the expected effective date and the implementing  
4 mechanism.

5 (k) Orderly extension.--The plan shall provide for the  
6 orderly extension of municipal waste management systems in a  
7 manner that is consistent with the needs of the area and is also  
8 consistent with any existing State, regional or local plans  
9 affecting the development, use and protection of air, water,  
10 land or other natural resources. The plan shall also take into  
11 consideration planning, zoning, population estimates,  
12 engineering and economics.

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

15 (m) Noninterference with certain resource recovery  
16 facilities and landfills.--

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

19 (i) The design, construction or operation of any  
20 municipal waste processing, disposal or resource recovery  
21 facility or the reasonable expansion of such facility or  
22 municipal waste landfill that is part of a complete  
23 municipal waste management plan submitted by a  
24 municipality or organization of municipalities under the  
25 Solid Waste Management Act prior to the effective date of  
26 this act or the date such plan is undertaken, whichever  
27 is the later, and for which a complete permit application  
28 under the Solid Waste Management Act is submitted to the  
29 department within one year of the effective date of this  
30 act.

1           (ii) The projects, plans or operations of a  
2           municipality authority created under the act of May 2,  
3           1945 (P.L.382, No.164), known as the Municipality  
4           Authorities Act of 1945, or of an organization of  
5           municipalities which (municipality authority or  
6           organization of municipalities) is created by two or more  
7           municipalities prior to the effective date of this act  
8           for the purposes of providing for collection, storage,  
9           transportation, processing or disposal of solid waste  
10          generated within the municipalities and which  
11          (municipality authority or organization of  
12          municipalities) submits to the department within two  
13          years of the effective date of this act, and has approved  
14          by the department, a solid waste management plan,  
15          consistent with the other provisions of this section,  
16          that includes each member municipality. This subparagraph  
17          applies to the projects, plans and operations of  
18          municipalities which are members of the municipality  
19          authority or organization of municipalities.

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

27 Section 503. Development of municipal waste management plans.

28          (a) Advisory committee.--Prior to preparing a plan or  
29          substantial plan revisions for submission to the department in  
30          accordance with the provisions of this act, the county shall

1 form an advisory committee, which shall include representatives  
2 of all classes of municipalities within the county, citizen  
3 organizations, industry, the county recycling coordinator, if  
4 one exists, and any other persons deemed appropriate by the  
5 county. The advisory committee shall review the plan during its  
6 preparation, make suggestions and propose any changes it  
7 believes appropriate.

8 (b) Written notice.--The county shall provide written notice  
9 to all municipalities within the county when plan development  
10 begins and shall provide periodic written progress reports to  
11 such municipalities concerning the preparation of the plan.

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

24 (d) Adoption and ratification of plan.--The governing body  
25 of the county shall adopt a plan within 60 days from the end of  
26 the public comment period. Not later than ten days following  
27 adoption of a plan by the governing body of the county, the plan  
28 shall be sent to municipalities within the county for  
29 ratification. If a municipality does not act on the plan within  
30 90 days of its submission to such municipality, it shall be

1 deemed to have ratified the plan. If more than one-half of the  
2 municipalities, representing more than one-half of the county's  
3 population as determined by the most recent decennial census by  
4 the United States Bureau of the Census, ratify the plan, then  
5 the county within ten days of ratification shall submit the plan  
6 to the department for approval.

7 (e) Statement of objections.--A municipality may not  
8 disapprove of a proposed county plan unless the municipality's  
9 resolution of disapproval contains a concise statement of its  
10 objections to the plan. Each municipality disapproving a plan  
11 shall immediately transmit a copy of its resolution of  
12 disapproval to the county and the advisory committee. a  
13 conditional approval shall be considered a disapproval.

14 Section 504. Failure to ratify plan.

15 (a) Submission.--If the plan is not ratified as provided in  
16 section 503(d), the county shall meet with the advisory  
17 committee to discuss the reasons that the plan was not ratified.  
18 The advisory committee shall submit a recommendation concerning  
19 a revised county plan to the county within 45 days after it  
20 becomes apparent that the plan has failed to obtain  
21 ratification. The advisory committee's recommendation shall  
22 specifically address the objections stated by municipalities in  
23 their resolutions of disapproval of the county plan.

24 (b) Adoption of revised plan by county.--The governing body  
25 of the county shall adopt a revised plan within 75 days after it  
26 has become apparent that the original plan has failed to obtain  
27 ratification. Not later than five days following adoption of a  
28 revised plan by the governing body of the county, the plan shall  
29 be sent to municipalities within the county for ratification. If  
30 a municipality does not act on the revised plan within 45 days

1 of its submission to such municipality, it shall be deemed to  
2 have ratified the plan. If more than one-half of the  
3 municipalities, representing more than one-half of the county's  
4 population as determined by the most recent decennial census by  
5 the United States Bureau of the Census, ratify the revised plan,  
6 then the county within ten days of ratification shall submit the  
7 revised plan to the department for approval.

8 (c) Statement of objections.--A municipality may not  
9 disapprove of a proposed revised county plan unless the  
10 municipality's resolution of disapproval contains a concise  
11 statement of its objections to the plan. Each municipality shall  
12 immediately transmit a copy of its resolution of disapproval to  
13 the county.

14 (d) Failure to ratify revised plan.--If the plan is not  
15 ratified as provided in subsection (b), the county shall submit  
16 the revised plan to the department for approval. The revised  
17 plan shall be submitted within ten days after it is apparent  
18 that the plan has failed to obtain ratification and shall be  
19 accompanied by the county's written response to the objections  
20 stated by municipalities in the resolutions of disapproval.

21 Section 505. Review of municipal waste management plans.

22 (a) Departmental approval options.--Within 30 days after  
23 receiving a complete plan, the department shall approve,  
24 conditionally approve or disapprove it, unless the department  
25 gives written notice that additional time is necessary to  
26 complete its review. If the department gives such notice, it  
27 shall have 30 additional days to render a decision.

28 (b) Minimum plan requirement.--The department shall not  
29 approve any county plan ~~unless the plan~~ THAT demonstrates to the <—  
30 satisfaction of the department that:

1 (1) The plan is complete and accurate.

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

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

8 (4) The plan provides for the processing and disposal of  
9 municipal waste for at least ten years.

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

16 Section 506. Contracts.

17 (a) General rule.--Except as otherwise provided in this act,  
18 nothing in this act shall be construed to interfere with, or in  
19 any way modify, the provisions of any contract for municipal  
20 waste disposal, processing or collection in force in any county,  
21 other municipality or municipal authority upon the effective  
22 date of this act.

23 (b) Renewals.--No renewal of any existing contract upon the  
24 expiration or termination of the original term thereof, and no  
25 new contract for municipal waste disposal, processing or  
26 collection shall be entered into after the effective date of  
27 this act, unless such renewal or such new contract shall conform  
28 to the applicable provisions of this act and a department-  
29 approved municipal waste management plan.

30 (c) Renegotiation option.--If no plan has been approved for

1 the county, no contract renewal or new contract for municipal  
2 waste disposal, processing or collection shall be entered into  
3 unless such contract contains a provision for renegotiation to  
4 conform to the approved plan when such plan is approved by the  
5 department.

6 Section 507. Relationship between plans and permits.

7 After the date of departmental approval of a county municipal  
8 waste management plan under section 505, the department may not  
9 issue any new permit, or any permit that results in additional  
10 capacity, for a municipal waste landfill or resource recovery  
11 facility under the act of July 7, 1980 (P.L.380, No.97), known  
12 as the Solid Waste Management Act, in the county unless the  
13 applicant demonstrates to the department's satisfaction that the  
14 proposed facility:

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

16 (2) meets all of the following requirements:

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

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

22 (iii) The governing body of the proposed host county  
23 has provided a written statement approving the location  
24 of the proposed facility, or the proposed location of the  
25 facility is preferable to alternative locations, giving  
26 consideration to environmental and economic factors.

27 Section 508. Studies.

28 (a) Market development for recyclable municipal waste.--

29 Within 15 months after the effective date of this act, the  
30 department shall submit to the General Assembly a report that

1 describes:

2 (1) The current and projected capacity of existing  
3 markets to absorb materials generated by municipal recycling  
4 programs in this Commonwealth.

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

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

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

13 (5) SPECIFIC RECOMMENDATIONS ON MARKETS FOR RECYCLED  
14 MATERIALS FOR EACH REGION OF THIS COMMONWEALTH. <—

15 (b) Update of market study.--Within three years after the  
16 completion of the market development study described in  
17 subsection (a), the department shall submit to the General  
18 Assembly an update of the study, taking into account information  
19 developed since its completion.

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

23 (1) That describes various mechanisms that could be  
24 utilized to stimulate and enhance waste reduction, including  
25 their advantages and disadvantages. The mechanisms to be  
26 analyzed shall include, but not be limited to, incentives for  
27 prolonging product life, methods for ensuring product  
28 recyclability, ~~labeling requirements for recyclable products~~ <—  
29 ~~and products with recycled content,~~ taxes for excessive  
30 packaging, tax incentives, prohibitions on the use of certain

1 products and performance standards for products.

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

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

10 Section 509. Best available technology.

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

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

24 (c) Operation tests and reports.--The operator of any  
25 resource recovery facility shall conduct tests for emissions of  
26 particulate matter in accordance with standards of performance  
27 for new sources specified by the United States Environmental  
28 Protection Agency for incinerators, resource recovery facilities  
29 and associated control devices and shall report the results in a  
30 manner established by the department.

1 Section 510. Permit requirements.

2 The department shall not issue any approval or permit for a  
3 resource recovery facility under the act of July 7, 1980  
4 (P.L.380, No.97), known as the Solid Waste Management Act,  
5 unless the applicant has provided the department with adequate  
6 documentation and assurances that all ash residue produced from  
7 or by a resource recovery facility will be disposed at a  
8 permitted landfill. Prior to the approval of any permit  
9 application for a resource recovery facility, the operator shall  
10 submit a plan to the department for the alternate disposal of  
11 municipal waste designated for disposal at the resource recovery  
12 facility.

13 Section 511. Site limitation.

14 No municipal waste landfill or resource recovery facility  
15 shall be located within 300 yards of a park, playground or  
16 school. The department shall not issue a permit to any operator  
17 of such a landfill or facility as defined in this section. For  
18 purposes of this section, a municipal waste landfill or resource  
19 recovery facility shall include the processing, compacting,  
20 treatment, storage, off-loading, transferring or in any other  
21 way dealing with municipal waste.

22 CHAPTER 7

23 RECYCLING FEE

24 Section 701. Recycling fee for municipal waste landfills and  
25 resource recovery facilities.

26 (a) Imposition.--There is imposed a recycling fee of \$1.25  
27 per ton for all solid waste processed at resource recovery  
28 facilities and for all solid waste except process residue and  
29 nonprocessable waste from a resource recovery facility that is  
30 disposed of at municipal waste landfills. Such fee shall be paid

1 by the operator of each municipal waste landfill and resource  
2 recovery facility.

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

7 (c) Waste weight requirement.--On and after January 1, 1988,  
8 each operator of a municipal waste landfill and resource  
9 recovery facility that has received 30,000 or more cubic yards  
10 of solid waste in the previous calendar year shall weigh all  
11 solid waste when it is received. The scale used to weigh solid  
12 waste shall conform to the requirements of the act of December  
13 1, 1965 (P.L.988, No.368), known as the Weights and Measures Act  
14 of 1965, and the regulations promulgated pursuant thereto. The  
15 operator of the scale shall be a licensed public weighmaster  
16 under the act of April 28, 1961 (P.L.135, No.64), known as the  
17 Public Weighmaster's Act, and the regulations promulgated  
18 pursuant thereto.

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

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

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

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

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

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

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

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

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

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

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

1 the date of the overpayment.

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

6 Section 703. Collection and enforcement of fee.

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

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

21 (c) Assessment notices.--

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

30 (2) The operator charged with the deficiency shall have

1 30 days to pay the deficiency in full or, if the operator  
2 wishes to contest the deficiency, forward the amount of the  
3 deficiency to the department for placement in an escrow  
4 account with the State Treasurer or any Pennsylvania bank, or  
5 post an appeal bond in the amount of the deficiency. Such  
6 bond shall be executed by a surety licensed to do business in  
7 this Commonwealth and be satisfactory to the department.

8 Failure to forward the money or the appeal bond to the  
9 department within 30 days shall result in a waiver of all  
10 legal rights to contest the deficiency.

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

16 (4) The amount determined after administrative hearing  
17 or after waiver of administrative hearing shall be payable to  
18 the Commonwealth and shall be collectible in the manner  
19 provided in section 1709.

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

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

28 (d) Filing of appeals.--Notwithstanding any other provision  
29 of law, all appeals of final department actions concerning the  
30 resource recovery fee, including, but not limited to, petitions

1 for refunds, shall be filed with the Environmental Hearing  
2 Board.

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

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

16 Section 704. Records.

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

25 Section 705. Surcharge.

26 The provisions of any law to the contrary notwithstanding,  
27 the operator may collect the fee imposed by this section as a  
28 surcharge on any fee schedule established pursuant to law,  
29 ordinance, resolution or contract for solid waste processing or  
30 disposal operations at the facility. In addition, any person who

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

10 Section 706. Recycling Fund.

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

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

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

24 (1) At least 70% shall be expended by the department for  
25 grants to municipalities for the development and  
26 implementation of recycling programs as set forth in section  
27 902, recycling coordinators as provided in section 903, and  
28 market development and waste reduction studies as set forth  
29 in section 508; for implementation of the recommendations in  
30 the studies required by section 508; and for research

1 conducted or funded by the Department of Transportation  
2 pursuant to section 1505.

3 (2) Up to 10% may be expended by the department for  
4 grants for feasibility studies for municipal waste processing  
5 and disposal facilities, except for facilities for the  
6 combustion of municipal waste that are not proposed to be  
7 operated for the recovery of energy as set forth in section  
8 901.

9 (3) Up to 30% may be expended by the department for  
10 public information, public education and technical assistance  
11 programs concerning recycling and waste reduction, including  
12 technical assistance programs for counties and other  
13 municipalities, for research and demonstration projects, for  
14 planning grants as set forth in section 901, for the host  
15 inspector training program as set forth in section 1102, and  
16 for other purposes consistent with this act.

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

19 (d) Transfer.--On the first day of the sixteenth year after  
20 the fee imposed by section 701 becomes effective, all moneys in  
21 the Recycling Fund that are not obligated shall be transferred  
22 to the Solid Waste Abatement Fund and expended in the same  
23 manner as other moneys in the Solid Waste Abatement Fund. On the  
24 first day of the nineteenth year after the fee imposed by  
25 section 701 becomes effective, all moneys in the Recycling Fund  
26 that are not expended shall be transferred to the Solid Waste  
27 Abatement Fund and expended in the same manner as other moneys  
28 in the Solid Waste Abatement Fund.

29 (e) Advisory committee.--The secretary shall establish a  
30 Recycling Fund Advisory Committee composed of representatives of

1 counties, other municipalities, municipal authorities, the  
2 municipal waste management industry, the municipal waste  
3 recycling industry, MUNICIPAL WASTE GENERATING INDUSTRY and the ←  
4 general public. The committee shall meet at least annually to  
5 review the Commonwealth's progress in meeting the goals under  
6 section 102(c), to recommend priorities on expenditures from the  
7 fund, and to advise the secretary on associated activities  
8 concerning the administration of the fund. The department shall  
9 reimburse members of the committee for reasonable travel, hotel  
10 and other necessary expenses incurred in performance of their  
11 duties under this section.

12 (f) Annual reports.--The department shall submit an annual  
13 report to the General Assembly on receipts to and disbursements  
14 from the Recycling Fund in the previous fiscal year, projections  
15 for revenues and expenditures in the coming fiscal year, and the  
16 Commonwealth's progress in achieving the goals set forth in  
17 section 102(c).

## 18 CHAPTER 9

### 19 GRANTS

20 Section 901. Planning grants.

21 The department may, upon application from a county, award  
22 grants for the cost of preparing municipal waste management  
23 plans in accordance with this act; for carrying out related  
24 studies, surveys, investigations, inquiries, research and  
25 analyses, including those related by siting; and for  
26 environmental mediation. The department may also award grants  
27 under this section for feasibility studies and project  
28 development for municipal waste processing or disposal  
29 facilities, except for facilities for the combustion of  
30 municipal waste that are not proposed to be operated for the

1 recovery of energy. The application shall be made on a form  
2 prepared and furnished by the department. The application shall  
3 contain such information as the department deems necessary to  
4 carry out the provisions and purposes of this act. The grant to  
5 any county under this section shall be 50% of the approved cost  
6 of such plans and studies.

7 Section 902. Grants for development and implementation of  
8 municipal recycling programs.

9 (a) Authorization.--The department may award grants for  
10 development and implementation of municipal recycling programs,  
11 upon application from any municipality. The grant provided by  
12 this section may be used to identify markets, develop a public  
13 education campaign, purchase collection and storage equipment,  
14 and do other things necessary to establish a municipal recycling  
15 program. The grant may be used to purchase collection equipment,  
16 only to the extent needed for collection of recyclable  
17 materials, and mechanical processing equipment, only to the  
18 extent that such equipment is not available to the program in  
19 the private sector. The application shall be made on a form  
20 prepared and furnished by the department. The application shall  
21 explain the structure and operation of the program and shall  
22 contain such other information as the department deems necessary  
23 to carry out the provisions and purposes of this act. The grant  
24 under this section to a municipality required by section 1501 to  
25 implement a recycling program shall be 50% of the approved cost  
26 of establishing a municipal recycling program. The grant under  
27 this section to a municipality not required by section 1501 to  
28 implement a recycling program shall be up to 50% of the approved  
29 cost of establishing a municipal recycling program. IN ADDITION <—  
30 TO THE GRANT UNDER THIS SECTION TO A FINANCIALLY DISTRESSED

1 MUNICIPALITY THAT IS REQUIRED BY SECTION 1501 TO IMPLEMENT A  
2 RECYCLING PROGRAM SHALL BE 50% OF THE APPROVED COST OF  
3 ESTABLISHING A MUNICIPAL RECYCLING PROGRAM FROM GRANTS  
4 AUTHORIZED UNDER SECTION 203(F) OF THE ACT OF JULY 10, 1987  
5 (P.L.246, NO.47), KNOWN AS THE FINANCIAL DISTRESSED  
6 MUNICIPALITIES ACT.

7 (b) Prerequisites.--The department shall not award any grant  
8 under this section unless ~~the application is complete and~~ <—  
9 ~~accurate and demonstrates~~ IT IS DEMONSTRATED to the department's <—  
10 satisfaction that:

11 (1) The application is complete and accurate.

12 (2) The recycling program for which the grant is sought  
13 does not duplicate any other recycling programs operating  
14 within the municipality.

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

18 (i) materials collected and persons affected;

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

20 (iii) markets or uses for collected materials,

21 giving consideration to the results of the market

22 development study required by section 508 if the results  
23 are available;

24 (iv) ordinances or other mechanisms that will be

25 used to ensure that materials are collected;

26 (v) public information and education;

27 (vi) program economics, including avoided processing  
28 or disposal costs; and

29 (vii) other information deemed necessary by the  
30 department.

1 (c) Municipal retroactive grants with restrictions.--The  
2 grant authorized by this section may be awarded to any  
3 municipality for eligible costs incurred for a municipal  
4 recycling program after 60 days prior to the effective date of  
5 this act. However, no grant may be authorized under this section  
6 for a municipal recycling program that has received a grant from  
7 the department under the act of July 20, 1974 (P.L.572, No.198),  
8 known as the Pennsylvania Solid Waste - Resource Recovery  
9 Development Act, except for costs that were not paid by such  
10 grant.

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

15 (a) Authorization.--The department may award grants for the  
16 salary and expenses of recycling coordinators, upon application  
17 from any county. The application shall be made on a form  
18 prepared and furnished by the department. The application shall  
19 explain the duties and activities of the county recycling  
20 coordinator. If a recycling coordinator has been active prior to  
21 the year for which the grant is sought, the application shall  
22 also explain the coordinator's activities and achievements in  
23 the previous year.

24 (b) Limit on grant.--The grant under this section shall not  
25 exceed 50% of the approved cost of the recycling coordinator's  
26 salary and expenses.  
27 Section 904. General limitations.

28 (a) Content of application.--Each grant application under  
29 this chapter shall include provisions for an independent  
30 performance audit, which shall be completed within six months

1 after all reimbursable work under the grant has been completed.

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

6 (c) Other limitations on grants.--The department may not  
7 award any grant under this chapter to any county or municipality  
8 that has failed to comply with the conditions set forth in  
9 previously awarded grants under this chapter, the requirements  
10 of this chapter, and any regulations promulgated pursuant  
11 thereto.

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

17 (e) Lapse of encumbered funds.--Grant funds that have been  
18 encumbered shall lapse automatically to the recycling fund if  
19 the funds are not expended within two years after they have been  
20 encumbered. The department may, upon written request from the  
21 grantee, extend the two-year period for an additional period of  
22 up to three months. To obtain any funds that have lapsed to the  
23 recycling fund, the grantee must submit a new application in a  
24 subsequent funding period.

25 CHAPTER 11

26 ASSISTANCE TO MUNICIPALITIES

27 Section 1101. Information provided to host municipalities.

28 (a) Departmental information.--The department will provide  
29 all of the following information to the governing body of host  
30 municipalities for municipal waste landfills and resource

1 recovery facilities:

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

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

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

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

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

27 (d) Information to county.--If the host municipality owns or  
28 operates the municipal waste landfill or resource recovery  
29 facility, or proposes to own or operate such landfill or  
30 facility, the information required by this section shall be

1 provided to the county within which the landfill or facility is  
2 located or proposed to be located instead of the host  
3 municipality.

4 Section 1102. Joint inspections with host municipalities.

5 (a) Training of inspectors.--

6 (1) The department shall establish and conduct a  
7 training program to certify host municipality inspectors for  
8 municipal waste landfills and resource recovery facilities.  
9 This program will be available to no more than two persons  
10 who have been designated in writing by the host municipality.  
11 The department shall hold training programs at least twice a  
12 year. The department shall certify host municipality  
13 inspectors upon completion of the training program and  
14 satisfactory performance in an examination administered by  
15 the department.

16 (2) Certified municipal inspectors are authorized to  
17 enter property, inspect records, take samples and conduct  
18 inspections. However, certified municipal inspectors may not  
19 issue orders.

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

24 (b) Departmental information.--

25 (1) Whenever any host municipality presents information  
26 to the department which gives the department reason to  
27 believe that any municipal waste landfill or resource  
28 recovery facility is in violation of any requirement of the  
29 act of June 22, 1937 (P.L.1987, No.394), known as The Clean  
30 Streams Law, the act of January 8, 1960 (1959 P.L.2119,

1 No.787), known as the Air Pollution Control Act, the act of  
2 November 26, 1978 (P.L.1375, No.325), known as the Dam Safety  
3 and Encroachments Act, and the Solid Waste Management Act,  
4 any regulation promulgated pursuant thereto, or the condition  
5 of any permit issued pursuant thereto, the department will  
6 promptly conduct an inspection of such facility.

7 (2) The department will notify the host municipality of  
8 this inspection and will allow a certified municipal  
9 inspector from the host municipality to accompany the  
10 inspector during the inspection.

11 (3) If there is not sufficient information to give the  
12 department reasons to believe that there is a violation, the  
13 department will provide a written explanation to the host  
14 municipality of its decision not to conduct an inspection  
15 within 30 days of the request for inspection.

16 (4) Upon written request of a host municipality to the  
17 department, the department will allow a certified inspector  
18 of such municipality to accompany department inspectors on  
19 routine inspections of municipal waste landfills and resource  
20 recovery facilities.

21 (c) County involvement.--If the host municipality owns or  
22 operates the municipal waste landfill or resource recovery  
23 facility, the training and inspection requirements of this  
24 section shall be available to the county within which the  
25 landfill or facility is located instead of the host  
26 municipality.

27 Section 1103. Water supply testing for contiguous landowners.

28 (a) Required water sampling.--Upon written request from  
29 persons owning land contiguous to a municipal waste landfill,  
30 the operator of such landfill shall have quarterly sampling and

1 analysis conducted of private water supplies used by such  
2 persons for drinking water. Such sampling and analysis shall be  
3 conducted by a laboratory certified pursuant to the act of May  
4 1, 1984 (P.L.206, No.43), known as the Pennsylvania Safe  
5 Drinking Water Act. The laboratory shall be chosen by the  
6 landowners from a list of regional laboratories supplied by the  
7 department. Sampling and analysis shall be at the expense of the  
8 landfill operator. Upon request the landfill operator shall  
9 provide copies of the analyses to persons operating resource  
10 recovery facilities that dispose of the residue from the  
11 facilities at the landfill.

12 (b) Extent of analysis.--Water supplies shall be analyzed  
13 for all parameters or chemical constituents determined by the  
14 department to be indicative of typical contamination from  
15 municipal waste landfills. The laboratory performing such  
16 sampling and analysis shall provide written copies of sample  
17 results to the landowner and to the department.

18 (c) Additional sampling required.--If the analysis indicates  
19 possible contamination from a municipal waste landfill, the  
20 department may conduct, or require the landfill operator to have  
21 the laboratory conduct, additional sampling and analysis to  
22 determine more precisely the nature, extent and source of  
23 contamination.

24 (d) Written notice of rights.--On or before 60 days from the  
25 effective date of this act for permits issued under the Solid  
26 Waste Management Act prior to the effective date of this act,  
27 and at or before the time of permit issuance for permits issued  
28 under the Solid Waste Management Act after the effective date of  
29 this act, the operator of each municipal waste landfill shall  
30 provide contiguous landowners with written notice of their

1 rights under this section on a form prepared by the department.

2 Section 1104. Water supply protection.

3 (a) Alternative water supply requirement.--Any person owning  
4 or operating a municipal waste management facility that affects  
5 a public or private water supply by pollution, contamination or  
6 diminution shall restore or replace the affected supply with an  
7 alternate source of water adequate in quantity or quality for  
8 the purposes served by the water supply. If any person shall  
9 fail to comply with this requirement, the department may issue  
10 such orders to the person as are necessary to assure compliance.

11 (b) Notification to department.--Any landowner or water  
12 purveyor suffering pollution, contamination or diminution of a  
13 public or private water supply as a result of solid waste  
14 disposal activities at a municipal waste management facility may  
15 so notify the department and request that an investigation be  
16 conducted. Within ten days of such notification, the department  
17 shall begin investigation of any such claims and shall, within  
18 120 days of the notification, make a determination. If the  
19 department finds that the pollution or diminution was caused by  
20 the operation of a municipal waste management facility or if it  
21 presumes the owner or operator of a municipal waste facility  
22 responsible for pollution, contamination or diminution pursuant  
23 to subsection (c), then it shall issue such orders to the owner  
24 or operator as are necessary to insure compliance with  
25 subsection (a).

26 (c) Rebuttable presumption.--Unless rebutted by one of the  
27 four defenses established in subsection (d), it shall be  
28 presumed that the owner or operator of a municipal waste  
29 landfill is responsible for the pollution, contamination or  
30 diminution of a public or private water supply that is within

1 one-quarter mile of the perimeter of the area where solid waste  
2 disposal activities have been carried out.

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

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

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

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

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

17 (e) Independent testing.--Any owner or operator electing to  
18 preserve its defenses under subsection (d)(1) or (2) shall  
19 retain the services of an independent certified laboratory to  
20 conduct the preoperation survey of water supplies. A copy of the  
21 results of any survey shall be submitted to the department and  
22 the landowner or water purveyor in a manner prescribed by the  
23 department.

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

29 Section 1105. Purchase of cogenerated electricity.

30 (a) Request to public utility.--The owner or operator of a

1 resource recovery facility may request that any public utility  
2 enter into a contract providing for the interconnection of the  
3 facility with the public utility and the purchase of electric  
4 energy, or electric energy and capacity, produced and offered  
5 for sale by the facility. The terms of any such contract shall  
6 be in accordance with the Federal Public Utility Regulatory  
7 Policies Act of 1978 (Public Law 95-617, 92 Stat. 3117) and any  
8 subsequent amendments, and any applicable Federal regulations  
9 promulgated pursuant thereto, and the regulations of the  
10 commission.

11 (b) Limited Public Utility Commission review.--A contract  
12 entered into between a resource recovery facility and a public  
13 utility in accordance with subsection (a), shall be subject to a  
14 one-time review and approval by the commission at the time the  
15 contract is entered into, notwithstanding the provisions of 66  
16 Pa.C.S. § 508 (relating to power of the commission to vary,  
17 reform and revise contracts).

18 Section 1106. Public Utility Commission.

19 (a) Application.--If the owner or operator of a resource  
20 recovery facility and a public utility fail to agree upon the  
21 terms and conditions of a contract for the purchase of electric  
22 energy, or electric energy and capacity, within 90 days of the  
23 request by the facility to negotiate such a contract, or if the  
24 public utility fails to offer a contract, either the owner or  
25 operator of the facility or the public utility may request the  
26 commission to establish the terms and conditions of such a  
27 contract. Such request may be for an informal consultation, a  
28 petition for declaratory order or a formal complaint, as  
29 appropriate under the circumstances.

30 (b) Commission response.--The commission shall respond to

1 any such request, unless time limits are waived by the owner or  
2 operator and utility, as follows:

3 (1) If the request is for an informal consultation, such  
4 consultation shall be held within 30 days, and commission  
5 staff shall make its recommendation to the parties within 30  
6 days after the last consultation or submittal of last  
7 requested data, whichever is later. Such recommendation may  
8 be oral or written, but shall not be binding on the parties  
9 or commission.

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

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

26 (c) Status as public utility.--A resource recovery facility  
27 shall not be deemed a public utility, as such is defined in 66  
28 Pa.C.S. § 101 et seq., if such facility produces thermal energy  
29 for sale to a public utility and/or ten or less retail  
30 customers, all of whom agree to purchase from such facility

1 under mutually agreed upon terms, or if such facility produces  
2 thermal energy for sale to any number of retail customers, all  
3 of which are located on the same site or site contiguous to that  
4 of the selling facility.

5 (d) Effect of section.--The provisions of this section shall  
6 take effect notwithstanding the adoption or failure to adopt any  
7 regulations by the Public Utility Commission regarding the  
8 purchase of electric energy from qualifying facilities, as such  
9 term is defined in section 210 of the Federal Public Utility  
10 Regulatory Policies Act of 1978 (Public Law 95-617, 92 Stat.  
11 3117) regulations and commission regulations.

12 Section 1107. Claims resulting from pollution occurrences.

13 (a) Financial responsibility.--

14 (1) Any permit application by a person other than a  
15 municipality or municipal authority under the Solid Waste  
16 Management Act for a municipal waste landfill or resource  
17 recovery facility shall certify that the applicant has in  
18 force, or will, prior to the initiation of operations under  
19 the permit, have in force, financial assurances for  
20 satisfying claims of bodily injury and property damage  
21 resulting from pollution occurrences arising from the  
22 operation of the landfill or facility. Such financial  
23 assurances shall be in place until the effective date of  
24 closure certification under the Solid Waste Management Act  
25 and the regulations promulgated pursuant thereto, unless the  
26 department determines that the landfill or facility may  
27 continue to present a significant risk to the public health,  
28 safety and welfare or the environment.

29 (2) The form and amount of such financial assurances  
30 shall be specified by the department. The required financial

1       assurances may include, but are not limited to, the  
2       following:

3               (i) A commercial pollution liability insurance  
4       policy.

5               (ii) A secured standby trust to become self-insured  
6       that satisfies a financial test established by  
7       regulation.

8               (iii) A trust fund financed by the person and  
9       administered by an independent trustee approved by the  
10      department.

11      (b) Municipal financial responsibility.--

12              (1) Any permit application by a municipality or  
13      municipal authority under the Solid Waste Management Act for  
14      a municipal waste landfill or resource recovery facility  
15      shall certify that the applicant has in force, or will, prior  
16      to the initiation of operations under the permit, have in  
17      force, financial assurances for satisfying claims of bodily  
18      injury and property damage resulting from pollution  
19      occurrences arising from the operation of the landfill or  
20      facility, to the extent that such claims are allowed by 42  
21      Pa.C.S. Ch. 85 Subch. C (relating to actions against local  
22      parties). Such financial assurances shall be in place until  
23      the effective date of closure certification under the Solid  
24      Waste Management Act and the regulations promulgated pursuant  
25      thereto, unless the department determines that the landfill  
26      or facility may continue to present a significant risk to the  
27      public health, safety and welfare or the environment.

28              (2) The form and amount of such financial assurances  
29      shall be specified by the department. The required financial  
30      assurances may include, but are not limited to, the

1 following:

2 (i) A commercial pollution liability insurance  
3 policy.

4 (ii) A trust fund financed by the municipality and  
5 administered by an independent trustee approved by the  
6 department.

7 (iii) An insurance pool or self-insurance program  
8 authorized by 42 Pa.C.S. § 8564 (relating to liability  
9 insurance and self-insurance).

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

14 (c) Liability limited.--A host municipality or county or  
15 municipality within the planning area may not be held liable for  
16 bodily injury or property damage resulting from pollution  
17 occurrences solely by reasons of participation in the  
18 preparation or adoption of a county or municipal solid waste  
19 plan. Nothing herein shall be construed to prevent any host  
20 municipality, county or municipality within the planning area  
21 from obtaining or giving such indemnities as may be appropriate  
22 in connection with the ownership, operation or control of a  
23 municipal solid waste facility.

24 (d) Effect on tort claims.--Nothing in this act shall be  
25 construed or understood as in any way modifying or affecting the  
26 provisions set forth in 42 Pa.C.S. Ch. 85 Subch. C.  
27 Section 1108. Site-specific postclosure fund.

28 (a) Establishment by county.--Each county shall establish an  
29 interest-bearing trust with an accredited financial institution  
30 for every municipal waste landfill that is operating within its

1 boundaries. This trust shall be established within 60 days of  
2 the effective date of this act for landfills permitted by the  
3 department prior to the effective date of this act. The trust  
4 shall be established prior to the operation of any landfill  
5 permitted by the department after the effective date of this  
6 act.

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

14 (c) Amount.--Each operator of a municipal waste landfill  
15 shall pay into the trust on a quarterly basis an amount equal to  
16 25¢ per ton of weighed waste or 25¢ per three cubic yards of  
17 volume measured waste for all solid waste received at the  
18 landfill.

19 (d) Trustee.--The trustee shall manage the trust in  
20 accordance with all applicable laws and regulations, except that  
21 moneys in the trust shall be invested in a manner that will  
22 allow withdrawals as provided in subsection (f). The trustee  
23 shall be a person whose trust activities are examined and  
24 regulated by a State or Federal agency. The trustee may resign  
25 only after giving 120 days' notice to the department and after  
26 the appointment of a new trustee. The trustee shall have an  
27 office located within the county where the landfill is located.

28 (e) Trust agreement.--The provisions of the trust agreement  
29 shall be consistent with the requirements of this section and  
30 shall be provided by the operator of the landfill on a form

1 prepared and approved by the department. The trust agreement  
2 shall be accompanied by a formal certification of  
3 acknowledgment.

4 (f) Withdrawal of funds.--The trustee may release moneys  
5 from the trust only upon written request of the operator of a  
6 landfill and upon prior written approval by the department. Such  
7 request shall include the proposed amount and purpose of the  
8 withdrawal and a copy of the department's written approval of  
9 the expenditure. A copy of the request shall be provided to the  
10 county and the host municipality. A copy of any withdrawal  
11 document prepared by the trustee shall be provided to the  
12 department, the county and the host municipality. No withdrawal  
13 from this trust may be made until after the department has  
14 certified closure of the landfill.

15 (g) Abandonment of trust.--If the department certifies to  
16 the trustee that the operator of a landfill has abandoned the  
17 operation of the landfill or has failed or refused to comply  
18 with the requirements of the Solid Waste Management Act, the  
19 regulations promulgated pursuant thereto or the terms or  
20 conditions of its permit, in any respect, the trustee shall  
21 forthwith pay the full amount of the trust to the department.  
22 The department may not make such certification unless it has  
23 given 30 days' written notice to the operator, the county, and  
24 the trustee of the department's intent to do so.

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

29 (i) Surplus.--Any moneys remaining in a trust subsequent to  
30 final closure of a landfill under the Solid Waste Management Act

1 and the regulations promulgated pursuant thereto shall, upon  
2 release of the bond by the department, be divided equally  
3 between the county and the host municipality.

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

10 (k) Other remedies.--The remedies provided to the department  
11 in this section are in addition to any other remedies provided  
12 at law or in equity.

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

19 Section 1109. Trust fund for municipally operated landfills.

20 (a) Establishment of trust.--Except as provided in  
21 subsection (b), each municipality or municipal authority  
22 operating a landfill solely for municipal waste not classified  
23 hazardous shall establish an interest-bearing trust with an  
24 accredited financial institution. This trust shall be  
25 established within 60 days of the effective date of this act for  
26 landfills permitted by the department prior to the effective  
27 date of this act. The trust shall be established prior to the  
28 operation of any landfill permitted by the department after the  
29 effective date of this act.

30 (b) Exemption.--Any municipality or municipal authority that

1 has posted a bond that is consistent with the provisions of the  
2 Solid Waste Management Act and the regulations promulgated  
3 pursuant thereto shall not be required to establish the trust  
4 set forth in this section.

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

12 (d) Amount.--Each municipality or municipal authority  
13 operating a landfill solely for municipal waste not classified  
14 hazardous shall pay into the trust on a quarterly basis an  
15 amount determined by the department for each ton or cubic yard  
16 of solid waste disposed at the landfill. This amount shall be  
17 based on the estimated cost of completing final closure of the  
18 landfill and the weight or volume of waste to be disposed at the  
19 landfill prior to closure.

20 (e) Trustee.--The trustee shall manage the trust in  
21 accordance with all applicable laws and regulations, except that  
22 moneys in the trust shall be invested in a manner that will  
23 allow withdrawals as provided in subsection (g). The trustee  
24 shall be a person whose trust activities are examined and  
25 regulated by a State or Federal agency. The trustee may resign  
26 only after giving 120 days' notice to the department and after  
27 the appointment of a new trustee.

28 (f) Trust agreement.--The provisions of the trust agreement  
29 shall be consistent with the requirements of this section and  
30 shall be provided by the municipality or municipal authority on

1 a form prepared and approved by the department. The trust  
2 agreement shall be accompanied by a formal certification of  
3 acknowledgment.

4 (g) Withdrawal of funds.--The trustee may release moneys  
5 from the trust only upon written request of the municipality or  
6 municipal authority and upon prior written approval by the  
7 department. Such request shall include the proposed amount and  
8 purpose of the withdrawal and a copy of the department's written  
9 approval of the expenditure. A copy of the request shall be  
10 provided to the host municipality. A copy of any withdrawal  
11 document prepared by the trustee shall be provided to the  
12 department and to the host municipality. No withdrawal from this  
13 trust may be made until after closure of the landfill.

14 (h) Abandonment of trust.--If the department certifies to  
15 the trustee that the municipality or municipal authority has  
16 abandoned the operation of the landfill or has failed or refused  
17 to comply with the requirements of the Solid Waste Management  
18 Act or the regulations promulgated pursuant thereto in any  
19 respect, the trustee shall forthwith pay the full amount of the  
20 trust to the department. The department may not make such  
21 certification unless it has given 30 days' written notice to the  
22 municipality or municipal authority and the trustee of the  
23 department's intent to do so.

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

28 (j) Surplus.--Except for trusts that have been abandoned as  
29 provided in subsection (h), any moneys remaining in a trust  
30 subsequent to final closure of a landfill under the Solid Waste

1 Management Act and the regulations promulgated pursuant thereto  
2 shall, upon certification of final closure by the department, be  
3 returned to the municipality or municipal authority.

4 (k) Duty under law.--Nothing in this section shall be  
5 understood or construed to in any way relieve the municipality  
6 or municipal authority of any duty or obligation imposed by this  
7 act, the Solid Waste Management Act, any other act administered  
8 by the department, the regulations promulgated pursuant thereto,  
9 or the terms or conditions of any permit.

10 (l) Other remedies.--The remedies provided to the department  
11 in this section are in addition to any other remedies provided  
12 at law or in equity.

13 Section 1110. Independent evaluation of permit applications.

14 ~~The department may reimburse host municipalities for costs~~ <—  
15 ~~incurred for professional technical review of a permit~~

16 AT THE REQUEST OF A HOST MUNICIPALITY, THE DEPARTMENT MAY <—  
17 REIMBURSE A HOST MUNICIPALITY FOR COSTS INCURRED FOR AN  
18 INDEPENDENT PERMIT APPLICATION REVIEW, BY A PROFESSIONAL  
19 ENGINEER WHO IS LICENSED IN THIS COMMONWEALTH AND WHO HAS  
20 PREVIOUS EXPERIENCE IN PREPARING SUCH PERMIT APPLICATIONS, OF AN  
21 application under the act of July 7, 1980 (P.L.380, No.97),  
22 known as the Solid Waste Management Act, for a new municipal  
23 waste landfill or resource recovery facility or that would  
24 result in additional capacity for a municipal waste landfill or  
25 resource recovery facility. Reimbursement shall not exceed  
26 \$10,000 per complete application.

27 Section 1111. Protection of capacity.

28 (a) New permits.--A permit issued by the department under  
29 the act of July 7, 1980 (P.L.380, No.97), known as the Solid  
30 Waste Management Act, for a new municipal waste landfill or

1 resource recovery facility or that results in additional  
2 capacity for a municipal waste landfill or resource recovery  
3 facility shall include a permit condition setting forth the  
4 weight or volume of municipal waste generated within the host  
5 county that the operator shall allow to be delivered for  
6 disposal or processing at the facility for a specified period.

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

16 (c) Department.--The department may take any action  
17 authorized by statute that the department deems necessary to  
18 ensure that operators of municipal waste landfills and resource  
19 recovery facilities give priority to the disposal or processing  
20 of municipal waste generated within the host county.

## 21 CHAPTER 13

### 22 HOST MUNICIPALITY BENEFIT FEE

23 Section 1301. Host municipality benefit fee.

24 (a) Imposition.--There is imposed a host municipality  
25 benefit fee upon the operator of each municipal waste landfill  
26 or resource recovery facility that receives a new permit or  
27 permit that results in additional capacity from the department  
28 under the Solid Waste Management Act after the effective date of  
29 this act. The fee shall be paid to the host municipality. If the  
30 host municipality owns or operates the landfill or facility, the

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

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

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

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

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

1 municipality.

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

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

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

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

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

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

22 Section 1303. Collection and enforcement of fee.

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

29 (b) Additional penalty.--In addition to the interest  
30 provided in subsection (a), if an operator fails to make timely

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

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

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

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

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

4 Section 1304. Records.

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

14 Section 1305. Surcharge.

15 The provisions of any law to the contrary notwithstanding,  
16 the operator of any municipal waste landfill or resource  
17 recovery facility subject to section 1301 may collect the host  
18 municipality benefit fee as a surcharge on any fee schedule  
19 established pursuant to law, ordinance, resolution or contract  
20 for solid waste disposal or processing operations at the  
21 landfill or facility. In addition, any person who collects or  
22 transports solid waste subject to the host municipality benefit  
23 fee to a municipal waste landfill or resource recovery facility  
24 subject to section 1301 may impose a surcharge on any fee  
25 schedule established pursuant to law, ordinance, resolution or  
26 contract for the collection or transportation of solid waste to  
27 the landfill or facility. The surcharge shall be equal to the  
28 increase in processing or disposal fees at the landfill or  
29 facility attributable to the host municipality benefit fee.  
30 However, interest and penalties on the fee under section 1303(a)

1 and (b) may not be collected as a surcharge.

2 CHAPTER 15

3 RECYCLING AND WASTE REDUCTION

4 Section 1501. Municipal implementation of recycling programs.

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

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

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

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

28 (i) Persons to separate ~~clear glass, aluminum and~~ <—  
29 ~~other material~~ AT LEAST THREE MATERIALS deemed <—  
30 appropriate by the municipality from other municipal

1 waste generated at their homes, apartments and other  
2 residential establishments and to store such material  
3 until collection. THE THREE MATERIALS SHALL BE CHOSEN ←—  
4 FROM THE FOLLOWING: CLEAR GLASS, COLORED GLASS, ALUMINUM,  
5 STEEL AND BIMETALLIC CANS, HIGH-GRADE OFFICE PAPER,  
6 NEWSPRINT, CORRUGATED PAPER AND PLASTICS.

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

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

28 (2) A scheduled day, at least once per month, during  
29 which separated materials are to be placed at the curbside or  
30 a similar location for collection.

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

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

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

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

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

28          (f) Preference.--In implementing its recycling program, a  
29          municipality shall accord consideration for the collection,  
30          marketing and disposition of recyclable materials to persons

1 engaged in the business of recycling on the effective date of  
2 this act, whether or not the persons were operating for profit.  
3 Section 1502. Facilities operation and recycling.

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

8 (b) Drop-off centers.--

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

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

30 Section 1503. Commonwealth recycling and waste reduction.

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

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

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

24 Section 1504. Procurement by Department of General Services.

25 (a) Review of policies.--

26 (1) The Department of General Services shall review and  
27 revise its existing procurement procedures and specifications  
28 for the purchase of products and materials to eliminate  
29 procedures and specifications that explicitly discriminate  
30 against products and materials with recycled content. The

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

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

21 (b) Bidding.

22 (1) A person who submits a bid to the Department of  
23 General Services for a contract that includes the purchase of  
24 products or materials shall certify, in writing, either the  
25 percentage by weight of recycled content in the product that  
26 is the subject of the bid or such other measure of recycled  
27 content as may be set forth in the Department of General  
28 Services' invitation for bids. A person may certify that the  
29 products or materials contain no recycled content.

30 (2) The Department of General Services shall, in issuing

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

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

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

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

26 (f) Annual report.--The Department of General Services shall  
27 submit an annual report to the General Assembly concerning its  
28 implementation of this section. This report shall include a  
29 description of what actions the Department of General Services  
30 has taken in the previous year to implement this section. This

1 report shall be submitted on or before the anniversary of the  
2 effective date of this act.

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

7 Section 1505. Procurement by Department of Transportation.

8 (a) Review of policies.--

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

23 (2) The Department of Transportation shall review and  
24 revise its procurement procedures and specifications for the  
25 purchase of products and materials to ensure, to the maximum  
26 extent economically feasible, that the Department of  
27 Transportation purchases products or materials that may be  
28 recycled or reused when these products or materials are  
29 discarded. The Department of Transportation shall complete an  
30 initial review and revision within one year of the effective

1 date of this act. The Department of Transportation shall  
2 review and revise its procedures and specifications on a  
3 continuing basis to encourage the use of products and  
4 materials that may be recycled or reused and shall, in  
5 developing new procedures and specifications, encourage the  
6 use of products and materials that may be recycled or reused.

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

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

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

26 (e) Grants.--The Department of Transportation may award  
27 research and demonstration grants concerning the potential  
28 beneficial use of a particular constituent of solid waste, or  
29 any product or material with recycled content, in lieu of  
30 another product or material in the Commonwealth's transportation

1 system. The application shall be made on a form prepared and  
2 furnished by the Department of Transportation and shall contain  
3 the information the Department of Transportation deems  
4 necessary.

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

12 Section 1506. Procurement options for local public agencies and  
13 certain Commonwealth agencies.

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

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

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

28 (2) Review and revise its procurement procedures and  
29 specifications for purchases of paper, lubricating oil, tires  
30 and other products or materials to ensure, to the maximum

1 extent economically feasible, that the agency purchases  
2 products or materials that may be recycled or reused when  
3 these products are discarded.

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

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

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

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

29 (2) Upon evaluation of bids opened for a public  
30 contract, the agency shall identify the lowest responsible

1 bidder. Where there is a tie for lowest responsible bidder,  
2 the agency in determining to whom to award the contract shall  
3 consider, as one factor in its determination, which of the  
4 bids provides for the greatest weight of recycled material in  
5 the product or products to be purchased, or for the best  
6 measure of recycled content other than weight as may be set  
7 forth in the invitation for bids.

8 (d) Other laws.--The options set forth in this section may  
9 be exercised, notwithstanding any other provision of law to the  
10 contrary.

11 Section 1507. Recycling at educational institutions.

12 The department, in consultation with the Department of  
13 Education, shall develop guidelines for source separation and  
14 collection of recyclable materials and for waste reduction in  
15 primary and secondary schools, colleges and universities,  
16 whether the schools, colleges and universities are public or  
17 nonpublic. At a minimum, the guidelines shall address generated  
18 in administrative offices, classrooms, dormitories and  
19 cafeterias. The Department of Education shall distribute these  
20 guidelines and encourage their implementation. The guidelines  
21 shall be developed and distributed within two years of the  
22 effective date of this act, except that the guidelines are not  
23 required to be distributed to educational institutions that are  
24 Commonwealth agencies implementing recycling programs under  
25 section 1505.

26 CHAPTER 17

27 ENFORCEMENT AND REMEDIES

28 Section 1701. Unlawful conduct.

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

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

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

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

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

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

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

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

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

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

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

6 Section 1702. Enforcement orders.

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

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

28 Section 1703. Restraining violations.

29 (a) Injunctions.--In addition to any other remedies provided  
30 in this act, the department may institute a suit in equity in

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

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

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

29 (d) Venue.--Actions instituted under this section may be  
30 filed in the appropriate court of common pleas or in the

1 Commonwealth Court, which courts are hereby granted jurisdiction  
2 to hear such actions.

3 Section 1704. Civil penalties.

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

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

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

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

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

19 Section 1705. Criminal penalties.

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

29 (b) Misdemeanor offense.--Any person, other than a municipal  
30 official exercising his official duties, who violates any

1 provision of this act, any regulation promulgated hereunder, any  
2 order issued hereunder, or the terms or conditions of any  
3 approved municipal waste management plan, commits a misdemeanor  
4 of the third degree and shall, upon conviction, be sentenced to  
5 pay a fine of not less than \$1,000 but not more than \$10,000 per  
6 day for each violation or to imprisonment for a period of not  
7 more than one year, or both.

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

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

24 Section 1706. Existing rights and remedies preserved;

25 cumulative remedies authorized.

26 Nothing in this act shall be construed as estopping the  
27 Commonwealth, or any district attorney of a county or solicitor  
28 of a municipality, from proceeding in courts of law or equity to  
29 abate pollution forbidden under this act, or abate nuisances  
30 under existing law. It is hereby declared to be the purpose of

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

18 Section 1707. Production of materials; recordkeeping  
19 requirements.

20 (a) Authority of department.--The department and its agents  
21 and employees shall:

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

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

29 (3) Have the authority to enter any building, property,  
30 premises or place where solid waste is generated, stored,

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

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

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

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

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

29 Section 1708. Withholding of State funds.

30 In addition to any other penalties provided in this act, the

1 department may notify the State Treasurer to withhold payment of  
2 all or any portion of funds payable to the municipality by the  
3 department from the General Fund or any other fund if the  
4 municipality has engaged in any unlawful conduct under section  
5 1701. Upon notification, the State Treasurer shall hold in  
6 escrow such moneys due to such municipality until such time as  
7 the department notifies the State Treasurer that the  
8 municipality has complied with such requirement or schedule.  
9 Section 1709. Collection of fines, fees, etc.

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

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

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

30 Any citizen of this Commonwealth having an interest which is

1 or may be adversely affected shall have the right on his own  
2 behalf, without posting bond, to intervene in any action brought  
3 pursuant to section 1703 or 1704.

4 Section 1711. Remedies of citizens.

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

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

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

30 Section 1712. Affirmative defense.

1 (a) Defense.--It shall be an affirmative defense to any  
2 action by the department pursuant to section 1702, 1704, 1705 or <—  
3 1708 AND ANY ACTION BROUGHT PURSUANT TO SECTION 1711 against any <—  
4 municipality alleged to be in violation of section 1501 that  
5 such municipality's failure to comply is caused by excessive  
6 costs of the program required by section 1501. Program costs are  
7 excessive when reasonable and necessary costs of operating the  
8 program exceed income from the sale or use of collected  
9 material, grant money received from the department pursuant to  
10 section 902, and avoided costs of municipal waste processing or  
11 disposal.

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

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

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

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

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

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

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

29 CHAPTER 19

30 MISCELLANEOUS PROVISIONS

1 Section 1901. Severability.

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

7 Section 1902. Repeals.

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

12 (b) Inconsistent repeals.--Except as provided in section  
13 501(b) of this act, the first through fourth sentences of  
14 section 201(b) and section 201(c), (d) and (e) of the act of  
15 July 7, 1980 (P.L.380, No.97), known as the Solid Waste  
16 Management Act, are repealed insofar as they are inconsistent  
17 with this act.

18 Section 1903. Effective date.

19 This act shall take effect in 60 days.