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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 528**      Session of  
1987

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**Report of the Committee of Conference**

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To the Members of the Senate and House of Representatives:

We, the undersigned, Committee of Conference on the part of the Senate and House of Representatives for the purpose of considering Senate Bill No. 528, entitled:

"An act providing for planning for the processing and disposal of municipal waste; requiring counties to submit plans for municipal waste management systems within their boundaries; authorizing grants to counties and municipalities for planning, resource recovery and recycling; \* \* \* PROVIDING TAX CREDITS FOR TAXPAYERS WHO PURCHASE AND INSTALL RECYCLING EQUIPMENT; \* \* \* authorizing the Department of Environmental Resources to implement this act; providing remedies; prescribing penalties; establishing a fund; and making repeals,"

respectfully submit the following bill as our report:

D. MICHAEL FISHER

JAMES C. GREENWOOD

RAPHAEL J. MUSTO

(Committee on the part of the Senate.)

ROBERT W. O'DONNELL

CAMILLE GEORGE

GEORGE C. HASAY

(Committee on the part of the House of Representatives.)

AN ACT

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

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

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

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

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

1 combustion efficiency, thereby resulting in significant cost  
2 savings in the planning, construction and operation of these  
3 facilities.

4 (14) It is in the public interest to promote the source  
5 separation of marketable materials on a Statewide basis so  
6 that reusable materials may be returned to the economic  
7 mainstream in the form of raw materials or products rather  
8 than be disposed of or processed at the Commonwealth's  
9 overburdened municipal waste processing or disposal  
10 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 local processing or disposal of municipal waste saves energy  
23 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 (21) Uncontrolled increases in the daily volumes of  
11 solid waste received at municipal waste landfills have  
12 significantly decreased their remaining lifetimes, disrupting  
13 the municipal waste planning process and the ability of  
14 municipalities relying on the landfills to continue using  
15 them. These increases have threatened to significantly and  
16 adversely affect public health and safety when municipalities  
17 find they can no longer use the facilities. Uncontrolled  
18 increases in daily waste volumes can also cause increased  
19 noise, odors, truck traffic and other significant adverse  
20 effects on the environment as well as on public health and  
21 safety.

22 (22) By purchasing, processing and marketing obsolete  
23 and other materials which would otherwise have been managed  
24 as municipal or residual waste, the Commonwealth's existing  
25 for-profit scrap processing and recycling industry has been  
26 and remains essential to the efficient and effective  
27 management of solid waste.

28 (23) In carrying out their powers and duties under this  
29 act, counties and other municipalities should:

30 (i) Ensure that the ability of the scrap processing

1 and recycling industry to continue purchasing, processing  
2 and marketing recoverable materials is not thereby  
3 impaired.

4 (ii) Utilize to the fullest extent practicable all  
5 available facilities and expertise within the scrap  
6 processing and recycling industry for processing and  
7 marketing recyclable materials from municipal waste.

8 (24) Vehicle batteries are particularly difficult to  
9 dispose of and potentially harmful if improperly disposed of,  
10 and that it is necessary to control disposal and promote  
11 recycling of such batteries.

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

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

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

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

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

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

29 (6) Establish a recycling fee for municipal waste  
30 landfills and resource recovery facilities to provide grants

1 for recycling, planning and related purposes.

2 (7) Establish a host municipality benefit fee for  
3 municipal waste landfills and resource recovery facilities  
4 that are permitted on or after the effective date of this act  
5 and to provide benefits to host municipalities for the  
6 presence of such facilities.

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

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

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

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

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

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

29 (14) Strengthen the department's existing authority to  
30 regulate daily waste volumes that may be received at a

1 municipal waste landfill to protect against the unexpected or  
2 unplanned loss of facilities and to ensure that the  
3 facilities operate in a manner that protects the environment  
4 as well as public health and safety.

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

7 (1) At least 25% of all municipal waste and source-  
8 separated recyclable materials generated in this Commonwealth  
9 on and after January 1, 1997, should be recycled.

10 (2) The weight or volume of municipal waste generated  
11 per capita in this Commonwealth on January 1, 1997, should,  
12 to the greatest extent practicable, be less than the weight  
13 or volume of municipal waste generated per capita on the  
14 effective date of this act.

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

19 (4) The Commonwealth should, to the greatest extent  
20 practicable, procure and use products and materials with  
21 recycled content, and procure and use materials that are  
22 recyclable.

23 Section 103. Definitions.

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

27 "Abatement." The restoration, reclamation, recovery, etc.,  
28 of a natural resource adversely affected by the activity of a  
29 person.

30 "Average daily volume." The mean daily volume received at a

1 facility taking into account weather, seasonal variations,  
2 scheduled community cleanup days and other factors.

3 "Commission." The Pennsylvania Public Utility Commission and  
4 its authorized representatives.

5 "Commonwealth agency." The Commonwealth and its departments,  
6 boards, commissions and agencies, Commonwealth owned  
7 universities, and the State Public School Building Authority,  
8 the State Highway and Bridge Authority, and any other authority  
9 now in existence or hereafter created or organized by the  
10 Commonwealth.

11 "Degradable plastic beverage carrier." Plastic beverage  
12 carriers that degrade by biological processes, photodegradation,  
13 chemodegradation or degradation by other natural processes. The  
14 degradation process does not produce or result in a residue or  
15 by-product considered to be hazardous waste.

16 "Department." The Department of Environmental Resources of  
17 the Commonwealth and its authorized representatives.

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

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

30 "Host municipality." The municipality other than the county

1 within which a municipal waste landfill or resource recovery  
2 facility is located or is proposed to be located.

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

6 "Local public agency."

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

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

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

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

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

1 treatment plants.

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

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

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

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

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

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

6 "Plastic beverage carrier." Plastic rings or similar plastic  
7 connectors used as holding devices in the packaging of  
8 beverages, including, but not limited to, all carbonated  
9 beverages, liquors, wines, fruit juices, mineral waters, soda  
10 and beer.

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

19 "Postconsumer material." Any product generated by a business  
20 or consumer which has served its intended end use, and which has  
21 been separated or diverted from solid waste for the purposes of  
22 collection, recycling, and disposition. The term includes  
23 industrial byproducts that would otherwise go to disposal or  
24 processing facilities. The term does not include internally  
25 generated scrap that is commonly returned to industrial or  
26 manufacturing processes.

27 "Processing." Any technology used for the purpose of  
28 reducing the volume or bulk of municipal waste or any technology  
29 used to convert part or all of such waste materials for offsite  
30 reuse. Processing facilities include, but are not limited to,



1 transfer facilities, composting facilities and resource recovery  
2 facilities.

3 "Project development." Those activities required to be  
4 conducted prior to constructing a processing or disposal  
5 facility that has been shown to be feasible, including, but not  
6 limited to, public input and participation, siting, procurement  
7 and vendor contract negotiations, and market and municipal waste  
8 supply assurance negotiations.

9 "Public agency." Any Commonwealth agency or local public  
10 agency.

11 "Reasonable expansion." The growth of an existing permitted  
12 municipal waste landfill to land which is contiguous to the  
13 existing municipal waste landfill which contiguous land is owned  
14 in fee by the owner of the municipal waste landfill or which  
15 land is subject to an irrevocable option exercisable within one  
16 year in favor of the owner of the municipal waste landfill on  
17 the date that written notice of the development of a plan or a  
18 plan revision pursuant to section 503(b) and which contiguous  
19 land contains the same geological features which are present at  
20 the existing municipal waste landfill and for which a permit  
21 application under the Solid Waste Management Act is filed within  
22 one year of such notice.

23 "Recycled content." Goods, supplies, equipment, materials  
24 and printing containing postconsumer materials.

25 "Recycling." The collection, separation, recovery and sale  
26 or reuse of metals, glass, paper, leaf waste, plastics and other  
27 materials which would otherwise be disposed or processed as  
28 municipal waste or the mechanized separation and treatment of  
29 municipal waste (other than through combustion) and creation and  
30 recovery of reuseable materials other than a fuel for the

1 operation of energy.

2 "Recycling facility." A facility employing a technology that  
3 is a process that separates or classifies municipal waste and  
4 creates or recovers reuseable materials that can be sold to or  
5 reused by a manufacturer as a substitute for or a supplement to  
6 virgin raw materials. The term "recycling facility" shall not  
7 mean transfer stations or landfills for solid waste nor  
8 composting facilities or resource recovery facilities.

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

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

23 "Residual waste." Any garbage, refuse, other discarded  
24 material or other waste, including solid, liquid, semisolid or  
25 contained gaseous materials resulting from industrial, mining  
26 and agricultural operations and any sludge from an industrial,  
27 mining or agricultural water supply treatment facility, waste  
28 water treatment facility or air pollution control facility,  
29 provided that it is not hazardous. The term shall not include  
30 coal refuse as defined in the act of September 24, 1968

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

7 "Resource recovery facility." A processing facility that  
8 provides for the extraction and utilization of materials or  
9 energy from municipal waste that is generated off-site,  
10 including, but not limited to, a facility that mechanically  
11 extracts materials from municipal waste, a combustion facility  
12 that converts the organic fraction of municipal waste to usable  
13 energy, and any chemical and biological process that converts  
14 municipal waste into a fuel product. The term also includes any  
15 facility for the combustion of municipal waste that is generated  
16 off-site, whether or not the facility is operated to recover  
17 energy. The term does not include:

18 (1) Any composting facility.

19 (2) Methane gas extraction from a municipal waste  
20 landfill.

21 (3) Any separation and collection center, drop-off point  
22 or collection center for recycling, or any source separation  
23 or collection center for composting leaf waste.

24 (4) Any facility, including all units in the facility,  
25 with a total processing capacity of less than 50 tons per  
26 day.

27 "Secretary." The Secretary of Environmental Resources of the  
28 Commonwealth.

29 "Solid waste." Solid waste, as defined in the act of July 7,  
30 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

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

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

5 "Source-separated recyclable materials." Materials that are  
6 separated from municipal waste at the point of origin for the  
7 purpose of recycling.

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

14 "Transportation." The offsite removal of any municipal waste  
15 at any time after generation.

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

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

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

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

1 Section 104. Construction of act.

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

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

7 CHAPTER 3

8 POWERS AND DUTIES

9 Section 301. Powers and duties of department.

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

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

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

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

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

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

29 (6) Approve, conditionally approve or disapprove  
30 municipal waste management plans, issue orders, conduct

1 inspections and abate public nuisances to implement the  
2 provisions and purposes of this act and the regulations  
3 promulgated pursuant to this act.

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

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

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

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

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

27 (12) Take any action not inconsistent with this act that  
28 the department may deem necessary or proper to collect the  
29 recycling fee provided by this act, to ensure the payment of  
30 the host municipality benefit fee, and to ensure the payment

1 of the site-specific postclosure fee and moneys for the trust  
2 fund for municipally operated landfills provided by this act.

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

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

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

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

22 (iii) Coordinating recycling and waste reduction  
23 efforts among Commonwealth agencies.

24 (iv) Providing financial and other assistance to  
25 municipalities that are required by section 1501 to  
26 implement recycling programs.

27 (v) Providing information about potential recycling  
28 markets to municipalities and other interested persons.

29 (15) Do any and all other acts and things, not  
30 inconsistent with any provision of this act, which it may

1       deem necessary or proper for the effective enforcement of  
2       this act and the regulations promulgated pursuant thereto  
3       after consulting with the Department of Health regarding  
4       matters of public health significance.

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

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

10 Section 303. Powers and duties of counties.

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

16           (1) May require all persons to obtain licenses to  
17       collect and transport municipal waste subject to the plan to  
18       a municipal waste processing or disposal facility designated  
19       pursuant to subsection (e).

20           (2) Shall have the power and duty to implement its  
21       approved plan, including a plan approved under section  
22       501(b), as it relates to the processing and disposal of  
23       municipal waste generated within its boundaries.

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

28           (4) May adopt ordinances, resolutions, regulations and  
29       standards for the recycling of municipal waste or source-  
30       separated recyclable material if one of the following



1 requirements are met:

2 (i) Such ordinances, resolutions, regulations or  
3 standards are set forth in the approved plan, and do not  
4 interfere with the implementation of any municipal  
5 recycling program under section 1501.

6 (ii) Such ordinances, resolutions, regulations or  
7 standards are necessary to implement a municipal  
8 recycling program under section 1501 which the  
9 municipality has delegated to the county pursuant to  
10 section 304.

11 (5) May prohibit the siting of additional resource  
12 recovery facilities within its geographic boundaries where  
13 any additional resource recovery facility is inconsistent  
14 with the county plan pursuant to section 501(b) unless such  
15 facilities meet the criteria of section 502(c)(2) and  
16 (o)(1)(iii).

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

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

28 (d) Delegation of county responsibility.--A county may enter  
29 into a written agreement with another person pursuant to which  
30 the person undertakes to fulfill some or all of the county's

1 responsibilities under this act for municipal waste planning and  
2 implementation of the approved county plan. Any such person  
3 shall be jointly and severally responsible with the county for  
4 municipal waste planning and implementation of the approved  
5 county plan in accordance with this act and the regulations  
6 promulgated pursuant thereto.

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

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

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

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

1 Section 304. Powers and duties of municipalities other than  
2 counties.

3 (a) Responsibility of other municipalities.--Each  
4 municipality other than a county shall have the power and its  
5 duty shall be to assure the proper and adequate transportation,  
6 collection and storage of municipal waste which is generated or  
7 present within its boundaries, to assure adequate capacity for  
8 the disposal of municipal waste generated within its boundaries  
9 by means of the procedure set forth in section 1111, and to  
10 adopt and implement programs for the collection and recycling of  
11 municipal waste or source-separated recyclable materials as  
12 provided in this act.

13 (b) Ordinances.--

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

23 (2) The host municipality shall have the authority to  
24 adopt reasonable ordinances concerning the hours and days  
25 during which vehicles may deliver waste to the facility and  
26 the routing of traffic on public roads to the facility. Such  
27 ordinances may be in addition to, but not less stringent  
28 than, not inconsistent with and not in violation of, any  
29 provision of the Solid Waste Management Act, any regulation  
30 promulgated pursuant to that act, any order issued under that

1 act, or any permit issued pursuant to that act. Such  
2 ordinances found to be inconsistent and not in substantial  
3 conformity with this paragraph shall be superseded. Appeals  
4 under this paragraph may be brought before a court of  
5 competent jurisdiction.

6 (c) Contracting of responsibility.--A municipality other  
7 than a county may contract with any person to carry out its  
8 duties for the recycling, transportation, collection and storage  
9 of municipal waste and source-separated recyclable materials, if  
10 the recycling, transportation, collection or storage activity or  
11 facility is conducted or operated in a manner that is consistent  
12 with the Solid Waste Management Act, this act and the  
13 regulations promulgated pursuant thereto. Any such person shall  
14 be jointly and severally responsible with the municipality other  
15 than a county when carrying out its duties for transportation,  
16 collection or storage activity or facility.

17 (d) Designated sites.--A municipality other than a county  
18 may require by ordinance that all municipal waste generated  
19 within its jurisdiction shall be disposed of or processed at a  
20 designated permitted facility. Such ordinance shall include an  
21 ordinance that is part of a plan approved under section 501(b).  
22 Such ordinance shall remain in effect until the county in which  
23 the municipality is located adopts a waste flow control  
24 ordinance as part of a plan submitted to the department pursuant  
25 to section 501(a) or (c) and approved by the department. Except  
26 as provided in section 502(o), any such county ordinance shall  
27 supersede any such municipal ordinance to the extent that the  
28 municipal ordinance is inconsistent with the county ordinance.

29 (e) Term and renewals of certain contracts.--The governing  
30 body of a municipality other than a county shall have the power

1 to, and may, enter into contracts having an initial term of five  
2 years with optional renewal periods of up to five years with  
3 persons responsible for the collection or transportation of  
4 municipal waste generated within the municipality. The  
5 limitations imposed on contracts by section 1502(XXVII) of the  
6 act of June 24, 1931 (P.L.1206, No.331), known as The First  
7 Class Township Code, and section 702 (VIII) of the act of May 1,  
8 1933 (P.L.103, No.69), known as The Second Class Township Code,  
9 shall not apply to contracts entered into pursuant to this act.  
10 Nothing in this act shall impair municipalities, other than  
11 counties, from entering into disposal contracts under section  
12 502(o).

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

## 19 CHAPTER 5

### 20 MUNICIPAL WASTE PLANNING

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

23 (a) Submission of plan.--Except as provided in subsections  
24 (b) and (c), each county shall submit to the department within  
25 two and one-half years of the effective date of this act an  
26 officially adopted municipal waste management plan for municipal  
27 waste generated within its boundaries. Such plan shall be  
28 consistent with the requirements of this act. For the purposes  
29 of this chapter, the term "county" includes cities of the first  
30 class but does not include counties of the first class.

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

5 (1) The department has granted technical or preliminary  
6 approval of such plan under 25 Pa. Code §§ 75.11 through  
7 75.13 within 90 days after the submission of the plan.

8 (2) More than one-half of the municipalities within the  
9 county, representing more than one-half of the county's  
10 population as determined by the most recent decennial census  
11 by the United States Bureau of the Census, have adopted  
12 resolutions approving such plan within 180 days after  
13 submission of the plan.

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

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

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

27 (3) When otherwise required by the department.

28 (d) Procedure for considering plan revisions.--At least 30  
29 days before submitting any proposed plan revision to the  
30 department, the county shall submit a copy of the proposed

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

7 Section 502. Content of municipal waste management plans.

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

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

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

30 (1) Facilities holding permits for which a complete

1 permit application under the Solid Waste Management Act is  
2 filed with the department within one year from the effective  
3 date of this act or within one year of the date written  
4 notice of the development of a plan is given to  
5 municipalities pursuant to section 503(b) or within six  
6 months of the written notice for a substantial plan revision  
7 is given to municipalities pursuant to section 503(b),  
8 whichever is the later, unless such permit application is  
9 denied by the department.

10 (2) Resource recovery facilities for which the owner or  
11 operator of the facility has deposited funds into escrow for  
12 financing of the facility or has secured permanent bond  
13 financing for the facility or has signed an electric power  
14 contract with a public utility and such contract has been  
15 approved by the commission.

16 (3) Any facility which is a resource recovery facility  
17 or municipal waste landfill which, on or before the effective  
18 date of this act to the department's satisfaction meets all  
19 of the following criteria:

20 (i) The applicant has acquired ownership of the  
21 site.

22 (ii) The applicant has agreements for disposal of  
23 municipal waste.

24 (iii) The applicant meets one of the following:

25 (A) The applicant has a permit from the  
26 department on the effective date of this act.

27 (B) The applicant has received a permit within  
28 one year from the date written notice of the plan or  
29 the plan revisions is given to the municipalities  
30 pursuant to section 503(b).



1 (C) A permit application is submitted to the  
2 department within one year of the effective date of  
3 this act.

4 In addition, the plan shall give consideration to the potential  
5 expansion of existing municipal waste processing or disposal  
6 facilities located in the county. For the purposes of this  
7 subsection, the department shall determine whether applications  
8 are complete within 90 days of their receipt and, if incomplete,  
9 specify to the applicant all deficiencies of the application.

10 Any subsequent plan revisions shall identify and describe the  
11 facilities where municipal waste is currently being disposed or  
12 processed and the remaining available permitted capacity of such  
13 facilities and the plan shall consider the capacity which could  
14 be made available through the reasonable expansion of such  
15 facilities.

16 (d) Estimated future capacity.--The plan shall estimate the  
17 processing or disposal capacity needed for the municipal waste  
18 that will be generated in the county during the next ten years.  
19 The assessment shall describe the primary variables affecting  
20 this estimate and the extent to which they can reasonably be  
21 expected to affect the estimate, including, but not limited to,  
22 the amount of residual waste disposed or processed at municipal  
23 waste disposal or processing facilities in the county and the  
24 extent to which residual waste may be disposed or processed at  
25 such facilities during the next ten years. If the plan indicates  
26 that additional processing or disposal capacity is needed by the  
27 county, the county shall give public notice of such a  
28 determination and solicit proposals and recommendations  
29 regarding facilities and programs to provide such capacity. The  
30 county shall provide a copy of such notice to the department

1 which shall cause a copy of such notice to be published in the  
2 Pennsylvania Bulletin.

3 (e) Description of recyclable materials.--

4 (1) The plan shall describe and evaluate:

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

11 (ii) Potential benefits of recycling, including the  
12 potential solid waste reduction and the avoided cost of  
13 municipal waste processing or disposal.

14 (iii) Existing materials recovery operations and the  
15 kind and weight or volume of materials recycled by the  
16 operations, whether public or private.

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

22 (v) Proposed or existing collection methods for  
23 recyclable materials.

24 (vi) Options for ensuring the collection of  
25 recyclable materials.

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

1 (viii) Options for municipal cooperation or  
2 agreement for the collection, processing and sale of  
3 recyclable materials.

4 (ix) A schedule for implementation of the recycling  
5 program.

6 (x) Estimated costs of operating and maintaining a  
7 recycling program, estimated revenue from the sale or use  
8 of materials and avoided costs of processing or disposal.  
9 This estimate shall be based on a comparison of public  
10 and private operation of some or all parts of the  
11 recycling program.

12 (xi) What consideration for the collection,  
13 marketing and disposition of recyclable materials will be  
14 accorded to persons engaged in the business of recycling  
15 on the effective date of this act, whether or not the  
16 persons are operating for profit.

17 (xii) A public information and education program  
18 that will provide comprehensive and sustained public  
19 notice of recycling program features and requirements.

20 (2) Any county containing municipalities that are  
21 required by section 1501 to implement recycling programs  
22 shall take the provisions of that section into account in  
23 preparing the recycling portion of its plan.

24 (3) Nothing in this chapter shall be construed or  
25 understood to prohibit preparation of a county municipal  
26 waste management plan prior to developing and implementing  
27 any recycling program required by Chapter 15.

28 (f) Financial factors.--The plan shall describe the type,  
29 mix, size, expected cost and proposed methods of financing the  
30 facilities, recycling programs or waste reduction programs that

1 are proposed for the processing and disposal of the municipal  
2 waste or source-separated recyclable materials that will be  
3 generated within the county's boundaries during the next ten  
4 years. For every proposed facility, recycling program or waste  
5 reduction program, the plan shall discuss all of the following:

6 (1) Explain in detail the reason for selecting such  
7 facility or program.

8 (2) Describe alternative facilities or programs,  
9 including, but not limited to, waste reduction, recycling, or  
10 resource recovery facilities or programs, that were  
11 considered and provide reasonable assurances that the county  
12 utilized a fair, open and competitive process for selecting  
13 such facilities or programs from among alternatives which  
14 were suggested to the county.

15 (3) Evaluate the environmental, energy, life cycle cost,  
16 the costs of transportation to each facility considered and  
17 economic advantages and disadvantages of the proposed  
18 facility or program as well as the alternatives considered.

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

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

25 (g) Location.--The plan shall identify the general location  
26 within a county where each municipal waste processing or  
27 disposal facility and each recycling program identified in  
28 subsection (f) will be located, and either identify the site of  
29 each facility if the site has already been chosen or explain how  
30 the site will be chosen. For any facility that is proposed to be

1 located outside the county, the plan shall explain in detail the  
2 reasons for selecting such a facility.

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

7 (i) Public function.--Where the county determines that it is  
8 in the public interest for municipal waste processing or  
9 disposal to be a public function, the plan shall provide for  
10 appropriate mechanisms, subject to the limitations set forth in  
11 section 902(a) on the use of grant moneys by municipalities for  
12 purchasing equipment for processing solid waste.

13 (j) Copies of ordinances and resolutions.--The plan shall  
14 include any proposed ordinances, negotiated contracts or  
15 requirements that will be used to insure the operation of any  
16 facilities proposed in the plan. For each ordinance, contract or  
17 requirement, the plan shall identify the areas of the county to  
18 be affected, the expected effective date and the implementing  
19 mechanism.

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

28 (l) Methods of disposal other than by contract.--If the  
29 county proposes to require, by means other than contracts, that  
30 municipal wastes generated within its boundaries be processed or

1 disposed at a designated facility under section 303(e), the plan  
2 shall so state. The plan shall explain the basis for such a  
3 proposal, giving consideration to alternative means of ensuring  
4 that waste generated within the county's boundaries is processed  
5 or disposed in an environmentally acceptable manner. A copy of  
6 the proposed ordinance or other legal instrument that would  
7 effectuate this proposal shall also be included.

8 (m) County ownership.--If the county proposes to own or  
9 operate a municipal waste processing or disposal facility, the  
10 plan shall so state. The plan shall also explain the basis for  
11 such a proposal, giving consideration to the comparative costs  
12 and benefits of private ownership and operation of municipal  
13 waste processing or disposal facilities.

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

16 (o) Noninterference with certain resource recovery  
17 facilities and landfills.--

18 (1) No county municipal waste management plan shall  
19 interfere with the design, construction, operation, financing  
20 or contractual obligations of any municipal processing or  
21 disposal facility, including any reasonable expansion of an  
22 existing facility which meets any of the following  
23 requirements:

24 (i) A resource recovery facility or municipal waste  
25 landfill that is part of a complete municipal waste  
26 management plan submitted by a municipality or  
27 organization of municipalities under the Solid Waste  
28 Management Act prior to the effective date of this act,  
29 and for which a complete permit application under the  
30 Solid Waste Management Act is submitted to the department

1 within one year of the effective date of this act.

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

21 (iii) The owner or operator of the facility has  
22 deposited funds into escrow for financing of the facility  
23 or has secured permanent bond financing for the facility  
24 or has signed an electric power contract with a public  
25 utility and such a contract has been approved by the  
26 commission.

27 (iv) The implementation of a county municipal waste  
28 plan pursuant to section 501(b) which has designated an  
29 existing permitted solid waste management facility, on or  
30 before the effective date of this act, owned by a local

1 public agency other than the county in which the facility  
2 is located.

3 (v) The facility is a resource recovery facility or  
4 municipal waste landfill which, on or before the  
5 effective date of this act to the department's  
6 satisfaction, meets all of the following criteria:

7 (A) The applicant has acquired ownership of the  
8 site.

9 (B) The applicant has agreements for disposal of  
10 municipal waste.

11 (C) The applicant meets one of the following:

12 (I) The applicant has a permit from the  
13 department on the effective date of this act.

14 (II) The applicant has received a permit  
15 within one year from the date written notice of  
16 the plan or the plan revisions is given to the  
17 municipalities pursuant to section 503(b).

18 (III) A permit application is submitted to  
19 the department within one year of the effective  
20 date of this act.

21 (2) Within 120 days after receiving a complete plan, the  
22 department shall give it preliminary or technical approval  
23 under 25 Pa. Code §§ 75.11 through 75.13 or disapprove it.

24 (p) Public participation.--The plan shall include provisions  
25 for public participation in the implementation of the plan,  
26 including, but not limited to, an advisory committee to provide  
27 oversight and advice on the implementation of the plan.

28 Section 503. Development of municipal waste management plans.

29 (a) Advisory committee.--Prior to preparing a plan or  
30 substantial plan revisions for submission to the department in



1 accordance with the provisions of this act, the county shall  
2 form an advisory committee, which shall include representatives  
3 of all classes of municipalities within the county, citizen  
4 organizations, industry, the private solid waste industry  
5 operating within the county, the private recycling or scrap  
6 material processing industry operating within the county, the  
7 county recycling coordinator, if one exists, and any other  
8 persons deemed appropriate by the county. The advisory committee  
9 shall review the plan during its preparation, make suggestions  
10 and propose any changes it believes appropriate.

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

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

27 (d) Adoption and ratification of plan.--The governing body  
28 of the county shall adopt a plan within 60 days from the end of  
29 the public comment period. Not later than ten days following  
30 adoption of a plan by the governing body of the county, the plan

1 shall be sent to municipalities within the county for  
2 ratification. If a municipality does not act on the plan within  
3 90 days of its submission to such municipality, it shall be  
4 deemed to have ratified the plan. If more than one-half of the  
5 municipalities, representing more than one-half of the county's  
6 population as determined by the most recent decennial census by  
7 the United States Bureau of the Census, ratify the plan, then  
8 the county within ten days of ratification shall submit the plan  
9 to the department for approval.

10 (e) Statement of objections.--A municipality may not  
11 disapprove of a proposed county plan unless the municipality's  
12 resolution of disapproval contains a concise statement of its  
13 objections to the plan. Each municipality disapproving a plan  
14 shall immediately transmit a copy of its resolution of  
15 disapproval to the county and the advisory committee. A  
16 conditional approval shall be considered a disapproval.  
17 Section 504. Failure to ratify plan.

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

27 (b) Adoption of revised plan by county.--The governing body  
28 of the county shall adopt a revised plan within 75 days after it  
29 has become apparent that the original plan has failed to obtain  
30 ratification. Not later than five days following adoption of a

1 revised plan by the governing body of the county, the plan shall  
2 be sent to municipalities within the county for ratification. If  
3 a municipality does not act on the revised plan within 45 days  
4 of its submission to such municipality, it shall be deemed to  
5 have ratified the plan. If more than one-half of the  
6 municipalities, representing more than one-half of the county's  
7 population as determined by the most recent decennial census by  
8 the United States Bureau of the Census, ratify the revised plan,  
9 then the county within ten days of ratification shall submit the  
10 revised plan to the department for approval.

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

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

24 Section 505. Review of municipal waste management plans.

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

1 (b) Minimum plan requirement.--The department shall approve  
2 any county plan that demonstrates to the satisfaction of the  
3 department that:

4 (1) The plan is complete and accurate, and consistent  
5 with this act and regulations promulgated hereunder.

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

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

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

14 (5) If the plan proposes that municipal waste generated  
15 within the county's boundaries be required, by means other  
16 than contracts, to be processed or disposed at a designated  
17 facility under section 303(e), the plan explains the basis  
18 for doing so.

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

22 (c) Zoning powers unaffected.--Nothing in this act shall be  
23 construed or understood to enlarge or diminish the authority of  
24 municipalities to adopt ordinances pursuant to, or to exempt  
25 persons acting under the authority of this act from, the  
26 provisions of the act of July 31, 1968 (P.L.805, No.247), known  
27 as the Pennsylvania Municipalities Planning Code, provided such  
28 ordinances do not interfere with the reasonable expansion,  
29 pursuant to a permit application filed with the department prior  
30 to the effective date of this act, of existing permitted

1 municipal owned municipal waste landfills.

2 Section 506. Contracts.

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

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

18 Section 507. Relationship between plans and permits.

19 (a) Limitation on permit issuance.--After the date of  
20 submission to the department of all executed ordinances,  
21 contracts or other requirements under section 513, the  
22 department shall not issue any permit, or any permit that  
23 results in additional capacity, for a municipal waste landfill  
24 or resource recovery facility under the Solid Waste Management  
25 Act, in the county unless the applicant demonstrates to the  
26 department's satisfaction that the proposed facility:

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

28 (2) meets all of the following requirements:

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

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

4 (iii) The proposed location of the facility is at  
5 least as suitable as alternative locations giving  
6 consideration to environmental and economic factors.

7 (iv) The governing body of the proposed host county  
8 has received written notice of the proposed facility from  
9 the applicant pursuant to section 504 of the Solid Waste  
10 Management Act, and within 60 days from such  
11 notification, the governing body of the proposed host  
12 county has not provided the department with written  
13 objections to the proposed facility. Should the governing  
14 body of the proposed host county file timely objections  
15 to the department, the department shall not approve the  
16 permit application, unless the department determines the  
17 proposed facility complies with the appropriate  
18 environmental, public health and safety requirements and  
19 is in compliance with this paragraph.

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

24 Section 508. Studies.

25 (a) Market development for recyclable materials.--Within 15  
26 months after the effective date of this act, the department  
27 shall submit to the General Assembly a report that describes:

28 (1) The current and projected capacity of existing  
29 markets to absorb materials generated by municipal recycling  
30 programs in this Commonwealth.

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

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

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

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

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

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

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

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

30         (d) Update of waste reduction study.--Within three years

1 after the completion of the waste reduction study described in  
2 subsection (c), the department shall submit to the General  
3 Assembly an update of the study, taking into account information  
4 developed since its completion.

5 (e) Distribution to municipalities.--The department shall  
6 promptly make available to municipalities and other interested  
7 persons the results of the studies required by this section.  
8 Section 509. Best available technology.

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

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

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

30 (d) New technologies.--Nothing contained in this act shall



1 prohibit a private commercial enterprise from developing and  
2 implementing innovative or alternative, environmentally  
3 acceptable, means of reducing, processing, recycling and/or  
4 disposing of waste generated by the applicant commercial  
5 enterprise's operation, either onsite or otherwise, which means  
6 are not violative of, nor inconsistent with, the provisions and  
7 purposes of the Solid Waste Management Act, this act and  
8 department regulations.

9 Section 510. Permit requirements.

10 (a) Permits.--The department shall not issue any approval or  
11 permit for a resource recovery facility under the Solid Waste  
12 Management Act, unless the applicant has provided the department  
13 with adequate documentation and assurances that all ash residue  
14 produced from or by a resource recovery facility will be  
15 disposed at a permitted landfill. Prior to the approval of any  
16 permit application for a resource recovery facility, the  
17 operator shall submit a plan to the department for the alternate  
18 disposal of municipal waste designated for disposal at the  
19 resource recovery facility.

20 (b) Study of effects on water supply.--The department shall  
21 not issue any approval or permit for a resource recovery  
22 facility unless the applicant has provided the department with a  
23 study that documents the short-term and long-term effects that  
24 the facility will have on the public and private water supply.  
25 The study shall include, but not be limited to, effects of  
26 pollution, contamination, diminution, and alternative sources of  
27 water adequate in quantity and quality for the purposes served  
28 by the water supply both public and private.

29 Section 511. Site limitation.

30 (a) General rule.--The department shall not issue a permit

1 for, nor allow the operation of, a new municipal waste landfill,  
2 a new commercial residual waste treatment facility or a new  
3 resource recovery facility within 300 yards of a building which  
4 is owned by a school district or a parochial school and used for  
5 instructional purposes, parks or playgrounds existing prior to  
6 the date the department has received an administratively  
7 complete application for a permit for such facilities. This  
8 subsection shall not affect any modification, extension,  
9 addition or renewal of existing permitted facilities.

10 (b) Existing features.--In applying subsection (a), the  
11 department shall use the same provisions concerning existing  
12 features that are present in its municipal waste regulations for  
13 other areas where municipal waste landfills and resource  
14 recovery facilities are prohibited.

15 (c) Authorization.--Nothing in this section shall prevent  
16 the department from establishing site limitations by regulation  
17 under the Solid Waste Management Act, in addition to or more  
18 stringent than those established in this section.

19 (d) Exemption by request.--The current property owner under  
20 subsection (a) in which a new facility is proposed may waive the  
21 300-yard prohibition by signing a written waiver and, upon such  
22 request, the department shall waive the 300 yard prohibition and  
23 shall not use such prohibition as the basis for the denial of a  
24 new permit.

25 (e) Waiver.--The department may grant a waiver of the  
26 property line setback requirement in the department's  
27 regulations under the Solid Waste Management Act for resource  
28 recovery facilities if, upon petition by a permit applicant, the  
29 department determines that the proposed facility is in  
30 conformance with local zoning codes and that the operation of

1 the facility would result in an overall reduction in air  
2 emissions and that all owners of occupied dwellings within the  
3 above setbacks have provided written waivers consenting to the  
4 facility being closer than required in the regulations.

5 Section 512. Completeness review.

6 (a) General rule.--After receipt of a permit application  
7 under the Solid Waste Management Act for a landfill or resource  
8 recovery facility, the department shall determine whether the  
9 application is administratively complete. For purposes of this  
10 section, an application is administratively complete if it  
11 contains necessary information, maps, fees and other documents,  
12 regardless of whether the information, maps, fees and documents  
13 would be sufficient for issuance of the permit.

14 (1) If the application is not administratively complete,  
15 the department shall, within 60 days of receipt of the  
16 application, return it to the applicant, along with a written  
17 statement of the specific information, maps, fees and  
18 documents that are required to make the application  
19 administratively complete.

20 (2) The department shall deny the application if the  
21 applicant fails to provide the information, maps, fees and  
22 documents within 90 days of receipt of the notice in  
23 paragraph (1).

24 (b) Review period.--

25 (1) The department shall issue or deny permit  
26 applications under this act within the following periods of  
27 time:

28 (i) For municipal waste and construction/demolition  
29 waste landfills, within nine months from the date of the  
30 department's determination under subsection (a) that the

1 application is administratively complete.

2 (ii) For all other permits, within six months from  
3 the date of the department's determination under  
4 subsection (a) that the application is administratively  
5 complete.

6 (2) The time periods in paragraph (1) do not include a  
7 period beginning with the date that the department in writing  
8 has requested the applicant to make substantive corrections  
9 or changes to the application and ending with the date that  
10 the applicant submits the corrections or changes to the  
11 department's satisfaction.

12 Section 513. Future availability.

13 (a) Submission of ordinances.--Within one year following  
14 approval of a plan by the department, including plans approved  
15 pursuant to section 501(b), the county shall cause to be  
16 submitted to the department copies of all executed ordinances,  
17 contracts or other requirements to implement its approved plan  
18 and that will be used to ensure sufficient available capacity to  
19 properly dispose or process all municipal waste that is expected  
20 to be generated within the county for the next ten years. The  
21 county may have such documents, contracts or other requirements  
22 submitted by a person to whom it has delegated such  
23 responsibility under section 303(d).

24 (b) Acceptable documents.--The contracts or other documents  
25 shall make the demonstration required by subsection (a) by any  
26 of the following:

27 (1) County ownership, operation or control of a facility  
28 or facilities with such available capacity.

29 (2) Contracts between the county and one or more persons  
30 for the right to use a facility or facilities with such

1 available capacity.

2 (3) Third-party contracts for the right to use a  
3 facility or facilities with such available capacity.

4 (c) Compliance.--The county shall assure that facilities  
5 subject to this section meet the requirements of section 507(a).

6 (d) Definition.--As used in this section, the term  
7 "sufficient available capacity" includes facilities not in  
8 existence for which the county has binding commitments.

9 CHAPTER 7

10 RECYCLING FEE

11 Section 701. Recycling fee for municipal waste landfills and  
12 resource recovery facilities.

13 (a) Imposition.--There is imposed a recycling fee of \$2 per  
14 ton for all solid waste processed at resource recovery  
15 facilities and for all solid waste except process residue and  
16 nonprocessable waste from a resource recovery facility that is  
17 disposed of at municipal waste landfills. Such fee shall be paid  
18 by the operator of each municipal waste landfill and resource  
19 recovery facility.

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

24 (c) Waste weight requirement.--On and after April 9, 1990,  
25 each operator of a municipal waste landfill and resource  
26 recovery facility that has received 30,000 or more cubic yards  
27 of solid waste in the previous calendar year shall weigh all  
28 solid waste when it is received. The scale used to weigh solid  
29 waste shall conform to the requirements of the act of December  
30 1, 1965 (P.L.988, No.368), known as the Weights and Measures Act

1 of 1965, and the regulations promulgated pursuant thereto. The  
2 operator of the scale shall be a licensed public weighmaster  
3 under the act of April 28, 1961 (P.L.135, No.64), known as the  
4 Public Weighmaster's Act, and the regulations promulgated  
5 pursuant thereto.

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

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

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

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

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

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

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

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

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

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

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

23          Section 703. Collection and enforcement of fee.

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

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

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

8 (c) Assessment notices.--

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

17 (2) The operator charged with the deficiency shall have  
18 30 days to pay the deficiency in full or, if the operator  
19 wishes to contest the deficiency, forward the amount of the  
20 deficiency to the department for placement in an escrow  
21 account with the State Treasurer or any Pennsylvania bank, or  
22 post an appeal bond in the amount of the deficiency. Such  
23 bond shall be executed by a surety licensed to do business in  
24 this Commonwealth and be satisfactory to the department.  
25 Failure to forward the money or the appeal bond to the  
26 department within 30 days shall result in a waiver of all  
27 legal rights to contest the deficiency.

28 (3) If, through administrative or judicial review of the  
29 deficiency, it is determined that the amount of deficiency  
30 shall be reduced, the department shall within 30 days remit



1 the appropriate amount to the operator, with any interest  
2 accumulated by the escrow deposit.

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

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

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

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

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

30 (f) Remedies cumulative.--The remedies provided to the

1 department in this section are in addition to any other remedies  
2 provided at law or in equity.

3 Section 704. Records.

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

12 Section 705. Surcharge.

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

27 Section 706. Recycling Fund.

28 (a) Establishment.--All fees received by the department  
29 pursuant to section 701 shall be paid into the State Treasury  
30 into a special fund to be known as the Recycling Fund, which is

1 hereby established.

2 (b) Appropriation.--All moneys placed in the Recycling Fund  
3 are hereby appropriated to the department for the purposes set  
4 forth in this section. The department shall annually submit to  
5 the Governor for his approval estimates of amounts to be  
6 expended under this act.

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

11 (1) At least 70% shall be expended by the department for  
12 grants to municipalities for the development and  
13 implementation of recycling programs as set forth in section  
14 902, recycling coordinators as provided in section 903, for  
15 grants for municipal recycling programs as set forth in  
16 section 904, and market development and waste reduction  
17 studies as set forth in section 508; for implementation of  
18 the recommendations in the studies required by section 508;  
19 and for research conducted or funded by the Department of  
20 Transportation pursuant to section 1506.

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

27 (3) Up to 30% may be expended by the department for  
28 public information, public education and technical assistance  
29 programs concerning litter control, recycling and waste  
30 reduction, including technical assistance programs for

1 counties and other municipalities, for research and  
2 demonstration projects, for planning grants as set forth in  
3 section 901, for the host inspector training program as set  
4 forth in section 1102, and for other purposes consistent with  
5 this act.

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

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

18 (e) Advisory committee.--The secretary shall establish a  
19 Recycling Fund Advisory Committee composed of representatives of  
20 counties, other municipalities, municipal authorities, the  
21 municipal waste management industry, the municipal waste  
22 recycling industry, municipal waste generating industry and the  
23 general public. The committee shall also include members of the  
24 General Assembly, one appointed by each of the following: the  
25 Speaker of the House of Representatives, the Minority Leader of  
26 the House of Representatives, the President pro tempore of the  
27 Senate and the Minority Leader of the Senate. The committee  
28 shall meet at least annually to review the Commonwealth's  
29 progress in meeting the goals under section 102(c), to recommend  
30 priorities on expenditures from the fund, and to advise the

1 secretary on associated activities concerning the administration  
2 of the fund. The department shall reimburse members of the  
3 committee for reasonable travel, hotel and other necessary  
4 expenses incurred in performance of their duties under this  
5 section.

6 (f) Annual reports.--The department shall submit an annual  
7 report to the General Assembly on receipts to and disbursements  
8 from the Recycling Fund in the previous fiscal year, projections  
9 for revenues and expenditures in the coming fiscal year, and the  
10 Commonwealth's progress in achieving the goals set forth in  
11 section 102(c). The annual report due two years before the  
12 expiration of the recycling fee under section 701(d) shall  
13 contain a recommendation whether the fee should continue to be  
14 imposed after the expiration date and, if so, the proposed  
15 amount of the fee.

## 16 CHAPTER 9

### 17 GRANTS

18 Section 901. Planning grants.

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

1 contain such information as the department deems necessary to  
2 carry out the provisions and purposes of this act. The grant to  
3 any county under this section shall be 80% of the approved cost  
4 of such plans and studies.

5 Section 902. Grants for development and implementation of  
6 municipal recycling programs.

7 (a) Authorization.--The department shall award grants for  
8 development and implementation of municipal recycling programs,  
9 upon application from any municipality which meets the  
10 requirements of this section. The grant provided by this section  
11 may be used to identify markets, develop a public education  
12 campaign, purchase collection and storage equipment, and do  
13 other things necessary to establish a municipal recycling  
14 program. The grant may be used to purchase collection equipment,  
15 only to the extent needed for collection of recyclable  
16 materials, and mechanical processing equipment, only to the  
17 extent that such equipment is not available to the program in  
18 the private sector. The application shall be made on a form  
19 prepared and furnished by the department. The application shall  
20 explain the structure and operation of the program and shall  
21 contain such other information as the department deems necessary  
22 to carry out the provisions and purposes of this act. The grant  
23 under this section to a municipality required by section 1501 to  
24 implement a recycling program shall be 90% of the approved cost  
25 of establishing a municipal recycling program. The grant under  
26 this section to a municipality not required by section 1501 to  
27 implement a recycling program shall be 90% of the approved cost  
28 of establishing a municipal recycling program. In addition to  
29 the grant under this section, a financially distressed  
30 municipality, as defined in section 203(f) of the act of July

1 10, 1987 (P.L.246, No.47), known as the Financial Distressed  
2 Municipalities Act, that is required by section 1501 to  
3 implement a recycling program shall be eligible for an  
4 additional grant equal to 10% of the approved cost of  
5 establishing a municipal recycling program.

6 (b) Prerequisites.--The department shall not award any grant  
7 under this section unless it is demonstrated to the department's  
8 satisfaction that:

9 (1) The application is complete and accurate.

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

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

16 (i) materials collected and persons affected;

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

18 (iii) markets or uses for collected materials,

19 giving consideration to the results of the market  
20 development study required by section 508 if the results  
21 are available;

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

24 (v) public information and education;

25 (vi) program economics, including avoided processing  
26 or disposal costs; and

27 (vii) other information deemed necessary by the  
28 department.

29 (4) If the municipality proposes to use some or all of  
30 the grant funds to purchase mechanical processing equipment,

1 the equipment is not available to the program in the private  
2 sector. Before submitting the application to the department,  
3 the municipality shall publish in a newspaper of general  
4 circulation a notice describing in reasonable detail the  
5 equipment which the municipality proposes to purchase or  
6 cause to be purchased and the proposed uses of the equipment,  
7 and allow 30 days for written response from any interested  
8 persons. The application shall describe the responses  
9 received and shall explain why the municipality has concluded  
10 that such equipment is not available from the private sector.

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

21 (d) Priority.--Each municipality, other than a county, which  
22 establishes and implements a mandatory source separation and  
23 collection program for recyclable materials shall be given the  
24 same priority with municipalities subject to the requirements of  
25 section 1501 for grants under this section.  
26 Section 903. Grants for recycling coordinators.

27 (a) Authorization.--The department shall award grants to  
28 reimburse counties for authorized costs incurred for the salary  
29 and expenses of recycling coordinators, upon application from  
30 any county. The application shall be made on a form prepared and



1 furnished by the department. The application shall explain the  
2 duties and activities of the county recycling coordinator. If a  
3 recycling coordinator has been active prior to the year for  
4 which the grant is sought, the application shall also explain  
5 the coordinator's activities and achievements in the previous  
6 year.

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

10 Section 904. Performance grants for municipal recycling  
11 programs.

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

19 (b) Availability.--The department shall award a grant under  
20 this section to a municipality based on the type and weight of  
21 source-separated recyclable materials identified in section 1501  
22 that were recycled in the previous calendar year, and the  
23 population of the municipality.

24 (c) Amount.--The amount of the grant shall be based on  
25 available funds under section 706 and shall be available to all  
26 municipalities which have a recycling program in existence on or  
27 will initiate a program after the effective date of this act.

28 (d) Prerequisites.--The department shall not award any grant  
29 under this section unless the application is complete and  
30 accurate, and the materials were actually marketed. The

1 department shall not award any grant under this section for the  
2 operation of a leaf waste composting facility.

3 Section 905. General limitations.

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

8 (b) Monetary limit on grant.--The department may not award  
9 more than 10% of the moneys available under any grant under this  
10 chapter in any fiscal year to any county.

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

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

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

30 (f) Availability of funds.--All obligations of the

1 Commonwealth under this chapter are contingent upon the  
2 availability of funds under section 706.

3 CHAPTER 11

4 ASSISTANCE TO MUNICIPALITIES

5 Section 1101. Information provided to host municipalities.

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

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

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

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

26 (b) Operator information.--Every operator of a municipal  
27 waste landfill or resource recovery facility shall provide to  
28 the host municipality copies of all air and water quality  
29 monitoring data as required by the department for the facility  
30 conducted by or on behalf of the operator, within five days

1 after such data becomes available to the operator.

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

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

12 (e) Sign on vehicle.--A vehicle or conveyance used for the  
13 transporting of solid waste shall bear the name and business  
14 address of the person or municipality which owns the vehicle or  
15 conveyance and the specific type of solid waste transported by  
16 the vehicle or conveyance. All signs shall have lettering which  
17 is at least six inches in height.

18 Section 1102. Joint inspections with host municipalities.

19 (a) Training of inspectors.--

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

30 (2) Certified municipal inspectors are authorized to

1 enter property, inspect only those records required by the  
2 department, take samples and conduct inspections in  
3 accordance with department regulations as applicable to  
4 department inspectors. However, certified municipal  
5 inspectors may not issue orders except as provided in this  
6 subsection. A certified municipal inspector may order the  
7 operator of a facility to cease any operation or activity at  
8 the facility which constitutes an immediate threat to public  
9 health and safety and which represents a violation of the  
10 Solid Waste Management Act, the regulations promulgated under  
11 that act, any order issued under that act, or the terms or  
12 conditions of a permit issued under that act. The order shall  
13 expire within two hours unless the inspector notifies the  
14 department and the governing body of the host municipality.  
15 The department may, after conducting an inspection, supersede  
16 the inspector's order by issuing an order of its own which  
17 vacates or modifies the terms of the inspector's order. If  
18 the department does not supersede the order, the order shall  
19 expire after 24 hours unless otherwise extended, continued or  
20 modified by a court pursuant to section 1703(b).

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

25 (4) The department may decertify host municipality  
26 inspectors pursuant to regulations promulgated by the  
27 Environmental Quality Board.

28 (b) Departmental information.--

29 (1) Whenever any host municipality presents information  
30 to the department which gives the department reason to

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

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

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

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

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

1 municipality.

2 Section 1103. Water supply testing for contiguous landowners.

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

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

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

29 (d) Written notice of rights.--On or before 60 days from the  
30 effective date of this act for permits issued under the Solid

1 Waste Management Act prior to the effective date of this act,  
2 and at or before the time of permit issuance for permits issued  
3 under the Solid Waste Management Act after the effective date of  
4 this act, the operator of each municipal waste landfill shall  
5 provide contiguous landowners with written notice of their  
6 rights under this section on a form prepared by the department.  
7 Section 1104. Water supply protection.

8 (a) Alternative water supply requirement.--Any person owning  
9 or operating a municipal waste management facility that  
10 adversely affects a public or private water supply by pollution,  
11 degradation, diminution or other means shall restore the  
12 affected supply at no additional cost to the owner or replace  
13 the affected supply with an alternate source of water that is of  
14 like quantity and quality to the original supply at no  
15 additional cost to the owner. If any person shall fail to comply  
16 with this requirement, the department may issue such orders to  
17 the person as are necessary to assure compliance.

18 (b) Notification to department.--Any landowner or water  
19 purveyor suffering pollution, degradation or diminution of a  
20 public or private water supply as a result of solid waste  
21 management operations at a municipal waste management facility  
22 may so notify the department and request that an investigation  
23 be conducted. Within ten days of such notification, the  
24 department shall begin investigation of any such claims and  
25 shall, within 120 days of the notification, make a  
26 determination. If the department finds that the pollution,  
27 degradation or diminution was caused by the operation of a  
28 municipal waste management facility or if it presumes the owner  
29 or operator of a municipal waste facility responsible for  
30 pollution, degradation or diminution pursuant to subsection (c),



1 then it shall issue such orders to the owner or operator as are  
2 necessary to ensure compliance with subsection (a).

3 (c) Rebuttable presumption.--Unless rebutted by one of the  
4 four defenses established in subsection (d), it shall be  
5 presumed that the owner or operator of a municipal waste  
6 landfill is responsible for the pollution, degradation or  
7 diminution of a public or private water supply that is within  
8 one-quarter mile of the perimeter of the area where solid waste  
9 management operations have been carried out.

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

14 (1) The pollution, degradation or diminution existed  
15 prior to any municipal waste management operations on the  
16 site as determined by a preoperation survey.

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

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

22 (4) The owner or operator did not cause the pollution,  
23 degradation or diminution.

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

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

6 Section 1105. Purchase of cogenerated electricity.

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

17 Section 1106. Pennsylvania Public Utility Commission.

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

29 (b) Commission response.--The commission shall respond to  
30 any such request, unless time limits are waived by the owner or

1 operator and utility, as follows:

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

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

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

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

1 thermal energy for sale to any number of retail customers, all  
2 of which are located on the same site or site contiguous to that  
3 of the selling facility.

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

11 Section 1107. Claims resulting from pollution occurrences.

12 (a) Financial responsibility.--

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

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

1 following:

2 (i) Commercial pollution liability insurance.

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

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

9 (b) Municipal financial responsibility.--

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

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

30 (i) Commercial pollution liability insurance.

1 (ii) A trust fund financed by the municipality and  
2 administered by an independent trustee approved by the  
3 department.

4 (iii) An insurance pool or self-insurance program  
5 authorized by 42 Pa.C.S. § 8564 (relating to liability  
6 insurance and self-insurance).

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

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

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

25 (a) Establishment by county.--Each county shall establish an  
26 interest-bearing trust with an accredited financial institution  
27 for every municipal waste landfill that is operating within its  
28 boundaries. This trust shall be established within 60 days of  
29 the effective date of this act for landfills permitted by the  
30 department prior to the effective date of this act. The trust

1 shall be established prior to the operation of any landfill  
2 permitted by the department after the effective date of this  
3 act. The requirement to establish a trust shall be satisfied by  
4 the submission to the department of a preexisting trust  
5 agreement which is substantially similar to the requirements of  
6 this section.

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

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

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

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

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

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

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

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

30 (i) Surplus.--Any moneys remaining in a trust subsequent to



1 final closure of a landfill under the Solid Waste Management Act  
2 and the regulations promulgated pursuant thereto shall, upon  
3 release of the bond by the department, be divided equally  
4 between the county and the host municipality.

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

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

16 Section 1110. Independent evaluation of permit applications.

17 At the request of a host municipality, the department may  
18 reimburse a host municipality for costs incurred for an  
19 independent permit application review, by a professional  
20 engineer who is licensed in this Commonwealth and who has  
21 previous experience in preparing such permit applications, of an  
22 application under the Solid Waste Management Act, for a new  
23 municipal waste landfill or resource recovery facility or that  
24 would result in additional capacity for a municipal waste  
25 landfill or resource recovery facility. Reimbursement shall not  
26 exceed \$10,000 per complete application.

27 Section 1111. Protection of capacity.

28 (a) Permit condition.--The following permits issued by the  
29 department under the Solid Waste Management Act, shall include a  
30 permit condition, if provided pursuant to this section, which

1 require compliance with an agreement or arbitration award,  
2 setting forth the weight or volume of municipal waste generated  
3 within the county and municipality that the operator shall allow  
4 and the rates, terms or conditions with which municipal waste is  
5 to be delivered for disposal or processing at the facility for a  
6 specified period:

7 (1) A permit for a new municipal waste landfill or  
8 resource recovery facility.

9 (2) A permit that results in additional capacity for a  
10 municipal waste landfill or resource recovery facility.

11 (3) In the case of an existing facility, a permit  
12 modification that results in an increase in the average or  
13 maximum daily volume of waste that may be received for  
14 processing or disposal at the facility.

15 (b) Determination.--The permit condition shall be determined  
16 in the following manner:

17 (1) The applicant shall notify the host county and host  
18 municipality upon filing an application for permit pursuant  
19 to subsection (a). Within 60 days after receiving written  
20 notice from the applicant that an application has been filed  
21 with the department, the host county and host municipality  
22 shall provide written notice to the applicant and the  
23 department if it intends to negotiate with the applicant. If  
24 the host county and host municipality do not provide such  
25 notice and, if the permit is issued, the permit condition  
26 shall state that no waste capacity is reserved for the host  
27 county and host municipality. The negotiation period shall  
28 commence upon the date of receipt of the written notice to  
29 the applicant from the host county and host municipality and  
30 shall continue for 30 days. The issues to be considered in

1 negotiations shall include, but not be limited to, the weight  
2 or volume of capacity reserved to a host county and host  
3 municipality and an increase in the average volume of waste  
4 up to the amount of capacity set aside for municipal waste  
5 generated within the host county and host municipality.

6 (2) If the host county and host municipality and the  
7 applicant agree to a weight or volume of waste capacity to be  
8 reserved for the host county and host municipality, they  
9 shall notify the department in writing.

10 (3) If the host county and host municipality and the  
11 applicant have failed to reach an agreement within the 30-day  
12 negotiation period then either party to the dispute, after  
13 written notice to the other party containing specifications  
14 of the issue or issues in dispute, may request the  
15 appointment of a board of arbitration pursuant to paragraph  
16 (7). Such notice shall be made in writing to the other party  
17 within five days of the end of the negotiation period. In  
18 making the decision as to the terms of the agreement, the  
19 board shall consider among other things the availability of  
20 disposal alternatives to the host county and host  
21 municipality. Should the host county and host municipality  
22 fail to request arbitration within five days, then the permit  
23 condition shall state that no waste capacity is reserved for  
24 the host county and host municipality.

25 (4) If the county and municipality elect to negotiate  
26 with the applicant pursuant to this section, any agreement or  
27 arbitration award shall provide, unless the host county and  
28 host municipality and applicant agree otherwise, that the  
29 county and municipality shall utilize the capacity reserved  
30 in an agreed upon time frame.

1           (5) Should the applicant and the host county and host  
2 municipality be unable to agree to the terms of the agreement  
3 governing such utilization within 30 days of an agreement or  
4 an arbitration award as to the weight or volume of waste  
5 capacity to be reserved in the facility, either party can  
6 request the appointment of an arbitration board pursuant to  
7 paragraph (7). In making the decision as to the terms of the  
8 agreement for utilization, the board shall consider, among  
9 other things, the weight or volume of capacity reserved to a  
10 host county and host municipality under any permit issued  
11 pursuant to this section, an increase in the average volume  
12 of waste in an amount up to the amount of capacity set aside  
13 for municipal waste generated within the host county and host  
14 municipality, the financial viability of the facility, and  
15 the terms, including the rates per ton for disposal, of the  
16 contracts entered into by the applicant for use of the  
17 facility by other than the host county and host municipality.

18           (6) Except as provided in paragraph (1), the department  
19 shall not issue any permit under this section unless it has  
20 received written notice of an agreement between the applicant  
21 and host county and host municipality as to the weight or  
22 volume of capacity to be reserved for the host county and  
23 host municipality as provided in paragraph (2) or unless it  
24 has received written notice that a Board of Arbitration  
25 appointed pursuant to paragraph (7) has settled all issues in  
26 dispute between the host county and host municipality and the  
27 applicant. The department shall include a permit condition  
28 reserving such capacity provided for in such agreements or  
29 arbitration awards.

30           (7) The board of arbitration shall be composed of three

1 persons, one appointed by the applicant, one appointed by the  
2 host county and host municipality and a third member to be  
3 agreed upon by the applicant and such host county and host  
4 municipality. The members of the board representing the  
5 applicant and the host county and host municipality shall be  
6 named within five days from the date of the request for the  
7 appointment of such board. If, after a period of ten days  
8 from the date of the appointment of the two arbitrators  
9 appointed by the host county and host municipality and the  
10 applicant, the third arbitrator has not been selected by  
11 them, then either arbitrator may request the American  
12 Arbitration Association, or its successor in function, to  
13 furnish a list of three members of said association who are  
14 residents of Pennsylvania from which the third arbitrator  
15 shall be selected. The arbitrator appointed by the applicant  
16 shall eliminate one name from the list within five days after  
17 publication of the list, following which the arbitrator  
18 appointed by the host county and host municipality shall  
19 eliminate one name from the list within five days thereafter.  
20 The individual whose name remains on the list shall be the  
21 third arbitrator and shall act as chairman of the board of  
22 arbitration. The board of arbitration thus established shall  
23 commence the arbitration proceedings within ten days after  
24 the third arbitrator is selected and shall make its  
25 determination within 30 days after the appointment of the  
26 third arbitrator.

27 (c) Department.--The department may take any action  
28 authorized by statute that the department deems necessary to  
29 ensure that operators of municipal waste landfills and resource  
30 recovery facilities give priority to the disposal or processing



1 of municipal waste generated within the host county.

2 (d) Consultation.--The host county shall consult with the  
3 host municipality as part of the procedure set forth under this  
4 section.

5 (e) Exemption.--The provisions of this section shall not  
6 apply to a resource recovery facility financed by the host  
7 municipality or municipal authority, and to facilities for the  
8 disposal of ash residue from municipal waste incinerators which,  
9 prior to the enactment date of this act, agree to provide  
10 capacity to all municipalities located within the county and  
11 which can be documented to the department.

12 Section 1112. Waste volumes.

13 (a) General rule.--No person or municipality operating a  
14 municipal waste landfill may receive solid waste at the landfill  
15 in excess of the maximum or average daily volume approved in the  
16 permit by the department under the Solid Waste Management Act,  
17 or authorized by any regulation promulgated pursuant to the  
18 Solid Waste Management Act.

19 (b) New permits.--

20 (1) A permit issued by the department under the Solid  
21 Waste Management Act for a new municipal waste landfill, or  
22 that results in additional capacity for a municipal waste  
23 landfill, shall include a permit condition setting forth the  
24 maximum and average volumes of solid waste that may be  
25 received on a daily basis.

26 (2) The department may not approve any permit  
27 application for a new municipal waste landfill, or that would  
28 result in additional capacity for a municipal waste landfill,  
29 unless the applicant demonstrates all of the following to the  
30 department's satisfaction:

1 (i) That the proposed maximum and average daily  
2 waste volumes will not cause or contribute to any  
3 violations of this act; the Solid Waste Management Act;  
4 any other statute administered by the department; or any  
5 regulation promulgated pursuant to this act, the Solid  
6 Waste Management Act or any other statute administered by  
7 the department.

8 (ii) That the proposed maximum and average daily  
9 waste volumes will not cause or contribute to any public  
10 nuisance from odors, noises, dust, truck traffic or other  
11 causes.

12 (iii) That the proposed maximum and average daily  
13 waste volumes will not interfere with, or contradict any  
14 provision contained in, any applicable county solid waste  
15 management plan that has been approved by the department.

16 (c) Existing permits.--Within six months after the effective  
17 date of this act, the department shall review the maximum and  
18 average daily volume limits in each municipal waste landfill  
19 permit issued under the Solid Waste Management Act before the  
20 effective date of this act. In reviewing any existing municipal  
21 waste landfill permit, the department shall consider:

22 (1) That the proposed maximum and average daily waste  
23 volumes will not cause or contribute to any violations of  
24 this act; the Solid Waste Management Act; any other statute  
25 administered by the department; or any regulation promulgated  
26 pursuant to this act, the Solid Waste Management Act or any  
27 other statute administered by the department.

28 (2) That the proposed maximum and average daily waste  
29 volumes will not cause or contribute to any public nuisance  
30 from odors, noises, dust, truck traffic or other causes.

1           (3) That the proposed maximum and average daily waste  
2 volumes will not interfere with, or contradict any provision  
3 contained in, any applicable county solid waste management  
4 plan that has been approved by the department.

5 This subsection does not require a second review for facilities  
6 where the department reviewed daily waste volumes 12 months  
7 before the enactment date of this act.

8           (d) Permit modification.--The department may not approve any  
9 permit modification request under the Solid Waste Management Act  
10 to increase the maximum or average daily volumes of solid waste  
11 received at a municipal waste landfill unless the applicant  
12 demonstrates all of the following to the department's  
13 satisfaction:

14           (1) Increased daily volumes will not cause or contribute  
15 to any violations of this act; the Solid Waste Management  
16 Act; any other statute administered by the department; or any  
17 regulations promulgated pursuant to this act, the Solid Waste  
18 Management Act or any other statute administered by the  
19 department.

20           (2) Increased daily volumes will not cause or contribute  
21 to any public nuisance from odors, noise, dust, truck traffic  
22 or other causes.

23           (3) Increased daily volumes will not reduce the  
24 remaining lifetime of a landfill, based on its remaining  
25 permitted capacity, to less than three years from the date of  
26 issuance of the permit modification.

27           (4) Increased daily volumes will not interfere with or  
28 contradict any provision contained in an applicable county  
29 municipal management plan that has been approved by the  
30 department.

1 (e) Emergencies.--

2 (1) Notwithstanding any provision of law to the  
3 contrary, the department shall immediately modify a municipal  
4 waste landfill permit to allow increased maximum or average  
5 daily waste volumes when the department finds, in writing,  
6 that this action is necessary to prevent a public health or  
7 environmental emergency and publishes public notice of the  
8 finding. Action under this paragraph shall be taken pursuant  
9 to section 503(e) of the Solid Waste Management Act.

10 (2) When the department determines that the remaining  
11 lifetime of any municipal waste landfill, based on its  
12 remaining permitted capacity, is three years or less, the  
13 landfill operator shall give written notice of the finding to  
14 all municipalities that generate municipal waste received at  
15 the landfill. Notice shall be given annually thereafter until  
16 closure of the landfill or until the department has issued a  
17 permit under the Solid Waste Management Act expanding the  
18 capacity of the landfill to more than three years. This act  
19 shall not be understood or construed to impose any obligation  
20 on the department to find alternative processing or disposal  
21 capacity.

22 (f) Enforcement.--In addition to any other remedies provided  
23 at law or in equity, the department shall assess a civil penalty  
24 of at least \$100 per ton for each ton of waste received at any  
25 municipal waste landfill in excess of the maximum or average  
26 daily volume limitations set forth in its permit. Except for the  
27 minimum amount, the penalty shall be assessed and collected in  
28 the manner set forth in section 1704. Each ton of waste in  
29 excess of the permit shall be considered a separate violation of  
30 this act.

1 (g) Preference to host county waste.--Pursuant to section  
2 1111(a), a facility will give a preference to waste generated  
3 within the host county when the facility receives an increase in  
4 its average daily volume.

5 CHAPTER 13

6 HOST MUNICIPALITY BENEFIT FEE

7 Section 1301. Host municipality benefit fee.

8 (a) Imposition.--There is imposed a host municipality  
9 benefit fee upon the operator of each municipal waste landfill  
10 or resource recovery facility that has a valid permit on the  
11 effective date of this act or receives a new permit or permit  
12 that results in additional capacity from the department under  
13 the Solid Waste Management Act after the effective date of this  
14 act. The fee shall be paid to the host municipality. If the host  
15 municipality owns or operates the landfill or facility, the fee  
16 shall not be imposed for waste generated within such  
17 municipality. If the landfill or facility is located within more  
18 than one host municipality, the fee shall be apportioned among  
19 them according to the percentage of the permitted area located  
20 in each municipality.

21 (b) Amount.--The fee is \$1 per ton of weighed solid waste or  
22 \$1 per three cubic yards of volume-measured solid waste for all  
23 solid waste received at a landfill or facility. Any amounts paid  
24 by an operator to a host municipality pursuant to a preexisting  
25 agreement shall serve as a credit against the fee amount imposed  
26 by this section.

27 (c) Municipal options.--Nothing in this section or section  
28 1302 shall prevent a host municipality from receiving a higher  
29 fee or receiving the fee in a different form or at different  
30 times than provided in this section and section 1302, if the

1 host municipality and the operator of the municipal waste  
2 landfill or resource recovery facility agree in writing.

3 (d) Supersede.--The fee imposed by this section shall  
4 preempt and supersede any tax imposed on each municipal waste  
5 landfill or resource recovery facility under the act of December  
6 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling  
7 Act, which is in excess of the amount imposed on or before  
8 December 31, 1987.

9 (e) County options.--Nothing in this act shall prevent a  
10 host county from negotiating a fee or fee in a different form,  
11 if the host county and the operator of the municipal waste  
12 landfill or resource recovery agree in writing. Any county who  
13 has negotiated a fee as of the effective date of this act may  
14 require that the fee be continued.

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 municipality, requiring all of the following:

27 (i) Persons to separate at least three materials  
28 deemed appropriate by the municipality from other  
29 municipal waste generated at their homes, apartments and  
30 other residential establishments and to store such

1 material until collection. The three materials shall be  
2 chosen from the following: clear glass, colored glass,  
3 aluminum, steel and bimetallic cans, high-grade office  
4 paper, newsprint, corrugated paper and plastics. Nothing  
5 in the ordinance or regulation shall be deemed to impair  
6 the ownership of separated materials by the person who  
7 generated them unless and until such materials are placed  
8 at curbside or similar location for collection by the  
9 municipality or its agents.

10 (ii) Persons to separate leaf waste from other  
11 municipal waste generated at their homes, apartments and  
12 other residential establishments until collection unless  
13 those persons have otherwise provided for the composting  
14 of leaf waste. The governing body of a municipality shall  
15 allow an owner, landlord or agent of an owner or landlord  
16 of multifamily rental housing properties with four or  
17 more units to comply with its responsibilities under this  
18 section by establishing a collection system for  
19 recyclable materials at each property. The collection  
20 system must include suitable containers for collecting  
21 and sorting materials, easily accessible locations for  
22 the containers, and written instructions to the occupants  
23 concerning the use and availability of the collection  
24 system. Owners, landlords and agents of owners or  
25 landlords who comply with this act shall not be liable  
26 for the noncompliance of occupants of their buildings.

27 (iii) Persons to separate high grade office paper,  
28 aluminum, corrugated paper and leaf waste and other  
29 material deemed appropriate by the municipality generated  
30 at commercial, municipal or institutional establishments

1 and from community activities and to store the material  
2 until collection. The governing body of a municipality  
3 shall exempt persons occupying commercial, institutional  
4 and municipal establishments within its municipal  
5 boundaries from the requirements of the ordinance or  
6 regulation if those persons have otherwise provided for  
7 the recycling of materials they are required by this  
8 section to recycle. To be eligible for an exemption under  
9 this subparagraph, a commercial or institutional solid  
10 waste generator must annually provide written  
11 documentation to the municipality of the total number of  
12 tons recycled.

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

16 (3) A system, including trucks and related equipment,  
17 that collects recyclable materials from the curbside or  
18 similar locations at least once per month from each residence  
19 or other person generating municipal waste in the county or  
20 municipality. The municipality, other than a county, shall  
21 explain how the system will operate, the dates of collection,  
22 the responsibilities of persons within the municipality and  
23 incentives and penalties.

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

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

27 (d) Notice.--Each municipality subject to this section shall  
28 establish a comprehensive and sustained public information and  
29 education program concerning recycling program features and  
30 requirements. As a part of this program, each municipality

1 shall, at least 30 days prior to the initiation of the recycling  
2 program and at least once every six months thereafter, notify  
3 all persons occupying residential, commercial, institutional and  
4 municipal premises within its boundaries of the requirements of  
5 the ordinance. The governing body of a municipality may, in its  
6 discretion as it deems necessary and appropriate, place an  
7 advertisement in a newspaper circulating in the municipality,  
8 post a notice in public places where public notices are  
9 customarily posted, including a notice with other official  
10 notifications periodically mailed to residential taxpayers or  
11 utilize any combination of the foregoing.

12 (e) Implementation.--

13 (1) Except as provided in paragraph (2), a municipality  
14 shall implement its responsibilities for collection,  
15 transportation, processing and marketing materials under this  
16 section in one or both of the following ways:

17 (i) Collect, transport, process or market materials  
18 as required by this section.

19 (ii) Enter into contracts with other persons for the  
20 collection, transportation, processing or marketing of  
21 materials as required by this section. A person who  
22 enters into a contract under this subsection shall be  
23 responsible with the municipality for implementation of  
24 this section.

25 (2) Nothing in this section requires a municipality to  
26 collect, transport, process and market materials, or to  
27 contract for the collection, transportation, processing and  
28 marketing of materials from establishments or activities  
29 where all of the following are met:

30 (i) The municipality is not collecting and

1 transporting municipal waste from such establishment or  
2 activity.

3 (ii) The municipality has not contracted for the  
4 collection and transportation of municipal waste from  
5 such establishment or activity.

6 (iii) The municipality has adopted an ordinance as  
7 required by this section, and the establishment or  
8 activity is in compliance with the provisions of this  
9 section.

10 (f) Preference.--In implementing its recycling program, a  
11 municipality shall accord consideration for the collection,  
12 marketing and disposition of recyclable materials to persons  
13 engaged in the business of recycling on the effective date of  
14 this act, whether or not the persons were operating for profit.

15 (g) Recycling by operator.--An operator of a landfill or  
16 resource recovery facility may contract with a municipality to  
17 provide recycling services in lieu of the curbside recycling  
18 program. The contract must ensure that at least 25% of the waste  
19 received is recycled. The economic and environmental impact of  
20 the proposed technology used for the recycling shall receive  
21 prior approval from the department.

22 (h) Alternative program.--A municipality shall be deemed to  
23 comply with this section through the use and operation of a  
24 recycling facility if it demonstrates all of the following to  
25 the department's satisfaction:

26 (1) Materials separated, collected, recovered or created  
27 by the recycling facility can be marketed as readily as  
28 materials collected through a curbside recycling program.

29 (2) The mechanical separation technology used in the  
30 recycling facility has been demonstrated to be effective for

1 the life of operations at the facility.

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 at least three recyclable materials. The three  
13 materials shall be chosen from the following: clear glass,  
14 colored glass, aluminum, steel and bimetallic cans, high  
15 grade office paper, newsprint, corrugated paper and plastics.  
16 The center must be located at the facility or in a place that  
17 is easily accessible to persons generating municipal waste  
18 that is processed or disposed at the facility. Each drop-off  
19 center must contain bins or containers where recyclable  
20 materials may be placed and temporarily stored. If the  
21 operation of the drop-off center requires attendants, the  
22 center shall be open at least eight hours per week, including  
23 four hours during evenings or weekends.

24 (2) Each operator shall, at least 30 days prior to the  
25 initiation of the drop-off center program and at least once  
26 every six months thereafter, provide public notice of the  
27 availability of the drop-off center. The operator shall place  
28 an advertisement in a newspaper circulating in the  
29 municipality or provide notice in another manner approved by  
30 the department.

1 (c) Removal of recyclable materials.--Two years after the  
2 effective date of this act, no person may operate a resource  
3 recovery facility unless the operator has developed a program  
4 for the removal to the greatest extent practicable of recyclable  
5 materials, such as plastics, high grade office paper, aluminum,  
6 clear glass and newspaper from the waste to be incinerated.

7 (d) Removal of hazardous materials.--Two years after the  
8 effective date of this act, no person may operate a resource  
9 recovery facility unless the operator has developed a program  
10 for the removal to the greatest extent practicable of hazardous  
11 materials, such as plastics, corrosive materials, batteries,  
12 pressurized cans and household hazardous materials from the  
13 waste to be incinerated.

14 Section 1503. Commonwealth recycling and waste reduction.

15 (a) Recycling.--Within two years after the effective date of  
16 this act, each Commonwealth agency, in coordination with the  
17 Department of General Services, shall establish and implement a  
18 source separation and collection program for recyclable  
19 materials produced as a result of agency operations, including,  
20 at a minimum, aluminum, high grade office paper and corrugated  
21 paper. The source separation and collection program shall  
22 include, at a minimum, procedures for collecting and storing  
23 recyclable materials, bins or containers for storing materials,  
24 and contractual or other arrangements with buyers.

25 (b) Waste reduction.--Within two years after the effective  
26 date of this act, each Commonwealth agency, in coordination with  
27 the department of General Services, shall establish and  
28 implement a waste reduction program for materials used in the  
29 course of agency operations. The program shall be designed and  
30 implemented to achieve the maximum feasible reduction of waste



1 generated as a result of agency operations.

2 (c) Use of composted materials.--All Commonwealth agencies  
3 responsible for the maintenance of public lands in this  
4 Commonwealth shall, to the maximum extent practicable and  
5 feasible, give due consideration and preference to the use of  
6 compost materials in all land maintenance activities which are  
7 to be paid with public funds.

8 Section 1504. Procurement by Commonwealth agencies.

9 (a) Initial review.--

10 (1) Commonwealth agencies shall review and revise their  
11 existing procurement procedures and specifications for the  
12 purchase of goods, supplies, equipment, materials and  
13 printing to:

14 (i) eliminate procedures and specifications that  
15 explicitly discriminate against goods, supplies,  
16 equipment, materials and printing with recycled content;  
17 and

18 (ii) encourage the use of goods, supplies,  
19 equipment, materials and printing with recycled content.

20 (b) Continuing review.--Commonwealth agencies shall review  
21 and revise their procedures and specifications on a continuing  
22 basis to encourage the use of goods, supplies, equipment,  
23 materials and printing with recycled content and shall, in  
24 developing new procedures and specifications, encourage the use  
25 of goods, supplies, equipment, materials and printing with  
26 recycled content.

27 (c) Recycled materials.--

28 (1) Commonwealth agencies shall review and revise their  
29 procurement procedures and specifications for the purchase of  
30 goods, supplies, equipment, materials and printing to ensure,

1 to the maximum extent economically feasible, that such  
2 agencies purchase goods, supplies, equipment, materials and  
3 printing that may be recycled or reused when such goods,  
4 supplies, equipment, materials and printing are discarded.

5 (2) Commonwealth agencies shall review and revise their  
6 procurement procedures and specifications on a continuing  
7 basis to encourage the use of goods, supplies, equipment,  
8 materials and printing that may be recycled or reused.

9 (3) Commonwealth agencies shall also, in developing new  
10 procedures and specifications, encourage the use of goods,  
11 supplies, equipment, materials and printing that may be  
12 recycled or reused.

13 Section 1505. Procurement by Department of General Services.

14 (a) Bidding.--In issuing invitations to bid for the purchase  
15 of goods, supplies, equipment, materials and printing, the  
16 Department of General Services shall set forth a minimum  
17 percentage of recycled content for the goods, supplies,  
18 equipment, materials and printing that must be certified by a  
19 bidder in order to qualify for the preference in subsection (b).  
20 For goods, supplies, equipment, materials and printing for which  
21 the Environmental Protection Agency has adopted procurement  
22 guidelines under the Resource Conservation and Recovery Act of  
23 1976 (Public Law 94-580, 42 U.S.C. § 6901 et seq.), as amended,  
24 the minimum percentage of recycled content shall not be less  
25 than is specified in such guidelines. A person may submit a bid  
26 that does not certify that the goods, supplies, equipment,  
27 materials or printing contain such minimum percentage of  
28 recycled content. The Department of General Services may waive  
29 this requirement for goods, supplies, equipment, materials and  
30 printing that cannot be procured with recycled content.

1 (b) Preference.--Every bidder for the purchase of goods,  
2 supplies, equipment, materials and printing which certifies that  
3 the goods, supplies, equipment, materials and printing subject  
4 to the bid contain the minimum percentage of recycled content  
5 that is set forth in the invitation for bids shall be granted a  
6 preference equal to 5% of the bid amount against any bidder that  
7 has not so certified. The Department of General Services shall  
8 waive this requirement for paper products purchased for State-  
9 owned hospitals.

10 (c) Ties.--When there is a tie for lowest responsible  
11 bidder, the Department of General Services may consider, as one  
12 factor in determining to whom to award the contract, which of  
13 the bids provides for the greatest weight of recycled content in  
14 the goods, supplies, equipment, materials or printing, or such  
15 other measure of recycled content as may be set forth in the  
16 invitation for bids.

17 (d) Implementation.--The Department of General Services may  
18 carry out the provisions and purposes of this section through  
19 appropriate contractual provisions and invitations to bid,  
20 through the adoption of such regulations as it deems necessary,  
21 or both.

22 (e) Federal funds.--The provisions of this section shall not  
23 be applicable when such provisions may jeopardize the receipt of  
24 Federal funds.

25 (f) Additional provisions.--The requirements of this section  
26 are in addition to those set forth in section 1504 for the  
27 Department of General Services.

28 (g) Cooperation.--All Commonwealth agencies shall cooperate  
29 with the Department of General Services in carrying out this  
30 section.

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

8 Section 1506. Testing by Department of Transportation.

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

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

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

8 (d) Rulemaking.--The Department of Transportation may adopt  
9 regulations as it deems necessary to carry out this section.

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

13 Section 1507. Procurement procedures for local public agencies.

14 (a) Purpose.--Each local public agency may, at its  
15 discretion, review and revise its procurement procedures and  
16 specifications for purchases of goods, supplies, equipment,  
17 materials and printing to:

18 (1) eliminate procedures and specifications that  
19 explicitly discriminate against goods, supplies, equipment,  
20 materials and printing with recycled content;

21 (2) encourage the use of goods, supplies, equipment,  
22 materials and printing with recycled content; and

23 (3) ensure, to the maximum extent economically feasible,  
24 that it purchases goods, supplies, equipment, materials and  
25 printing that may be recycled or reused when such goods,  
26 supplies, equipment, materials and printing are discarded.

27 (b) Options.--The options set forth in this section may be  
28 exercised, notwithstanding any other provision of law to the  
29 contrary.

30 Section 1508. Procurement options for local public agencies and

1                   certain Commonwealth agencies.

2       (a) General rule.--This section sets forth procurement  
3 options for local public agencies. These procurement options are  
4 also available to Commonwealth agencies other than the  
5 Department of General Services.

6       (b) Options.--Each public agency subject to this section  
7 may, at its discretion, do any of the following:

8           (1) In issuing invitations to bid for the purchase of  
9 goods, supplies, equipment, materials and printing, set forth  
10 a minimum percentage of recycled content for the goods,  
11 supplies, equipment, materials and printing that must be  
12 certified by a bidder in order to qualify for the preference  
13 in this paragraph. For goods, supplies, equipment, materials  
14 and printing for which the Environmental Protection Agency  
15 has adopted procurement guidelines under the Resource  
16 Conservation and Recovery Act of 1976 (Public Law 94-580, 42  
17 U.S.C. § 6901 et seq.), as amended, the minimum percentage of  
18 recycled content shall not be less than is specified in such  
19 guidelines. A person may submit a bid that does not certify  
20 that the goods, supplies, equipment, materials or printing  
21 contain such minimum percentage of recycled content. Every  
22 bidder for the purchase of goods, supplies, equipment,  
23 materials and printing which certifies that the goods,  
24 supplies, equipment, materials and printing subject to the  
25 bid contain the minimum percentage of recycled content that  
26 is set forth in the invitation for bids shall be granted a  
27 preference equal to 5% of the bid amount against any bidder  
28 that has not so certified.

29           (2) Establish specifications for bids for public  
30 contracts that require all bidders to propose that a stated

1 minimum percentage of goods, supplies, equipment, materials  
2 or printing to be used for the contract be made from recycled  
3 material.

4 (3) Upon evaluation of bids opened for a public contract  
5 for goods, supplies, equipment, materials or printing, the  
6 agency shall identify the lowest responsible bidder. Where  
7 there is a tie for lowest responsible bidder, the agency  
8 shall consider, as one factor in determining to whom to award  
9 the contract, which of the bids provides for the greatest  
10 weight of recycled content in the goods, supplies, equipment,  
11 materials or printing, or such other measure of recycled  
12 content as may be set forth in the invitation for bids.

13 (c) Other laws.--The options set forth in this section may  
14 be exercised, notwithstanding any other provision of law to the  
15 contrary.

16 Section 1509. Recycling at educational institutions.

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

1 Section 1510. Lead acid batteries.

2 (a) Certain disposal prohibited.--No person may place a used  
3 lead acid battery in mixed municipal solid waste, discard or  
4 otherwise dispose of a lead acid battery except by delivery to  
5 an automotive battery retailer or wholesaler, to a secondary  
6 lead smelter permitted by the Environmental Protection Agency,  
7 or to a collection or recycling facility authorized under the  
8 laws of this Commonwealth.

9 (b) Disposal by dealers.--No automotive battery retailer  
10 shall dispose of a used lead acid battery except by delivery to  
11 a secondary lead smelter permitted by the Environmental  
12 Protection Agency, or to a collection or recycling facility  
13 authorized under the laws of this Commonwealth, or to the agent  
14 of a battery manufacturer or wholesaler for delivery to a  
15 secondary lead smelter permitted by the Environmental Protection  
16 Agency, or a collection or recycling facility authorized under  
17 the laws of this Commonwealth.

18 (c) Collection for recycling.--Any person selling or  
19 offering for sale at retail lead acid batteries shall:

20 (1) Accept, at the point of transfer, in a quantity at  
21 least equal to the number purchased, used lead acid batteries  
22 from customers in exchange for new batteries purchased.

23 (2) Post written notice which must be at least 8 1/2  
24 inches by 11 inches in size and must contain the universal  
25 recycling symbol and the following language:

26 (i) "It is illegal to discard a motor vehicle or  
27 other lead acid battery."

28 (ii) "Recycle your used batteries."

29 (iii) "State law requires us to accept used motor  
30 vehicle or other lead acid batteries for recycling, in



1 exchange for new batteries purchased."

2 (d) Lead acid battery wholesalers.--Any person selling new  
3 lead acid batteries at wholesale shall accept, at the point of  
4 transfer, used lead acid batteries from customers in a quantity  
5 at least equal to the number purchased. A person accepting  
6 batteries in transfer from an automotive battery retailer shall  
7 be allowed a period not to exceed 90 days to remove batteries  
8 from the retail point of collection.

9 (e) Inspection of automotive battery retailers.--The  
10 department shall produce, print and distribute the notices  
11 required by subsection (d) to all places where lead acid  
12 batteries are offered for sale at retail. The department may  
13 inspect any place, building or premises governed by this act.  
14 authorized employees of the department may issue warnings and  
15 citations to persons who fail to comply with the requirements of  
16 this section. Failure to post the required notice following  
17 warning shall subject a civil penalty of \$25 per day,  
18 collectible by the department.

19 (f) Enforcement.--The Department of Environmental Resources  
20 shall enforce this section.

21 Section 1511. Recycled paper products.

22 (a) General rule.--The Department of General Services shall,  
23 to the fullest extent possible when contracting for paper or  
24 paper products, purchase or approve for purchase only such paper  
25 or paper products that are manufactured or produced from  
26 recycled paper as specified in subsection (b).

27 (b) Implementation.--The provisions of subsection (a) shall  
28 be implemented by the Department of General Services so that, of  
29 the total volume of paper purchased, recycled paper composes at  
30 least 10% of the volume in 1989, at least 25% of the volume in

1 1991 and at least 40% of the volume in 1993.

2 (c) Newsprint.--In the case of the purchase of newsprint and  
3 newsprint products, at least 40% of the secondary waste paper  
4 material used in recycled newsprint shall be postconsumer  
5 newspaper waste.

6 (d) Application of section.--This section shall not apply to  
7 the purchase of paper containers for food or beverages.

8 (e) Definitions.--As used in this section, the following  
9 words and phrases shall have the meanings given to them in this  
10 subsection:

11 "Postconsumer waste." Any product generated by a business or  
12 consumer which has served its intended end use, and which has  
13 been separated from solid waste for the purposes of collection,  
14 recycling and disposition and which does not include secondary  
15 waste material or demolition waste.

16 "Recycled paper." Any paper having a total weight consisting  
17 of not less than 20% secondary waste paper material in 1989, not  
18 less than 30% of said material in 1991, not less than 40% of  
19 said material in 1993, and not less than 50% of said material in  
20 1996 and thereafter, and not less than 10% postconsumer waste  
21 beginning in 1996.

22 "Secondary waste paper material." Paper waste generated  
23 after the completion of a papermaking process, such as  
24 postconsumer waste material, envelope cuttings, bindery  
25 trimmings, printing waste, cutting and other converting waste,  
26 butt rolls and mill wrappers. The term shall not include fibrous  
27 waste generated during the manufacturing process, such as fibers  
28 recovered from wastewater or trimmings of paper machine rolls,  
29 fibrous by-products of harvesting, extractive or woodcutting  
30 process, or forest residue such as bark.

1 Section 1512. Household Hazardous Waste Collection and Disposal  
2 Grant Program.

3 (a) Administration.--It shall be the duty of the department  
4 to administer a Household Hazardous Waste Collection and  
5 Disposal Grant Program for households, farms, schools and small  
6 businesses, to be known as the Right-Way-to-Throw-Away Program.

7 (b) Grants.--It shall be the duty of the department to  
8 administer specifically appropriated funds for a grant program  
9 to municipalities for the establishment and operation of  
10 household hazardous waste collection programs. The department  
11 shall establish guidelines for the awarding of such grants and  
12 shall give priority to those programs operated by counties,  
13 multicounty agencies, cities of the first and second class and  
14 current municipal programs.

15 (c) Registration; department approval.--No municipality  
16 shall establish a program for the collection and management of  
17 household hazardous wastes until the program has been registered  
18 with and approved by the department. Each municipality shall  
19 also maintain and submit records to the department as required  
20 under the guidelines or regulations promulgated under subsection  
21 (d).

22 (d) Powers and duties of the department.--The department  
23 shall have the power and its duty shall be to:

24 (1) Administer the Right-Way-to-Throw-Away Program  
25 established pursuant to this section.

26 (2) Determine the types and amounts of household  
27 hazardous waste to be handled in the program and the size of  
28 the business establishments eligible for inclusion as  
29 entities.

30 (3) License a collection contractor or contractors as

1 defined and provided for in this section.

2 (4) Establish guidelines for the registration and  
3 operations of household hazardous waste collection programs  
4 within 90 days from the effective date of this act. The  
5 guidelines shall terminate after a period of one year or upon  
6 promulgation by the Environmental Quality Board of  
7 regulations for these activities, whichever occurs first.

8 (5) Inspect all such collection sites operated pursuant  
9 to this section to insure that such collection is performed  
10 in a safe and environmentally sound manner.

11 (6) Require records to be submitted to the department by  
12 the municipality or collection contractor identifying types  
13 and amounts of household hazardous waste collected, entities  
14 submitting household hazardous waste and the points of  
15 ultimate disposition.

16 (7) Submit an annual report to the General Assembly  
17 summarizing the operation and costs of the program, including  
18 location of sites, types and amounts of waste collected,  
19 entities disposing of waste at the collection sites, and the  
20 methods utilized for disposal of the wastes.

21 (8) Develop a fee schedule for eligible small  
22 businesses, with provisions exempting nonprofit entities from  
23 the payment of fees.

24 (e) Collection contractor responsibilities.--

25 (1) Qualifications.--No collection contractor may be  
26 selected to operate a collection program or site unless the  
27 contractor can demonstrate to the satisfaction of the  
28 department its ability to collect, package, transport and  
29 dispose of hazardous waste collected under this program  
30 consistent with the requirements of Articles IV, V and VI of

1 the Solid Waste Management Act and regulations promulgated  
2 thereunder and guidelines or regulations under this act.

3 (2) Ineligibility.--A collection contractor shall not be  
4 eligible to operate a collection program or collection site  
5 if the department finds that such person has shown a lack of  
6 ability or a lack of intent to comply with the Solid Waste  
7 Management Act or other environmental laws of this  
8 Commonwealth, other states or the United States.

9 (3) Requirements of the Solid Waste Management Act.--In  
10 addition to the requirements of this act, the contractor  
11 selected to operate a collection program shall be deemed to  
12 be a generator of hazardous waste under the Solid Waste  
13 Management Act and subject to the requirements and penalties  
14 provided in Article IV, V and VI of that act.

15 (f) Limit on amount.--No eligible entity shall deposit more  
16 than 100 kilograms of waste at any one scheduled collection  
17 event.

18 (g) Exclusions.--The following waste shall not be accepted  
19 at a collection point:

- 20 (1) Radioactive waste.
- 21 (2) Biologically active waste.
- 22 (3) Gas cylinders and aerosol cans.
- 23 (4) Explosives and ordinance materials.

24 (h) Public awareness.--The department shall administer a  
25 program of public information relating to the need for and  
26 promotion of the collection days to encourage citizen  
27 participation and inform citizens of the importance of proper  
28 disposal of hazardous waste. The department shall, within one  
29 year of the effective date of this act, establish a toll-free  
30 telephone line to provide information to the public on matters

1 relating to household hazardous waste management.

2 (i) Sites.--Collection events may be conducted on sites  
3 selected by the sponsoring entity or entities. Such sites may be  
4 on public or private property, including, but not limited to,  
5 property owned, leased or controlled by the Commonwealth, its  
6 agencies or its political subdivisions. Written permission to  
7 use the site for the conduct of the event shall be obtained from  
8 the owner prior to the event.

9 (j) Liability.--An owner who, without charge, permits any  
10 property to be used as a site for a collection event shall not  
11 be liable for any damage, harm or injury to any person or  
12 property which results from the use of the property as a site  
13 for a collection event.

14 (k) Definitions.--As used in this section, the following  
15 words and phrases shall have the meanings given to them in this  
16 subsection:

17 "Collection contractor." A person licensed by the department  
18 and retained by a municipality to operate a household hazardous  
19 waste collection program.

20 "Household hazardous waste." Any waste that would be  
21 considered hazardous under the Solid Waste Management Act, but  
22 for the fact that it is produced in quantities smaller than  
23 those regulated under that act and is generated by persons not  
24 otherwise covered by that act. At the discretion of the  
25 department, the term may include used oil.

26 "Owner." The possession of fee interest; a tenant, lessee,  
27 occupant, or person in contact; or the Commonwealth, its  
28 agencies and its political subdivisions.

29 "Small business." Any commercial establishment not regulated  
30 under the Resource Conservation and Recovery Act of 1976 (Public

1 Law 94-580, 42 U.S.C. § 6901 et seq.).

2 CHAPTER 17

3 ENFORCEMENT AND REMEDIES

4 Section 1701. Unlawful conduct.

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

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

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

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

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

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

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

27 (7) Hinder, obstruct, prevent or interfere with host  
28 municipalities or their personnel in the performance of any  
29 duty related to the collection of the host municipality  
30 benefit fee or in conducting any inspection authorized by

1 this act.

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

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

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

12 (c) Unlawful conduct.--It shall be unlawful to sell or offer  
13 for sale beverages connected to each other by plastic beverage  
14 carriers where the carrier is not a degradable plastic beverage  
15 carrier. The department shall certify whether a plastic beverage  
16 carrier meets the standards of degradability as defined in this  
17 act.

18 Section 1702. Enforcement orders.

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



1 act.

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

10 Section 1703. Restraining violations.

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

28 (b) Jurisdiction.--In addition to any other remedies  
29 provided for in this act, upon relation of any district attorney  
30 of any county affected, or upon relation of the solicitor of any

1 county or municipality affected, an action in equity may be  
2 brought in a court of competent jurisdiction for an injunction  
3 to restrain any and all violations of this act or the  
4 regulations promulgated pursuant thereto, or to restrain any  
5 public nuisance.

6 (c) Concurrent remedies.--The penalties and remedies  
7 prescribed by this act shall be deemed concurrent, and the  
8 existence of or exercise of any remedy shall not prevent the  
9 department from exercising any other remedy hereunder, at law or  
10 in equity.

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

15 Section 1704. Civil penalties.

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

1 cessation order, a civil penalty shall be assessed.

2 (b) Escrow.--When the department assesses a civil penalty,  
3 it shall inform the person of the amount of the penalty. The  
4 person charged with the penalty shall then have 30 days to pay  
5 the penalty in full or, if the person wishes to contest either  
6 the amount of the penalty or the fact of the violation, either  
7 to forward the proposed amount to the department for placement  
8 in an escrow account with the State Treasurer or with a bank in  
9 this Commonwealth or to post an appeal bond in the amount of the  
10 penalty. The bond must be executed by a surety licensed to do  
11 business in this Commonwealth and must be satisfactory to the  
12 department. If, through administrative or judicial review of the  
13 proposed penalty, it is determined that no violation occurred or  
14 that the amount of the penalty shall be reduced, the department  
15 shall, within 30 days, remit the appropriate amount to the  
16 person, with an interest accumulated by the escrow deposit.  
17 Failure to forward the money or the appeal bond to the  
18 department within 30 days shall result in a waiver of all legal  
19 rights to contest the violation or the amount of the penalty.

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

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

1 Section 1705. Criminal penalties.

2 (a) Summary offense.--Any person, other than a municipal  
3 official exercising his official duties, who violates any  
4 provision of this act, any regulation promulgated hereunder, any  
5 order issued hereunder, or the terms or conditions of any  
6 approved municipal waste management plan shall, upon conviction  
7 thereof in a summary proceeding, be sentenced to pay a fine of  
8 not less than \$100 and not more than \$1,000 and costs and, in  
9 default of the payment of such fine and costs, to undergo  
10 imprisonment for not more than 30 days.

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

20 (c) Second or subsequent offense.--Any person, other than a  
21 municipal official exercising his official duties who, within  
22 two years after a conviction of a misdemeanor for any violation  
23 of this act, violates any provision of this act, any regulation  
24 promulgated hereunder, any order issued hereunder, or the terms  
25 or conditions of any approved municipal waste management plan,  
26 commits a misdemeanor of the second degree and shall, upon  
27 conviction, be sentenced to pay a fine of not less than \$2,500  
28 nor more than \$25,000 for each violation or to imprisonment for  
29 a period of not more than two years, or both.

30 (d) Violations to be separate offense.--Each violation for

1 each separate day and each violation of any provision of this  
2 act, any regulation promulgated hereunder, any order issued  
3 hereunder, or the terms or conditions of any approved municipal  
4 waste management plan, shall constitute a separate offense under  
5 subsections (a), (b) and (c).

6 Section 1706. Existing rights and remedies preserved;  
7 cumulative remedies authorized.

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

30 Section 1707. Production of materials; recordkeeping

1 requirements.

2 (a) Authority of department.--The department and its agents  
3 and employees shall:

4 (1) Have access to, and require the production of, books  
5 and papers, documents, and physical evidence pertinent to any  
6 matter under investigation.

7 (2) Require any person engaged in the municipal waste  
8 management or municipal waste planning to establish and  
9 maintain such records and make such reports and furnish such  
10 information as the department may prescribe.

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

24 (b) Warrants.--An agent or employee of the department may  
25 apply for a search warrant to any Commonwealth official  
26 authorized to issue a search warrant for the purposes of  
27 inspecting or examining any property, building, premises, place,  
28 book, record or other physical evidence; of conducting tests; or  
29 of taking samples of any solid waste. The warrant shall be  
30 issued upon probable cause. It shall be sufficient probable

1 cause to show any of the following:

2 (1) The inspection, examination, test or sampling is  
3 pursuant to a general administrative plan to determine  
4 compliance with this act.

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

7 (3) The agent or employee has been refused access to the  
8 property, building, premises, place, book, record or physical  
9 evidence or has been prevented from conducting tests or  
10 taking samples.

11 Section 1708. Withholding of State funds.

12 In addition to any other penalties provided in this act, the  
13 department may notify the State Treasurer to withhold payment of  
14 all or any portion of funds payable to the municipality by the  
15 department from the General Fund or any other fund if the  
16 municipality has engaged in any unlawful conduct under section  
17 1701. Upon notification, the State Treasurer shall hold in  
18 escrow such moneys due to such municipality until such time as  
19 the department notifies the State Treasurer that the  
20 municipality has complied with such requirement or schedule.

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

22 (a) Lien.--All fines, fees, interest and penalties and any  
23 other assessments shall be collectible in any manner provided by  
24 law for the collection of debts. If the person liable to pay any  
25 such amount neglects or refuses to pay the same after demand,  
26 the amount, together with interest and any costs that may  
27 accrue, shall be a judgment in favor of the Commonwealth or the  
28 host municipality, as the case may be, upon the property of such  
29 person, but only after same has been entered and docketed of  
30 record by the prothonotary of the county where such property is

1 situated. The Commonwealth or host municipality, as the case may  
2 be, may at any time transmit to the prothonotaries of the  
3 respective counties certified copies of all such judgments, and  
4 it shall be the duty of each prothonotary to enter and docket  
5 the same of record in his office, and to index the same as  
6 judgments are indexed, without requiring the payment of costs as  
7 a condition precedent to the entry thereof.

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

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

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

16 Section 1711. Remedies of citizens.

17 (a) Authority to bring civil action.--Except as provided in  
18 subsection (c), any aggrieved person may commence a civil action  
19 on his own behalf against any person who is alleged to be in  
20 violation of this act.

21 (b) Jurisdiction.--The Environmental Hearing Board is hereby  
22 given jurisdiction over citizen suit actions brought under this  
23 section against the department. Actions against any other  
24 persons under this section may be taken in a court of competent  
25 jurisdiction. Such jurisdiction is in addition to any rights of  
26 action now or hereafter existing in equity, or under the common  
27 law or statutory law.

28 (c) Notice.--No action may be commenced under this section  
29 prior to 60 days after the plaintiff has given notice of the  
30 violation to the secretary, to the host municipality and to any



1 alleged violator of the act, of other environmental protection  
2 acts, or of the regulation or order of the department which has  
3 allegedly been violated, nor shall any action be commenced under  
4 this section if the secretary has commenced and is diligently  
5 prosecuting an administrative action before the Environmental  
6 Hearing Board, or a civil or criminal action in a court of the  
7 United States or a state to require compliance with such permit,  
8 standard, regulation, condition, requirement, prohibition or  
9 order.

10 (d) Award of costs.--The Environmental Hearing Board or a  
11 court of competent jurisdiction, in issuing any final order in  
12 any action brought pursuant to subsection (a), may award costs  
13 of litigation, including reasonable attorney and expert witness  
14 fees, to any party, whenever the board or court determines such  
15 award is appropriate.

16 Section 1712. Affirmative defense.

17 (a) Defense.--It shall be an affirmative defense to any  
18 action by the department pursuant to section 1702, 1704, 1705 or  
19 1708 and any action brought pursuant to section 1711 against any  
20 municipality alleged to be in violation of section 1501 that  
21 such municipality's failure to comply is caused by excessive  
22 costs of the program required by section 1501. Program costs are  
23 excessive when reasonable and necessary costs of operating the  
24 program exceed income from the sale or use of collected  
25 material, grant money received from the department pursuant to  
26 section 902, and avoided costs of municipal waste processing or  
27 disposal.

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

30 (1) To make a timely grant application to the department

1 pursuant to section 902.

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

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

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

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

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

15 (d) Exemption.--If the department approves a request, the  
16 municipality shall be exempt from the requirements of this  
17 section on and after the date of the department's approval.  
18 However, the municipality shall immediately pay to the  
19 department an amount equal to the depreciated value of any  
20 capital equipment, buildings, or other structures or facilities  
21 that were constructed or obtained through departmental grants  
22 under section 902. The municipality shall pay to the department  
23 within 5 years an amount equal to the depreciated value of any  
24 capital equipment purchased with funds provided by the  
25 department under section 902, less any contribution by the  
26 municipality for the purchase of such capital equipment, or the  
27 municipality shall convey within 90 days such capitol equipment  
28 to the department.

29 Section 1713. Public information.

30 (a) General rule.--Except as provided in subsection (b),

1 records, reports or other information obtained under this act  
2 shall be available to the public for inspection or copying  
3 during regular business hours.

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

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

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

13 (c) Separation of information.--When submitting information  
14 under this act, a person shall designate the information which  
15 the person believes is confidential or shall submit that  
16 information separately from other information being submitted.  
17 Section 1714. Whistleblower provisions.

18 (a) Adverse action prohibited.--No employer may discharge,  
19 threaten, or otherwise discriminate or retaliate against an  
20 employee regarding the employee's compensation, terms,  
21 conditions, location or privileges of employment because the  
22 employee makes a good faith report or is about to report,  
23 verbally or in writing, to the employer or appropriate authority  
24 an instance of waste or wrongdoing under this act.

25 (b) Remedies.--The remedies, penalties and enforcement  
26 procedures for violations of this section shall be as provided  
27 in the act of December 12, 1986 (P.L.1559, No.169), known as the  
28 Whistleblower Law.

29 (c) Definitions.--As used in this section, the following  
30 words and phrases shall have the meanings given to them in this

1 subsection:

2 "Appropriate authority." A Federal, State or local  
3 government body, agency or organization having jurisdiction over  
4 criminal law enforcement, regulatory violations, professional  
5 conduct or ethics, or waste; or a member, officer, agent,  
6 representative or supervisory employee of the body, agency or  
7 organization. The term includes, but is not limited to, the  
8 Office of Attorney General, the Department of the Auditor  
9 General, the Treasury Department, the General Assembly and  
10 committees of the General Assembly having the power and duty to  
11 investigate criminal law enforcement, regulatory violations,  
12 professional conduct or ethics, or waste.

13 "Employee." A person who performs a service for wages or  
14 other remuneration under a contract of hire, written or oral,  
15 express or implied, for an employer, whether or not the employer  
16 is a public body.

17 "Employer." A person supervising one or more employees,  
18 including the employee in question; a superior of that  
19 supervisor; or an agent of a public body.

20 "Good faith report." A report of conduct defined in this act  
21 as wrongdoing or waste which is made without malice or  
22 consideration of personal benefit and which the person making  
23 the report has reasonable cause to believe is true.

24 "Public body." All of the following:

25 (1) A State officer, agency, department, division,  
26 bureau, board, commission, council, authority or other body  
27 in the executive branch of State government.

28 (2) A county, city, township, regional governing body,  
29 council, school district, special district or municipal  
30 corporation, or a board, department, commission, council or

1 agency.

2 (3) Any other body which is created by Commonwealth or  
3 political subdivision authority or which is funded in any  
4 amount by or through Commonwealth or political subdivision  
5 authority or a member or employee of that body.

6 "Waste." An employer's conduct or omissions which result in  
7 substantial abuse, misuse, destruction or loss of funds or  
8 resources belonging to or derived from Commonwealth or political  
9 subdivision sources.

10 "Whistleblower." A person who witnesses or has evidence of  
11 wrongdoing or waste while employed and who makes a good faith  
12 report of the wrongdoing or waste, verbally or in writing, to  
13 one of the person's superiors, to an agent of the employer or to  
14 an appropriate authority.

15 "Wrongdoing." A violation which is not of a merely technical  
16 or minimal nature of a Federal or State statute or regulation,  
17 of a political subdivision ordinance or regulation or of a code  
18 of conduct or ethics designed to protect the interest of the  
19 public or the employer.

20 Section 1715. Additional penalties.

21 (a) Vehicle forfeiture.--Any vehicle or conveyance used for  
22 transportation or disposal of solid waste in the commission of  
23 an offense under section 610(1) of the Solid Waste Management  
24 shall be deemed contraband and forfeited to the department. The  
25 provisions of law relating to the seizure, summary and judicial  
26 forfeiture, and condemnation of intoxicating liquor shall apply  
27 to seizures and forfeitures under this section. Proceeds from  
28 the sale of forfeited vehicles or conveyances shall be deposited  
29 in the Solid Waste Abatement Fund.

30 (b) Responsibility for cost.--The operator of any vehicle or

1 conveyance forfeited under subsection (a) shall be responsible  
2 for any costs incurred in properly disposing of waste in the  
3 vehicle or conveyance.

4 CHAPTER 19

5 MISCELLANEOUS PROVISIONS

6 Section 1901. Report to General Assembly.

7 The Secretary of Environmental Resources shall prepare a  
8 report to the General Assembly concerning the implementation of  
9 this act and the success of county and municipal recycling  
10 programs. This report shall be transmitted to the General  
11 Assembly no later than April 1, 1991, and shall be revised, and  
12 modified if necessary, at least once every three years  
13 thereafter.

14 Section 1902. Severability.

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

20 Section 1903. Repeals.

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

25 (b) Inconsistent repeals.--

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

1           (2) All acts and parts of acts inconsistent with section  
2       1505 are hereby repealed to the extent of the inconsistency.

3       (c) Effect of repealers.--All orders, permits, licenses,  
4 decisions and actions of the department under the repealed  
5 provisions of the Solid Waste Management Act, including  
6 technical or preliminary approvals of solid waste management  
7 plans, shall remain in effect unless and until modified,  
8 repealed, suspended, superseded or otherwise changed under the  
9 terms of this act and the regulations promulgated under this  
10 act.

11 Section 1904. Effective date.

12       This act shall take effect as follows:

13           (1) The provisions of Chapters 7 and 9 shall take effect  
14       in 90 days.

15           (2) The remainder of this act shall take effect in 60  
16       days.