
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 REPORTED FROM COMMITTEE ON CONSERVATION, HOUSE OF
REPRESENTATIVES, AS AMENDED, DECEMBER 8, 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.

15 TABLE OF CONTENTS

16 Chapter 1. General Provisions
17 Section 101. Short title.
18 Section 102. Legislative findings; declaration of policy and
19 goals.
20 Section 103. Definitions.
21 Section 104. Construction of act.
22 Chapter 3. Powers and Duties

1 Section 301. Powers and duties of department.
2 Section 302. Powers and duties of Environmental Quality Board.
3 Section 303. Powers and duties of counties.
4 Section 304. Powers and duties of municipalities other than
5 counties.
6 Chapter 5. Municipal Waste Planning
7 Section 501. Schedule for submission of municipal waste
8 management plans.
9 Section 502. Content of municipal waste management plans.
10 Section 503. Development of municipal waste management plans.
11 Section 504. Failure to ratify plan.
12 Section 505. Review of municipal waste management plans.
13 Section 506. Contracts.
14 Section 507. Relationship between plans and permits.
15 Section 508. Studies.
16 Section 509. Best available technology.
17 Section 510. Permit requirements.
18 Section 511. Site limitation.
19 Section 512. Issuance of permits.
20 Chapter 7. Recycling Fee
21 Section 701. Recycling fee for municipal waste landfills and
22 resource recovery facilities.
23 Section 702. Form and timing of recycling fee payment.
24 Section 703. Collection and enforcement of fee.
25 Section 704. Records.
26 Section 705. Surcharge.
27 Section 706. Recycling Fund.
28 Chapter 9. Grants
29 Section 901. Planning grants.
30 Section 902. Grants for development and implementation of

1 municipal recycling programs.

2 Section 903. Grants for recycling coordinators.

3 Section 904. General limitations.

4 Chapter 11. Assistance to Municipalities

5 Section 1101. Information provided to host municipalities.

6 Section 1102. Joint inspections with host municipalities.

7 Section 1103. Water supply testing for contiguous landowners.

8 Section 1104. Water supply protection.

9 Section 1105. Purchase of cogenerated electricity.

10 Section 1106. Public Utility Commission.

11 Section 1107. Claims resulting from pollution occurrences.

12 Section 1108. Site-specific postclosure fund.

13 Section 1109. Trust fund for municipally operated landfills.

14 Section 1110. Independent evaluation of permit applications.

15 Section 1111. Protection of capacity.

16 Chapter 13. Host Municipality Benefit Fee

17 Section 1301. Host municipality benefit fee.

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

19 payment.

20 Section 1303. Collection and enforcement of fee.

21 Section 1304. Records.

22 Section 1305. Surcharge.

23 Chapter 15. Recycling and Waste Reduction

24 Section 1501. Municipal implementation of recycling programs.

25 Section 1502. Facilities operation and recycling.

26 Section 1503. Commonwealth recycling and waste reduction.

27 Section 1504. Procurement by Department of General Services.

28 Section 1505. Procurement by Department of Transportation.

29 Section 1506. Procurement options for local public agencies

30 and certain Commonwealth agencies.

1 Section 1507. Recycling at educational institutions.
2 Chapter 17. Enforcement and Remedies
3 Section 1701. Unlawful conduct.
4 Section 1702. Enforcement orders.
5 Section 1703. Restraining violations.
6 Section 1704. Civil penalties.
7 Section 1705. Criminal penalties.
8 Section 1706. Existing rights and remedies preserved;
9 cumulative remedies authorized.
10 Section 1707. Production of materials; recordkeeping
11 requirements.
12 Section 1708. Withholding of State funds.
13 Section 1709. Collection of fines, fees, etc.
14 Section 1710. Right of citizen to intervene in proceedings.
15 Section 1711. Remedies of citizens.
16 Section 1712. Affirmative defense.
17 Section 1713. Public information.
18 Chapter 19. Miscellaneous Provisions
19 Section 1901. Severability.
20 Section 1902. Repeals.
21 Section 1903. Effective date.

22 The General Assembly of the Commonwealth of Pennsylvania
23 hereby enacts as follows:

24 CHAPTER 1

25 GENERAL PROVISIONS

26 Section 101. Short title.

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

29 Section 102. Legislative findings; declaration of policy and
30 goals.

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

3 (1) Improper municipal waste practices create public
4 health hazards, environmental pollution and economic loss,
5 and cause irreparable harm to the public health, safety and
6 welfare.

7 (2) Parts of this Commonwealth have inadequate and
8 rapidly diminishing processing and disposal capacity for
9 municipal waste.

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

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

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

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

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

1 host such facilities.

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

4 (9) Prompt payment and efficient collection of the
5 recycling fee created by this act are essential to the
6 administration of the recycling grants provided by this act.

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

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

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

24 (13) Removing certain materials from the municipal
25 waste-stream will decrease the flow of solid waste to
26 municipal waste landfills, aid in the conservation and
27 recovery of valuable resources, conserve energy in the
28 manufacturing process, increase the supply of reusable
29 materials for the Commonwealth's industries, and will also
30 reduce substantially the required capacity of proposed

1 resource recovery facilities and contribute to their overall
2 combustion efficiency, thereby resulting in significant cost
3 savings in the planning, construction and operation of these
4 facilities.

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

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

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

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

29 (18) This act is enacted under the authority of
30 Amendment X of the Constitution of the United States of

1 America, under which the police power to protect the health,
2 safety and welfare of the citizens is reserved to the states.

3 (19) The Commonwealth is responsible for the protection
4 of the health, safety and welfare of its citizens concerning
5 solid waste management.

6 (20) All aspects of solid waste management, particularly
7 the disposition of solid waste, pose a critical threat to the
8 health, safety and welfare of the citizens of this
9 Commonwealth.

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

11 (1) Establish and maintain a cooperative State and local
12 program of planning and technical and financial assistance
13 for comprehensive municipal waste management.

14 (2) Encourage the development of waste reduction and
15 recycling as a means of managing municipal waste, conserving
16 resources and supplying energy through planning, grants and
17 other incentives.

18 (3) Protect the public health, safety and welfare from
19 the short and long term dangers of transportation,
20 processing, treatment, storage and disposal of municipal
21 waste.

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

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

27 (6) Establish a recycling fee for municipal waste
28 landfills and resource recovery facilities to provide grants
29 for recycling, planning and related purposes.

30 (7) Establish a host municipality benefit fee for

1 municipal waste landfills and resource recovery facilities
2 that are permitted after the effective date of this act and
3 to provide benefits to host municipalities for the presence
4 of such facilities.

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

10 (9) Establish trust funds for municipally operated
11 landfills to ensure that there are sufficient funds available
12 for completing the final closure of such landfills under the
13 Solid Waste Management Act.

14 (10) Shift the primary responsibility for developing and
15 implementing municipal waste management plans from
16 municipalities to counties.

17 (11) Require all public agencies of the Commonwealth to
18 aid and promote the development of recycling through their
19 procurement policies for the general welfare and economy of
20 the Commonwealth.

21 (12) Require certain municipalities to implement
22 recycling programs to return valuable materials to productive
23 use, to conserve energy and to protect capacity at municipal
24 waste processing or disposal facilities.

25 (13) Implement Article 1, section 27 of the Constitution
26 of Pennsylvania.

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

29 (1) At least 25% of all municipal waste generated in
30 this Commonwealth on and after January 1, 1997, should be

1 recycled.

2 (2) The weight or volume of municipal waste generated
3 per capita in this Commonwealth on January 1, 1997, should,
4 to the greatest extent practicable, be less than the weight
5 or volume of municipal waste generated per capita on the
6 effective date of this act.

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

11 (4) The Commonwealth should, to the greatest extent
12 practicable, procure and use products and materials with
13 recycled content, and procure and use materials that are
14 recyclable.

15 Section 103. Definitions.

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

19 "Abatement." The restoration, reclamation, recovery, etc.,
20 of a natural resource adversely affected by the activity of a
21 person.

22 "Commission." The Pennsylvania Public Utility Commission and
23 its authorized representatives.

24 "Commonwealth agency." The Commonwealth and its departments,
25 boards, commissions and agencies, Commonwealth owned
26 universities, and the State Public School Building Authority,
27 the State Highway and Bridge Authority, and any other authority
28 now in existence or hereafter created or organized by the
29 Commonwealth.

30 "County." Includes the City of Philadelphia but not

1 Philadelphia County.

2 "Department." The Department of Environmental Resources of
3 the Commonwealth and its authorized representatives.

4 "Disposal." The deposition, injection, dumping, spilling,
5 leaking or placing of solid waste into or on the land or water
6 in a manner that the solid waste or a constituent of the solid
7 waste enters the environment, is emitted into the air or is
8 discharged to the waters of this Commonwealth.

9 "Feasibility study." A study which analyzes a specific
10 municipal waste processing or disposal system to assess the
11 likelihood that the system can be successfully implemented,
12 including, but not limited to, an analysis of the prospective
13 market, the projected costs and revenues of the system, the
14 municipal waste-stream that the system will rely upon and
15 various options available to implement the system.

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

19 "Leaf waste." Leaves, garden residues, shrubbery and tree
20 trimmings, and similar material, but not including grass
21 clippings.

22 "Local public agency."

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

26 (2) All municipal or school or other authorities now in
27 existence or hereafter created or organized by any county,
28 city, borough, township or school district or any combination
29 thereof.

30 (3) Any and all other public bodies, authorities,

1 councils of government, officers, agencies or
2 instrumentalities of the foregoing, whether exercising a
3 governmental or proprietary function.

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

7 "Municipal recycling program." A source separation and
8 collection program for recycling municipal waste, or a program
9 for designated drop-off points or collection centers for
10 recycling municipal waste, that is operated by or on behalf of a
11 municipality. The term includes any source separation and
12 collection program for composting yard waste that is operated by
13 or on behalf of a municipality. The term shall not include any
14 program for recycling demolition waste or sludge from sewage
15 treatment plants or water supply treatment plants.

16 "Municipal waste." Any garbage, refuse, industrial lunchroom
17 or office waste and other material, including solid, liquid,
18 semisolid or contained gaseous material, resulting from
19 operation of residential, municipal, commercial or institutional
20 establishments and from community activities and any sludge not
21 meeting the definition of residual or hazardous waste in the
22 Solid Waste Management Act from a municipal, commercial or
23 institutional water supply treatment plant, waste water
24 treatment plant or air pollution control facility.

25 "Municipal waste landfill." Any facility that is designed,
26 operated or maintained for the disposal of municipal waste,
27 whether or not such facility possesses a permit from the
28 department under the Solid Waste Management Act. The term shall
29 not include any facility that is used exclusively for disposal
30 of demolition waste or sludge from sewage treatment plants or

1 water supply treatment plants.

2 "Municipality." A county, city, borough, incorporated town,
3 township or home rule municipality.

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

8 "Person." Any individual, partnership, corporation,
9 association, institution, cooperative enterprise, municipality,
10 municipal authority, Federal Government or agency, State
11 institution or agency (including, but not limited to, the
12 Department of General Services and the State Public School
13 Building Authority), or any other legal entity whatsoever which
14 is recognized by law as the subject of rights and duties. In any
15 provisions of this act prescribing a fine, imprisonment or
16 penalty, or any combination of the foregoing, the term "person"
17 shall include the officers and directors of any corporation or
18 other legal entity having officers and directors.

19 "Pollution." Contamination of any air, water, land or other
20 natural resources of this Commonwealth that will create or is
21 likely to create a public nuisance or to render the air, water,
22 land or other natural resources harmful, detrimental or
23 injurious to public health, safety or welfare, or to domestic,
24 municipal, commercial, industrial, agricultural, recreational or
25 other legitimate beneficial uses, or to livestock, wild animals,
26 birds, fish or other life.

27 "Post consumer waste material." Any product generated by a
28 business or consumer which has served its intended end use, and
29 which has been separated from solid waste for the purposes of
30 collection, recycling, and disposition. The term includes

1 industrial byproducts that would otherwise go to disposal or
2 processing facilities. The term does not include internally
3 generated scrap that is commonly returned to industrial or
4 manufacturing process.

5 "Processing." Any technology used for the purpose of
6 reducing the volume or bulk of municipal waste or any technology
7 used to convert part or all of such waste materials for offsite
8 reuse. Processing facilities include, but are not limited to,
9 transfer facilities, composting facilities and resource recovery
10 facilities.

11 "Project development." Those activities required to be
12 conducted prior to constructing a processing or disposal
13 facility that has been shown to be feasible, including, but not
14 limited to, public input and participation, siting, procurement
15 and vendor contract negotiations, and market and municipal waste
16 supply assurance negotiations.

17 "Public agency." Any Commonwealth agency or local public
18 agency.

19 "Reasonable expansion." The growth of an existing permitted
20 landfill to land which is contiguous to the existing landfill
21 which contiguous land is owned in fee by the owner of the
22 landfill or which land is subject to an irrevocable option
23 exercisable within one year in favor of the owner of the
24 landfill on the date that the plan is submitted and which
25 contiguous land contains the same geological features which are
26 present at the existing landfill.

27 "Recycled content." Products or materials containing post
28 consumer waste materials.

29 "Recycling." The collection, separation, recovery and sale
30 or reuse of metals, glass, paper, leaf waste, plastics and other

1 materials which would otherwise be disposed or processed as
2 municipal waste.

3 "Remaining available permitted capacity." The remaining
4 permitted capacity that is actually available for processing or
5 disposal to the county or other municipality that generated the
6 waste.

7 "Remaining permitted capacity." The weight or volume of
8 municipal waste that can be processed or disposed at an existing
9 municipal waste processing or disposal facility. The term shall
10 include only weight or volume capacity for which the department
11 has issued a permit under the Solid Waste Management Act. The
12 term shall not include any facility that the department
13 determines, or has determined, has failed and continues to fail
14 to comply with the provisions of the Solid Waste Management Act,
15 and the regulations promulgated pursuant thereto, or any permit
16 conditions.

17 "Residual waste." Any garbage, refuse, other discarded
18 material or other waste, including solid, liquid, semisolid or
19 contained gaseous materials resulting from industrial, mining
20 and agricultural operations and any sludge from an industrial,
21 mining or agricultural water supply treatment facility, waste
22 water treatment facility or air pollution control facility,
23 provided that it is not hazardous. The term shall not include
24 coal refuse as defined in the act of September 24, 1968
25 (P.L.1040, No.318), known as the Coal Refuse Disposal Control
26 Act. The term shall not include treatment sludges from coal mine
27 drainage treatment plants, disposal of which is being carried on
28 pursuant to and in compliance with a valid permit issued
29 pursuant to the act of June 22, 1937 (P.L.1987, No.394), known
30 as The Clean Streams Law.

1 "Resource recovery facility." A facility that provides for
2 the extraction and utilization of materials or energy from
3 municipal waste that is generated off-site, including, but not
4 limited to, a facility that mechanically extracts materials from
5 municipal waste, a combustion facility that converts the organic
6 fraction of municipal waste to usable energy, and any chemical
7 and biological process that converts municipal waste into a fuel
8 product or other usable materials. The term also includes any
9 facility for the combustion of municipal waste that is generated
10 off-site, whether or not the facility is operated to recover
11 energy. The term does not include any separation and collection
12 center, drop-off point or collection center for recycling
13 municipal waste, or any source separation or collection center
14 for composting leaf waste.

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

17 "Solid waste." Solid waste, as defined in the act of July 7,
18 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

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

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

23 "Storage." The containment of any municipal waste on a
24 temporary basis in such a manner as not to constitute disposal
25 of such waste. It shall be presumed that the containment of any
26 municipal waste in excess of one year constitutes disposal. This
27 presumption can be overcome by clear and convincing evidence to
28 the contrary.

29 "Transportation." The offsite removal of any municipal waste
30 at any time after generation.

1 "Treatment." Any method, technique or process, including,
2 but not limited to, neutralization, designed to change the
3 physical, chemical or biological character or composition of any
4 municipal waste so as to neutralize such waste or so as to
5 render such waste safer for transport, suitable for recovery,
6 suitable for storage or reduced in volume.

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

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

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

16 Section 104. Construction of act.

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

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

22 CHAPTER 3

23 POWERS AND DUTIES

24 Section 301. Powers and duties of department.

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

28 (1) Administer the municipal waste planning, recycling
29 and waste reduction program pursuant to the provisions of
30 this act and the regulations promulgated pursuant thereto.

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

4 (3) Provide technical assistance to municipalities and
5 Commonwealth agencies, including, but not limited to, the
6 training of personnel.

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

11 (5) Regulate municipal waste planning, including, but
12 not limited to, the development and implementation of county
13 municipal waste management plans.

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

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

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

30 (9) Institute prosecutions against any person under this

1 act.

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

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

12 (12) Take any action not inconsistent with this act that
13 the department may deem necessary or proper to collect the
14 recycling fee provided by this act, and to insure the payment
15 of the host municipality benefit fee and to ensure the
16 payment of the site-specific postclosure fee and moneys for
17 the trust fund for municipally operated landfills provided by
18 this act.

19 (13) Administer and distribute moneys in the Recycling
20 Fund for any public educational programs on recycling and
21 waste reduction that the department believes to be
22 appropriate, for technical assistance to counties in the
23 preparation of municipal waste management plans, for
24 technical assistance to municipalities concerning recycling
25 and waste reduction, to conduct research, and for other
26 purposes consistent with this act.

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

29 (i) Conducting a comprehensive, innovative and
30 effective public education program concerning the value

1 of recycling and waste reduction, and of public
2 opportunities to participate in such activities, in
3 cooperation with the Department of Education.

4 (ii) Developing and maintaining a data base on
5 recycling and waste reduction in the Commonwealth, and
6 making the information in that data base available to the
7 public.

8 (iii) Coordinating recycling and waste reduction
9 efforts among Commonwealth agencies.

10 (iv) Providing financial and other assistance to
11 municipalities that are required by section 1501 to
12 implement recycling programs.

13 (15) Do any and all other acts and things, not
14 inconsistent with any provision of this act, which it may
15 deem necessary or proper for the effective enforcement of
16 this act and the regulations promulgated pursuant thereto
17 after consulting with the Department of Health regarding
18 matters of public health significance.

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

20 The Environmental Quality Board shall have the power and its
21 duty shall be to adopt the regulations of the department to
22 accomplish the purposes and to carry out the provisions of this
23 act.

24 Section 303. Powers and duties of counties.

25 (a) Primary responsibility of county.--Each county shall
26 have the power and its duty shall be to insure the availability
27 of adequate permitted processing and disposal capacity for the
28 municipal waste which is generated within its boundaries. As
29 part of this power, a county:

30 ~~(1) May require all persons collecting or transporting~~ <—

1 ~~municipal waste within the county to obtain licenses for the~~
2 ~~purpose of directing waste to facilities designated pursuant~~
3 ~~to subsection (e).~~

4 (2) (1) Shall have the power and duty to implement its <—
5 approved plan as it relates to the processing and disposal of
6 municipal waste generated within its boundaries.

7 (3) (2) May plan for the processing and disposal of <—
8 municipal waste generated outside its boundaries and to
9 implement its approved plan as it relates to the processing
10 and disposal of such waste.

11 (4) (3) May ~~prohibit~~ PETITION THE DEPARTMENT TO LIMIT OR <—
12 RESTRICT municipal waste processing or disposal facilities
13 located within the geographic boundaries of the county from
14 processing or disposing of municipal waste generated or
15 produced outside the geographical boundaries of the county if
16 this processing or disposal would significantly ~~diminish the~~ <—
17 CONTRIBUTE TO A SHORTAGE OF processing or disposal capacity <—
18 ~~of the facilities.~~ AVAILABLE TO THE COUNTY. <—

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

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

30 (d) Delegation of county responsibility.--A county may enter

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

9 (e) Designated sites.--A county with an approved municipal
10 waste management plan that was submitted pursuant to section
11 501(a) or (c) of this act is also authorized to require that all
12 municipal wastes generated within its boundaries shall be
13 processed or disposed at a designated processing or disposal
14 facility that is contained in the approved plan and permitted by
15 the department under the act of July 7, 1980 (P.L.380, No.97),
16 known as the Solid Waste Management Act. No county shall direct
17 municipal waste that would otherwise be recycled to any resource
18 recovery facility or other facility for purposes other than
19 recycling such waste. This subsection shall not apply to
20 municipal waste going to existing or future on-site captive
21 commercial disposal facilities used for the exclusive disposal
22 of municipal waste generated by that commercial operation.

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

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

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

30 Section 304. Powers and duties of municipalities other than

1 counties.

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

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

17 (c) Contracting of responsibility.--A municipality other
18 than a county may contract with any municipality, municipal
19 authority or other persons to carry out its duties for the
20 transportation, collection and storage of municipal waste, if
21 the transportation, collection or storage activity or facility
22 is conducted or operated in a manner that is consistent with the
23 Solid Waste Management Act, this act and the regulations
24 promulgated pursuant thereto. Any such person shall be jointly
25 and severally responsible with the municipality other than a
26 county when carrying out its duties for transportation,
27 collection or storage activity or facility.

28 (d) Designated sites.--A municipality other than a county
29 may require by ordinance that all municipal waste generated
30 within its jurisdiction shall be disposed of at a designated

1 permitted facility. Such ordinance shall remain in effect until
2 the county in which the municipality is located adopts a waste
3 flow control ordinance as part of a plan submitted to the
4 department pursuant to section 501(a) or (c) and approved by the
5 department. Except as provided in section 502(m), any such
6 county ordinance shall supersede any such municipal ordinance to
7 the extent that the municipal ordinance is inconsistent with the
8 county ordinance.

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

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

26 CHAPTER 5

27 MUNICIPAL WASTE PLANNING

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

30 (a) Submission of plan.--Except as provided in subsections

1 (b) and (c), each county shall submit to the department within
2 two and one-half years of the effective date of this act an
3 officially adopted plan for a municipal waste management plan
4 for municipal waste generated within its boundaries. Such plan
5 shall be consistent with the requirements of this act.

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

11 (1) The department has granted technical or preliminary
12 approval of such plan under 25 Pa. Code §§ 75.11 through
13 75.13.

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

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

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

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

1 the requirements of this chapter.

2 (3) When otherwise required by the department.

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

12 Section 502. Content of municipal waste management plans.

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

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

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

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

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

25 (e) Description of recyclable waste.--

26 (1) The plan shall describe and evaluate:

27 (i) The kind and weight or volume of municipal waste
28 that could be recycled, giving consideration at a minimum
29 to the following materials: clear glass, colored glass,
30 aluminum, steel and bimetallic cans, high grade office

1 paper, newsprint, corrugated paper, plastics, leaf waste
2 and grass clippings.

3 (ii) Potential benefits of recycling, including the
4 potential solid waste reduction and the avoided cost of
5 municipal waste processing or disposal.

6 (iii) Existing materials recovery operations and the
7 kind and weight or volume of materials recycled by the
8 operations, whether public or private.

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

14 (v) Proposed or existing collection methods for
15 recyclable materials.

16 (vi) Options for ensuring the collection of
17 recyclable materials.

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

23 (viii) Options for municipal cooperation or
24 agreement for the collection, processing and sale of
25 recyclable materials.

26 (ix) A schedule for implementation of the recycling
27 program.

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

1 (xi) What consideration for the collection,
2 marketing and disposition of recyclable materials will be
3 accorded to persons engaged in the business of recycling
4 on the effective date of this act, whether or not the
5 persons are operating for profit.

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

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

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

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

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

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

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

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

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

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

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

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

29 (k) Orderly extension.--The plan shall provide for the
30 orderly extension of municipal waste management systems in a

1 manner that is consistent with the needs of the area and is also
2 consistent with any existing State, regional or local plans
3 affecting the development, use and protection of air, water,
4 land or other natural resources. The plan shall also take into
5 consideration planning, zoning, population estimates,
6 engineering and economics.

7 (l) Methods of disposal other than by contract.--If the
8 county proposes to require, by means other than contracts, that
9 municipal wastes generated within its boundaries be processed or
10 disposed at a designated facility, the plan shall so state. The
11 plan shall explain the basis for such a proposal, giving
12 consideration to alternative means of ensuring that waste
13 generated within the county's boundaries is processed or
14 disposed in an environmentally acceptable manner. A copy of the
15 proposed ordinance or other legal instrument that would
16 effectuate this proposal shall also be included.

17 (m) County ownership.--If the county proposes to own or
18 operate a municipal waste processing or disposal facility, the
19 plan shall so state. The plan shall also explain the basis for
20 such a proposal, giving consideration to the comparative costs
21 and benefits of private ownership and operation of municipal
22 waste processing or disposal facilities.

23 (n) Other information.--The plan shall include any other
24 information that the department may require.

25 (o) Noninterference with certain resource recovery
26 facilities and landfills.--

27 (1) Except as provided in section 303(a)(4), no county
28 municipal waste management plan shall interfere with any of
29 the following:

30 (i) The design, construction or operation of any

1 municipal waste processing, disposal or resource recovery
2 facility or the reasonable expansion of such facility or
3 municipal waste landfill that is part of a complete
4 municipal waste management plan submitted by a
5 municipality or organization of municipalities under the
6 Solid Waste Management Act prior to the effective date of
7 this act or the date such plan is undertaken, whichever
8 is the later, and for which a complete permit application
9 under the Solid Waste Management Act is submitted to the
10 department within one year of the effective date of this
11 act.

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

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

8 Section 503. Development of municipal waste management plans.

9 (a) Advisory committee.--Prior to preparing a plan or
10 substantial plan revisions for submission to the department in
11 accordance with the provisions of this act, the county shall
12 form an advisory committee, which shall include representatives
13 of all classes of municipalities within the county, citizen
14 organizations, industry, the private solid waste industry
15 operating within the county, the county recycling coordinator,
16 if one exists, and any other persons deemed appropriate by the
17 county. The advisory committee shall review the plan during its
18 preparation, make suggestions and propose any changes it
19 believes appropriate.

20 (b) Written notice.--The county shall provide written notice
21 to all municipalities within the county when plan development
22 begins and shall provide periodic written progress reports to
23 such municipalities concerning the preparation of the plan.

24 (c) Review and comment.--Prior to adoption by the governing
25 body of the county, the county shall submit copies of the
26 proposed plan for review and comment to the department, all
27 municipalities within the county, all areawide planning agencies
28 and the county health department, if one exists. The county
29 shall also make the proposed plan available for public review
30 and comment. The period for review and comment shall be 90 days.

1 The county shall hold at least one public hearing on the
2 proposed plan during this period. The plan subsequently
3 submitted to the governing body of the county for adoption shall
4 be accompanied by a document containing written responses to
5 comments made during the comment period.

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

19 (e) Statement of objections.--A municipality may not
20 disapprove of a proposed county plan unless the municipality's
21 resolution of disapproval contains a concise statement of its
22 objections to the plan. Each municipality disapproving a plan
23 shall immediately transmit a copy of its resolution of
24 disapproval to the county and the advisory committee. A
25 conditional approval shall be considered a disapproval.
26 Section 504. Failure to ratify plan.

27 (a) Submission.--If the plan is not ratified as provided in
28 section 503(d), the county shall meet with the advisory
29 committee to discuss the reasons that the plan was not ratified.
30 The advisory committee shall submit a recommendation concerning

1 a revised county plan to the county within 45 days after it
2 becomes apparent that the plan has failed to obtain
3 ratification. The advisory committee's recommendation shall
4 specifically address the objections stated by municipalities in
5 their resolutions of disapproval of the county plan.

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

20 (c) Statement of objections.--A municipality may not
21 disapprove of a proposed revised county plan unless the
22 municipality's resolution of disapproval contains a concise
23 statement of its objections to the plan. Each municipality shall
24 immediately transmit a copy of its resolution of disapproval to
25 the county.

26 (d) Failure to ratify revised plan.--If the plan is not
27 ratified as provided in subsection (b), the county shall submit
28 the revised plan to the department for approval. The revised
29 plan shall be submitted within ten days after it is apparent
30 that the plan has failed to obtain ratification and shall be

1 accompanied by the county's written response to the objections
2 stated by municipalities in the resolutions of disapproval.

3 Section 505. Review of municipal waste management plans.

4 (a) Departmental approval options.--Within 30 days after
5 receiving a complete plan, the department shall approve,
6 conditionally approve or disapprove it, unless the department
7 gives written notice that additional time is necessary to
8 complete its review. If the department gives such notice, it
9 shall have 30 additional days to render a decision.

10 (b) Minimum plan requirement.--The department shall approve
11 any county plan that demonstrates to the satisfaction of the
12 department that:

13 (1) The plan is complete and accurate.

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

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

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

22 (5) If the plan proposes that municipal waste generated
23 within the county's boundaries be required, by means other
24 than contracts, to be processed or disposed at a designated
25 facility, the plan explains the basis for doing so.

26 (6) If the plan proposes that the county own or operate
27 a municipal waste processing or disposal facility, the plan
28 explains the basis for doing so.

29 (c) Zoning powers unaffected.--Nothing in this act shall be
30 construed or understood to enlarge or diminish the authority of

1 municipalities to adopt ordinances pursuant to, or to exempt
2 persons acting under the authority of this act from the
3 provisions of the act of July 31, 1968 (P.L.805, No.247), known
4 as the Pennsylvania Municipalities Planning Code.

5 Section 506. Contracts.

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

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

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

25 Section 507. Relationship between plans and permits.

26 (a) Limitation on permit issuance.--After the date of
27 departmental approval of a county municipal waste management
28 plan under section 505, the department may not issue any new
29 permit, or any permit that results in additional capacity, for a
30 municipal waste landfill or resource recovery facility under the

1 act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste
2 Management Act, in the county unless the applicant demonstrates
3 to the department's satisfaction that the proposed facility:

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

5 (2) meets all of the following requirements:

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

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

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

16 (b) Exemption.--This section shall not impose any limitation
17 on the department's authority to issue a permit in a county
18 prior to the department's approval of a municipal waste
19 management plan for the county under this act.

20 Section 508. Studies.

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

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

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

30 (3) Potential opportunities to increase demand for and

1 use of materials generated by municipal recycling programs.

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

6 (5) Specific recommendations on markets for recycled
7 materials for each region of this Commonwealth.

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

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

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

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

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

1 developed since its completion.

2 Section 509. Best available technology.

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

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

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

23 Section 510. Permit requirements.

24 The department shall not issue any approval or permit for a
25 resource recovery facility under the act of July 7, 1980
26 (P.L.380, No.97), known as the Solid Waste Management Act,
27 unless the applicant has provided the department with adequate
28 documentation and assurances that all ash residue produced from
29 or by a resource recovery facility will be disposed at a
30 permitted landfill OR BY ANY OTHER METHOD APPROVED BY THE

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1 DEPARTMENT. Prior to the approval of any permit application for
2 a resource recovery facility, the operator shall submit a plan
3 to the department for the alternate disposal of municipal waste
4 designated for disposal at the resource recovery facility.

5 Section 511. Site limitation.

6 ~~(a) General rule.~~—No municipal waste landfill or resource <—
7 recovery facility shall be located within 300 yards of a park,
8 playground, cemetery or school. The department shall not issue a
9 permit to any operator of such a landfill or facility as defined
10 in this section. For purposes of this section, a municipal waste
11 landfill or resource recovery facility shall include the
12 processing, compacting, treatment, storage, off-loading,
13 transferring or in any other way dealing with municipal waste.

14 ~~(b) Counties of the first class. No new incinerators, trash <—
15 to steam facilities or mass burn facilities shall be constructed
16 in any city of the first class.~~

17 Section 512. Issuance of permits.

18 (a) General rule.--The department shall review and approve
19 or disapprove all applications for permits, permit modifications
20 and other determinations under the Solid Waste Management Act
21 within 90 days of the time the department determines that an
22 application for action is reasonably complete. The department
23 shall make a determination regarding whether an application is
24 reasonably complete within 45 days of the filing of an
25 application with the department and shall identify all areas in
26 which an application is incomplete when issuing a notice of
27 deficiency. The department shall review any amended application
28 filed in response to a notice of deficiency within 30 days of
29 the filing of the amended application with the department.

30 Nothing in this section shall prohibit the department and the

1 applicant from the agreeing to extend any deadline for action
2 provided by this section. Nothing in this section shall prohibit
3 the department from requesting and accepting supplemental
4 information, explanations and clarifications regarding the
5 content of an application prior to the deadline for department
6 action.

7 (b) Conditions.--Except as necessary to avoid an imminent
8 threat to the public health, safety or the environment, the
9 department shall not impose or modify conditions upon a permit
10 issued or impose or modify conditions upon operations or other
11 activities conducted under the Solid Waste Management Act
12 without prior notice to the applicant or permittee and affording
13 the applicant or permittee an opportunity to comment upon the
14 proposed conditions. The department shall review comments
15 submitted in response to the proposed conditions and either
16 amend the conditions or explain in writing the department's
17 response to comments received from the applicant or permittee.

18 CHAPTER 7

19 RECYCLING FEE

20 Section 701. Recycling fee for municipal waste landfills and
21 resource recovery facilities.

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

29 (b) Alternative calculation.--The fee for operators of
30 municipal waste landfills and resource recovery facilities that

1 do not weigh solid waste when it is received shall be calculated
2 as if three cubic yards were equal to one ton of solid waste.

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

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

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

19 (a) Quarterly payments.--Each operator of a municipal waste
20 landfill and resource recovery facility shall make the recycling
21 fee payment quarterly. The fee shall be paid on or before the
22 20th day of April, July, October and January for the three
23 months ending the last day of March, June, September and
24 December.

25 (b) Quarterly reports.--Each recycling fee payment shall be
26 accompanied by a form prepared and furnished by the department
27 and completed by the operator. The form shall state the total
28 weight or volume of solid waste received by the facility during
29 the payment period and provide any other aggregate information
30 deemed necessary by the department to carry out the purposes of

1 this act. The form shall be signed by the operator.

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

5 (1) The enclosed payment is for the full amount owed
6 pursuant to this section and no further departmental action
7 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 department is postmarked by the United States Postal
12 Service on or prior to the final day on which the payment is
13 to be received.

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

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

28 (f) Alternative proof of payment.--For purposes of this
29 section, presentation of a receipt indicating that the payment
30 was mailed by registered or certified mail on or before the due

1 date shall be evidence of timely payment.

2 Section 703. Collection and enforcement of fee.

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

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

17 (c) Assessment notices.--

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

26 (2) The operator charged with the deficiency shall have
27 30 days to pay the deficiency in full or, if the operator
28 wishes to contest the deficiency, forward the amount of the
29 deficiency to the department for placement in an escrow
30 account with the State Treasurer or any Pennsylvania bank, or

1 post an appeal bond in the amount of the deficiency. Such
2 bond shall be executed by a surety licensed to do business in
3 this Commonwealth and be satisfactory to the department.
4 Failure to forward the money or the appeal bond to the
5 department within 30 days shall result in a waiver of all
6 legal rights to contest the deficiency.

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

12 (4) The amount determined after administrative hearing
13 or after waiver of administrative hearing shall be payable to
14 the Commonwealth and shall be collectible in the manner
15 provided in section 1709.

16 (5) Any other provision of law to the contrary
17 notwithstanding, there shall be a statute of limitations of
18 five years upon actions brought by the Commonwealth pursuant
19 to this section.

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

24 (d) Filing of appeals.--Notwithstanding any other provision
25 of law, all appeals of final department actions concerning the
26 resource recovery fee, including, but not limited to, petitions
27 for refunds, shall be filed with the Environmental Hearing
28 Board.

29 (e) Constructive trust.--All recycling fees collected by an
30 operator and held by such operator prior to payment to the

1 department shall constitute a trust fund for the Commonwealth,
2 and such trust shall be enforceable against such operator, its
3 representatives and any person receiving any part of such fund
4 without consideration or with knowledge that the operator is
5 committing a breach of the trust. However, any person receiving
6 payment of lawful obligation of the operator from such fund
7 shall be presumed to have received the same in good faith and
8 without any knowledge of the breach of trust.

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

12 Section 704. Records.

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

21 Section 705. Surcharge.

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

1 transportation of solid waste to the facility. The surcharge
2 shall be equal to the increase in disposal fees at the facility
3 attributable to the recycling fee. However, interest and
4 penalties on the fee under section 703(a) and (b) may not be
5 collected as a surcharge.

6 Section 706. Recycling Fund.

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

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

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

20 (1) At least 70% shall be expended by the department for
21 grants to municipalities for the development and
22 implementation of recycling programs as set forth in section
23 902, recycling coordinators as provided in section 903, and
24 market development and waste reduction studies as set forth
25 in section 508; for implementation of the recommendations in
26 the studies required by section 508; and for research
27 conducted or funded by the Department of Transportation
28 pursuant to section 1505.

29 (2) Up to 10% may be expended by the department for
30 grants for feasibility studies for municipal waste processing

1 and disposal facilities, except for facilities for the
2 combustion of municipal waste that are not proposed to be
3 operated for the recovery of energy as set forth in section
4 901.

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

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

15 (d) Additional funding.--There is hereby appropriated to the
16 department from the General Fund the amount necessary to assure
17 payment of grants under section 902(a) provided the amount shall
18 not exceed 35% of the total amount of all grants awarded under
19 section 902(a).

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

30 (f) Advisory committee.--The secretary shall establish a

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

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

19 CHAPTER 9

20 GRANTS

21 Section 901. Planning grants.

22 The department may, upon application from a county, award
23 grants for the cost of preparing municipal waste management
24 plans in accordance with this act; for carrying out related
25 studies, surveys, investigations, inquiries, research and
26 analyses, including those related by siting; and for
27 environmental mediation. The department may also award grants
28 under this section for feasibility studies and project
29 development for municipal waste processing or disposal
30 facilities, except for facilities for the combustion of

1 municipal waste that are not proposed to be operated for the
2 recovery of energy. The application shall be made on a form
3 prepared and furnished by the department. The application shall
4 contain such information as the department deems necessary to
5 carry out the provisions and purposes of this act. The grant to
6 any county under this section shall be 50% of the approved cost
7 of such plans and studies.

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

10 (a) Authorization.--The department may award grants for
11 development and implementation of municipal recycling programs,
12 upon application from any municipality. The grant provided by
13 this section may be used to identify markets, develop a public
14 education campaign, purchase collection and storage equipment,
15 and do other things necessary to establish a municipal recycling
16 program. The grant may be used to purchase collection equipment,
17 only to the extent needed for collection of recyclable
18 materials, and mechanical processing equipment, only to the
19 extent that such equipment is not available to the program in
20 the private sector. The application shall be made on a form
21 prepared and furnished by the department. The application shall
22 explain the structure and operation of the program and shall
23 contain such other information as the department deems necessary
24 to carry out the provisions and purposes of this act. The grant
25 under this section to a municipality required by section 1501 to
26 implement a recycling program shall be 80% of the approved cost
27 of establishing a municipal recycling program. The grant under
28 this section to a municipality not required by section 1501 to
29 implement a recycling program shall be 80% of the approved cost
30 of establishing a municipal recycling program. In addition to

1 the grant under this section to a financially distressed
2 municipality that is required by section 1501 to implement a
3 recycling program shall be 20% of the approved cost of
4 establishing a municipal recycling program from grants
5 authorized under section 203(f) of the act of July 10, 1987
6 (P.L.246, No.47), known as the Financial Distressed
7 Municipalities Act.

8 (b) Prerequisites.--The department shall not award any grant
9 under this section unless 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.--Each municipality, other than a county, which
12 establishes and implements a mandatory source separation and
13 collection program for recyclable materials shall be given the
14 same priority with municipalities subject to the requirements of
15 section 1501 for grants under this section.
16 Section 903. Grants for recycling coordinators.

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

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

30 (a) Content of application.--Each grant application under

1 this chapter shall include provisions for an independent
2 performance audit, which shall be completed within six months
3 after all reimbursable work under the grant has been completed.

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

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

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

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

27 CHAPTER 11

28 ASSISTANCE TO MUNICIPALITIES

29 Section 1101. Information provided to host municipalities.

30 (a) Departmental information.--The department will provide

1 all of the following information to the governing body of host
2 municipalities for municipal waste landfills and resource
3 recovery facilities:

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

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

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

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

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

29 (d) Information to county.--If the host municipality owns or
30 operates the municipal waste landfill or resource recovery

1 facility, or proposes to own or operate such landfill or
2 facility, the information required by this section shall be
3 provided to the county within which the landfill or facility is
4 located or proposed to be located instead of the host
5 municipality.

6 Section 1102. Joint inspections with host municipalities.

7 (a) Training of inspectors.--

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

18 (2) Certified municipal inspectors are authorized to
19 enter property, inspect only those records required by the
20 department, take samples and conduct inspections. However,
21 certified municipal inspectors may not issue orders.

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

26 (b) Departmental information.--

27 (1) Whenever any host municipality presents information
28 to the department which gives the department reason to
29 believe that any municipal waste landfill or resource
30 recovery facility is in violation of any requirement of the

1 act of June 22, 1937 (P.L.1987, No.394), known as The Clean
2 Streams Law, the act of January 8, 1960 (1959 P.L.2119,
3 No.787), known as the Air Pollution Control Act, the act of
4 November 26, 1978 (P.L.1375, No.325), known as the Dam Safety
5 and Encroachments Act, and the Solid Waste Management Act,
6 any regulation promulgated pursuant thereto, or the condition
7 of any permit issued pursuant thereto, the department will
8 promptly conduct an inspection of such facility.

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

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

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

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

29 Section 1103. Water supply testing for contiguous landowners.

30 (a) Required water sampling.--Upon written request from

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

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

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

26 (d) Written notice of rights.--On or before 60 days from the
27 effective date of this act for permits issued under the Solid
28 Waste Management Act prior to the effective date of this act,
29 and at or before the time of permit issuance for permits issued
30 under the Solid Waste Management Act after the effective date of

1 this act, the operator of each municipal waste landfill shall
2 provide contiguous landowners with written notice of their
3 rights under this section on a form prepared by the department.
4 Section 1104. Water supply protection.

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

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

28 (c) Rebuttable presumption.--Unless rebutted by one of the
29 four defenses established in subsection (d), it shall be
30 presumed that the owner or operator of a municipal waste

1 landfill is responsible for the pollution, contamination or
2 diminution of a public or private water supply that is within
3 one-quarter mile of the perimeter of the area where solid waste
4 disposal activities have been carried out.

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

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

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

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

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

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

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

1 Section 1105. Purchase of cogenerated electricity.

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

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

20 Section 1106. Public Utility Commission.

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

1 appropriate under the circumstances.

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

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

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

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

28 (c) Status as public utility.--A resource recovery facility
29 shall not be deemed a public utility, as such is defined in 66
30 Pa.C.S. § 101 et seq., if such facility produces thermal energy

1 for sale to a public utility and/or ten or less retail
2 customers, all of whom agree to purchase from such facility
3 under mutually agreed upon terms, or if such facility produces
4 thermal energy for sale to any number of retail customers, all
5 of which are located on the same site or site contiguous to that
6 of the selling facility.

7 (d) Effect of section.--The provisions of this section shall
8 take effect notwithstanding the adoption or failure to adopt any
9 regulations by the Public Utility Commission regarding the
10 purchase of electric energy from qualifying facilities, as such
11 term is defined in section 210 of the Federal Public Utility
12 Regulatory Policies Act of 1978 (Public Law 95-617, 92 Stat.
13 3117) regulations and commission regulations.

14 Section 1107. Claims resulting from pollution occurrences.

15 (a) Financial responsibility.--

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

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

5 (i) A commercial pollution liability insurance
6 policy.

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

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

13 (b) Municipal financial responsibility.--

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

30 (2) The form and amount of such financial assurances

1 shall be specified by the department. The required financial
2 assurances may include, but are not limited to, the
3 following:

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

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

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

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

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

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

30 (a) Establishment by county.--Each county shall establish an

1 interest-bearing trust with an accredited financial institution
2 for every municipal waste landfill that is operating within its
3 boundaries. This trust shall be established within 60 days of
4 the effective date of this act for landfills permitted by the
5 department prior to the effective date of this act. The trust
6 shall be established prior to the operation of any landfill
7 permitted by the department after the effective date of this
8 act.

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

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

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

30 (e) Trust agreement.--The provisions of the trust agreement

1 shall be consistent with the requirements of this section and
2 shall be provided by the operator of the landfill on a form
3 prepared and approved by the department. The trust agreement
4 shall be accompanied by a formal certification of
5 acknowledgment.

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

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

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

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

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

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

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

21 Section 1109. Trust fund for municipally operated landfills.

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

1 effective date of this act.

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

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

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

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

30 (f) Trust agreement.--The provisions of the trust agreement

1 shall be consistent with the requirements of this section and
2 shall be provided by the municipality or municipal authority on
3 a form prepared and approved by the department. The trust
4 agreement shall be accompanied by a formal certification of
5 acknowledgment.

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

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

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

30 (j) Surplus.--Except for trusts that have been abandoned as

1 provided in subsection (h), any moneys remaining in a trust
2 subsequent to final closure of a landfill under the Solid Waste
3 Management Act and the regulations promulgated pursuant thereto
4 shall, upon certification of final closure by the department, be
5 returned to the municipality or municipal authority.

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

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

15 Section 1110. Independent evaluation of permit applications.

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 at least three materials
29 deemed appropriate by the municipality from other
30 municipal waste generated at their homes, apartments and

1 other residential establishments and to store such
2 material until collection. The three materials shall be
3 chosen from the following: clear glass, colored glass,
4 aluminum, steel and bimetallic cans, high-grade office
5 paper, newsprint, corrugated paper and plastics.

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

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

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

30 (3) A system, including trucks and related equipment,

1 that collects recyclable materials from the curbside or
2 similar locations at least once per month from each residence
3 or other person generating municipal waste in the county or
4 municipality.

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

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

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

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

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

1 this act, whether or not the persons were operating for profit.

2 Section 1502. Facilities operation and recycling.

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

7 (b) Drop-off centers.--

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

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

29 Section 1503. Commonwealth recycling and waste reduction.

30 (a) Recycling.--Within two years after the effective date of

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

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

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

23 Section 1504. Procurement by Department of General Services.

24 (a) Review of policies.--

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

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

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

20 (b) Bidding.--

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

29 (2) The Department of General Services shall, in issuing
30 an invitation for bids, require that all bidders who seek to

1 qualify for the preference set forth in subsection (c)
2 certify that the products or materials that are the subject
3 of the bid contain a minimum percentage of recycled content
4 that is set forth in the invitation for bids.

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

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

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

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

1 effective date of this act.

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

6 Section 1505. Procurement by Department of Transportation.

7 (a) Review of policies.--

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

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

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

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

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

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

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

1 furnished by the Department of Transportation and shall contain
2 the information the Department of Transportation deems
3 necessary.

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

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

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

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

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

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

1 products or materials that may be recycled or reused when
2 these products are discarded.

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

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

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

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

28 (2) Upon evaluation of bids opened for a public
29 contract, the agency shall identify the lowest responsible
30 bidder. Where there is a tie for lowest responsible bidder,

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

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

10 Section 1507. Recycling at educational institutions.

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

25 CHAPTER 17

26 ENFORCEMENT AND REMEDIES

27 Section 1701. Unlawful conduct.

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

30 (1) Violate, or cause or assist in the violation of, any

1 provision of this act, any regulation promulgated hereunder,
2 any order issued hereunder, or the terms or conditions of any
3 municipal waste management plan approved by the department
4 under this act.

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

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

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

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

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

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

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

30 (9) Fail to make any payment to the site-specific

1 postclosure fund or the trust fund for municipally operated
2 landfills in accordance with the provisions of this act.

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

5 Section 1702. Enforcement orders.

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

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

27 Section 1703. Restraining violations.

28 (a) Injunctions.--In addition to any other remedies provided
29 in this act, the department may institute a suit in equity in
30 the name of the Commonwealth where unlawful conduct or public

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

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

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

28 (d) Venue.--Actions instituted under this section may be
29 filed in the appropriate court of common pleas or in the
30 Commonwealth Court, which courts are hereby granted jurisdiction

1 to hear such actions.

2 Section 1704. Civil penalties.

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

19 (b) Escrow.--When the department assesses a civil penalty,
20 it shall inform the person of the amount of the penalty. The
21 person charged with the penalty shall then have 30 days to pay
22 the penalty in full or, if the person wishes to contest either
23 the amount of the penalty or the fact of the violation, either
24 to forward the proposed amount to the department for placement
25 in an escrow account with the State Treasurer or with a bank in
26 this Commonwealth or to post an appeal bond in the amount of the
27 penalty. The bond must be executed by a surety licensed to do
28 business in this Commonwealth and must be satisfactory to the
29 department. If, through administrative or judicial review of the
30 proposed penalty, it is determined that no violation occurred or

1 that the amount of the penalty shall be reduced, the department
2 shall, within 30 days, remit the appropriate amount to the
3 person, with an interest accumulated by the escrow deposit.
4 Failure to forward the money or the appeal bond to the
5 department within 30 days shall result in a waiver of all legal
6 rights to contest the violation or the amount of the penalty.

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

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

18 Section 1705. Criminal penalties.

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

28 (b) Misdemeanor offense.--Any person, other than a municipal
29 official exercising his official duties, who violates any
30 provision of this act, any regulation promulgated hereunder, any

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

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

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

23 Section 1706. Existing rights and remedies preserved;
24 cumulative remedies authorized.

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

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

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

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

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

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

28 (3) Have the authority to enter any building, property,
29 premises or place where solid waste is generated, stored,
30 processed, treated or disposed of for the purposes of making

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

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

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

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

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

28 Section 1708. Withholding of State funds.

29 In addition to any other penalties provided in this act, the
30 department may notify the State Treasurer to withhold payment of

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

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

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

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

29 Any citizen of this Commonwealth having an interest which is
30 or may be adversely affected shall have the right on his own

1 behalf, without posting bond, to intervene in any action brought
2 pursuant to section 1703 or 1704.

3 Section 1711. Remedies of citizens.

4 (a) Commencement of civil action.--Except as provided in
5 subsection (b), any person having an interest which is or may be
6 adversely affected may commence a civil suit on his own behalf
7 to compel compliance with this act, or any rule or regulation
8 promulgated hereunder, against any municipality where the
9 municipality fails to comply with the provisions of this act or
10 against the department where there is alleged a failure of the
11 department to perform any act which is not discretionary with
12 the department.

13 (b) Notice.--No action pursuant to this section may be
14 commenced prior to 60 days after the plaintiff has given notice,
15 in writing, notifying the department of the section of this act
16 or the rule or regulation for which compliance is sought. In
17 addition, no such action may be commenced if the department has
18 commenced and is diligently proceeding with performance of the
19 required nondiscretionary act.

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

1 of right.

2 Section 1712. Affirmative defense.

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

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

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

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

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

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

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

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

1 Section 1713. Public information.

2 (a) General rule.--Except as provided in subsection (b),
3 records, reports or other information obtained under this act
4 shall be available to the public for inspection or copying
5 during regular business hours.

6 (b) Confidentiality.--The department may, upon request,
7 designate records, reports or information as confidential when
8 the person providing the information demonstrates all of the
9 following:

10 (1) The information contains the trade secrets,
11 processes, operations, style of work or apparatus of a person
12 or is otherwise confidential business information.

13 (2) The information does not relate to public health,
14 safety, welfare, or the environment.

15 (c) Separation of information.--When submitting information
16 under this act, a person shall designate the information which
17 the person believes is confidential or shall submit that
18 information separately from other information being submitted.

19 CHAPTER 19

20 MISCELLANEOUS PROVISIONS

21 Section 1901. Severability.

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

27 Section 1902. Repeals.

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

1 Management Act, are repealed.

2 (b) Inconsistent repeals.--Except as provided in section
3 501(b) of this act, the first through fourth sentences of
4 section 201(b) and section 201(c), (d) and (e) of the act of
5 July 7, 1980 (P.L.380, No.97), known as the Solid Waste
6 Management Act, are repealed insofar as they are inconsistent
7 with this act.

8 Section 1903. Effective date.

9 This act shall take effect in 60 days.