No. 1988-101

AN ACT

SB 528

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; imposing and collecting fees; establishing certain rights for host municipalities; requiring municipalities to implement recycling programs; requiring Commonwealth agencies to procure recycled materials; imposing duties; granting powers to counties and municipalities; authorizing the Environmental Quality Board to adopt regulations; authorizing the Department of Environmental Resources to implement this act; providing remedies; prescribing penalties; establishing a fund; and making repeals.

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

CHAPTER 1
GENERAL PROVISIONS

Section 101. Short title.

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

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

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

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

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

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

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

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

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

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

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

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

(10) Authorizing counties to control the flow of municipal waste is necessary, among other reasons, to guarantee the long-term economic viability of resource recovery facilities and municipal waste landfills, to ensure that such facilities and landfills can be financed, to moderate the cost of such facilities and landfills over the long term, to protect existing capacity, and to assist in the development of markets for recyclable materials by guaranteeing a steady flow of such materials.

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

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

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

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

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

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

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

(18) This act is enacted under the authority of Amendment X of the Constitution of the United States of America, under which the police power to protect the health, safety and welfare of the citizens is reserved to the states.

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

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

(21) Uncontrolled increases in the daily volumes of solid waste received at municipal waste landfills have significantly decreased their remaining lifetimes, disrupting the municipal waste planning process and the ability of municipalities relying on the landfills to continue using them. These increases have threatened to significantly and adversely affect public health and safety when municipalities find they can no longer use the facilities. Uncontrolled increases in daily waste volumes can also cause increased noise, odors, truck traffic and other significant adverse effects on the environment as well as on public health and safety.

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

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

(i) Ensure that the ability of the scrap processing and recycling industry to continue purchasing, processing and marketing recoverable materials is not thereby impaired.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) Strengthen the department's existing authority to regulate daily waste volumes that may be received at a municipal waste landfill to protect against the unexpected or unplanned loss of facilities and to ensure that the facilities operate in a manner that protects the environment as well as public health and safety.

(c) Declaration of goals.—The General Assembly therefore declares the following goals:

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

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

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

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

Section 103. Definitions.

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

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

"Average daily volume." The mean daily volume received at a facility taking into account weather, seasonal variations, scheduled community cleanup days and other factors.

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

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

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

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

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

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

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

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

"Local public agency."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Resource recovery facility." A processing facility that provides for the extraction and utilization of materials or energy from municipal waste that is generated offsite, including, but not limited to, a facility that mechanically extracts materials from municipal waste, a combustion facility that converts the organic fraction of municipal waste to usable energy, and any chemical and biological process that converts municipal waste into a fuel product. The term also includes any facility for the combustion of municipal waste that is generated offsite, whether or not the facility is operated to recover energy. The term does not include:

(1) Any composting facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 104. Construction of act.

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

(b) Pari materia.—This act shall be construed in pari materia with the Solid Waste Management Act.

CHAPTER 3
POWERS AND DUTIES

Section 301. Powers and duties of department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 302. Powers and duties of Environmental Quality Board.

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

Section 303. Powers and duties of counties.

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

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

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

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

(4) May adopt ordinances, resolutions, regulations and standards for the recycling of municipal waste or source-separated recyclable material if one of the following requirements are met:

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

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

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

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

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

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

(e) Designated sites.—A county with an approved municipal waste management plan that was submitted pursuant to section 501(a), (b) or (c) is also authorized to require that all municipal wastes generated within its boundaries shall be processed or disposed at a designated processing or disposal facility that is contained in the approved plan and permitted by the department under the Solid Waste Management Act. No county shall direct municipal waste or source-separated recyclable materials that would otherwise be recycled to any resource recovery facility or other facility for purposes other than recycling such waste. This subsection shall not apply to municipal waste going to existing or future onsite captive commercial disposal facilities used

for the exclusive disposal of municipal waste generated by that commercial operation.

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

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

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

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

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

(b) Ordinances.—

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

(2) The host municipality shall have the authority to adopt reasonable ordinances concerning the hours and days during which vehicles may deliver waste to the facility and the routing of traffic on public roads to the facility. Such ordinances may be in addition to, but not less stringent than, not inconsistent with and not in violation of, any provision of the Solid Waste Management Act, any regulation promulgated pursuant to that act, any order issued under that act, or any permit issued pursuant to that act. Such ordinances found to be inconsistent and not in substantial conformity with this paragraph shall be superseded. Appeals under this paragraph may be brought before a court of competent jurisdiction.

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

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

(e) Term and renewals of certain contracts.—The governing body of a municipality other than a county shall have the power to, and may, enter into contracts having an initial term of five years with optional renewal periods of up to five years with persons responsible for the collection or transportation of municipal waste generated within the municipality. The limitations imposed on contracts by section 1502 (XXVII) of the act of June 24, 1931 (P.L.1206, No.331), known as The First Class Township Code, and section 702 (VIII) of the act of May 1, 1933 (P.L.103, No.69), known as The Second Class Township Code, shall not apply to contracts entered into pursuant to this act. Nothing in this act shall impair municipalities, other than counties, from entering into disposal contracts under section 502(o).

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

CHAPTER 5
MUNICIPAL WASTE PLANNING

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

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

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

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

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

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

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

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

(3) When otherwise required by the department.

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

Section 502. Content of municipal waste management plans.

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

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

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

(1) Facilities holding permits for which a complete permit application under the Solid Waste Management Act is filed with the department within

one year from the effective date of this act or within one year of the date written notice of the development of a plan is given to municipalities pursuant to section 503(b) or within six months of the date written notice for a substantial plan revision is given to municipalities pursuant to section 503(b), whichever is the later, unless such permit application is denied by the department.

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

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

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

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

(iii) The applicant meets one of the following:

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

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

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

In addition, the plan shall give consideration to the potential expansion of existing municipal waste processing or disposal facilities located in the county. For the purposes of this subsection, the department shall determine whether applications are complete within 90 days of their receipt and, if incomplete, specify to the applicant all deficiencies of the application. Any subsequent plan revisions shall identify and describe the facilities where municipal waste is currently being disposed or processed and the remaining available permitted capacity of such facilities, and the plan shall consider the capacity which could be made available through the reasonable expansion of such facilities.

(d) Estimated future capacity.—The plan shall estimate the processing or disposal capacity needed for the municipal waste that will be generated in the county during the next ten years. The assessment shall describe the primary variables affecting this estimate and the extent to which they can reasonably be expected to affect the estimate, including, but not limited to, the amount of residual waste disposed or processed at municipal waste disposal or processing facilities in the county and the extent to which residual waste may be disposed or processed at such facilities during the next ten years. If the plan indicates that additional processing or disposal capacity is needed by the county, the county shall give public notice of such a determination and solicit proposals and recommendations regarding facilities and programs to provide such capacity. The county shall provide a copy of such notice to the department, which shall cause a copy of such notice to be published in the Pennsylvania Bulletin.

(e) Description of recyclable materials.—

(1) The plan shall describe and evaluate:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) Orderly extension.—The plan shall provide for the orderly extension of municipal waste management systems in a manner that is consistent with the needs of the area and is also consistent with any existing State, regional

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

(l) Methods of disposal other than by contract.—If the county proposes to require, by means other than contracts, that municipal wastes generated within its boundaries be processed or disposed at a designated facility under section 303(e), the plan shall so state. The plan shall explain the basis for such a proposal, giving consideration to alternative means of ensuring that waste generated within the county's boundaries is processed or disposed in an environmentally acceptable manner. A copy of the proposed ordinance or other legal instrument that would effectuate this proposal shall also be included.

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

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

(o) Noninterference with certain resource recovery facilities and landfills.—

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

(i) A resource recovery facility or municipal waste landfill that is part of a complete municipal waste management plan submitted by a municipality or organization of municipalities under the Solid Waste Management Act prior to the effective date of this act, and for which a complete permit application under the Solid Waste Management Act is submitted to the department within one year of the effective date of this act.

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

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

(iv) The implementation of a county municipal waste plan pursuant to section 501(b) which has designated an existing permitted solid waste management facility, on or before the effective date of this act, owned by a local public agency other than the county in which the facility is located.

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

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

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

(C) The applicant meets one of the following:

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

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

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

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

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

Section 503. Development of municipal waste management plans.

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

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

(c) Review and comment.—Prior to adoption by the governing body of the county, the county shall submit copies of the proposed plan for review

and comment to the department, all municipalities within the county, all areawide planning agencies and the county health department, if one exists. The county shall also make the proposed plan available for public review and comment. The period for review and comment shall be 90 days. The county shall hold at least one public hearing on the proposed plan during this period. The plan subsequently submitted to the governing body of the county for adoption shall be accompanied by a document containing written responses to comments made during the comment period.

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

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

Section 504. Failure to ratify plan.

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

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

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

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

Section 505. Review of municipal waste management plans.

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

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

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

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

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

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

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

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

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

Section 506. Contracts.

(a) General rule.—Except as otherwise provided in this act, nothing in this act shall be construed to interfere with, or in any way modify, the provi-

sions of any contract for municipal waste disposal, processing or collection in force in any county, other municipality or municipal authority upon the effective date of this act or prior to the adoption pursuant to this act of a department-approved municipal waste management plan.

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

Section 507. Relationship between plans and permits.

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

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

(2) meets all of the following requirements:

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

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

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

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

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

Section 508. Studies.

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

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

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

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

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

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

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

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

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

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

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

(e) Distribution to municipalities.—The department shall promptly make available to municipalities and other interested persons the results of the studies required by this section.

Section 509. Best available technology.

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

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

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

(d) New technologies.—Nothing contained in this act shall prohibit a private commercial enterprise from developing and implementing innovative or alternative, environmentally acceptable, means of reducing, processing, recycling and/or disposing of waste generated by the applicant commercial enterprise's operation, either onsite or otherwise, which means are not violative of, nor inconsistent with, the provisions and purposes of the Solid Waste Management Act, this act and department regulations.

Section 510. Permit requirements.

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

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

Section 511. Site limitation.

(a) General rule.—The department shall not issue a permit for, nor allow the operation of, a new municipal waste landfill, a new commercial residual waste treatment facility or a new resource recovery facility within 300 yards of a building which is owned by a school district or a parochial school and used for instructional purposes, parks or playgrounds existing prior to the date the department has received an administratively complete application for a permit for such facilities. This subsection shall not affect any modification, extension, addition or renewal of existing permitted facilities.

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

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

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

(e) Waiver.—The department may grant a waiver of the property line setback requirement in the department's regulations under the Solid Waste Management Act for resource recovery facilities if, upon petition by a permit applicant, the department determines that the proposed facility is in conformance with local zoning codes and that the operation of the facility would result in an overall reduction in air emissions and that all owners of occupied dwellings within the above setbacks have provided written waivers consenting to the facility being closer than required in the regulations.

Section 512. Completeness review.

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

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

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

(b) Review period.—

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

(i) For municipal waste and construction/demolition waste landfills, within nine months from the date of the department's determination under subsection (a) that the application is administratively complete.

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

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

Section 513. Future availability.

(a) Submission of ordinances.—Within one year following approval of a plan by the department, including plans approved pursuant to

section 501(b), the county shall cause to be submitted to the department copies of all executed ordinances, contracts or other requirements to implement its approved plan and that will be used to ensure sufficient available capacity to properly dispose or process all municipal waste that is expected to be generated within the county for the next ten years. The county may have such documents, contracts or other requirements submitted by a person to whom it has delegated such responsibility under section 303(d).

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

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

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

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

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

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

CHAPTER 7
RECYCLING FEE

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

(a) Imposition.—There is imposed a recycling fee of $2 per ton for all solid waste processed at resource recovery facilities and for all solid waste except process residue and nonprocessible waste from a resource recovery facility that is disposed of at municipal waste landfills. Such fee shall be paid by the operator of each municipal waste landfill and resource recovery facility.

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

(c) Waste weight requirement.—On and after April 9, 1990, each operator of a municipal waste landfill and resource recovery facility that has received 30,000 or more cubic yards of solid waste in the previous calendar year shall weigh all solid waste when it is received. The scale used to weigh solid waste shall conform to the requirements of the act of December 1, 1965 (P.L.988, No.368), known as the Weights and Measures Act of 1965, and the regulations promulgated pursuant thereto. The operator of the scale shall be a licensed public weighmaster under the act of April 28, 1961 (P.L.135, No.64), known as the Public Weighmaster's Act, and the regulations promulgated pursuant thereto.

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

Section 702. Form and timing of recycling fee payment.

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

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

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

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

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

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

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

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

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

Section 703. Collection and enforcement of fee.

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

(b) Additional penalty.—In addition to the interest provided in subsection (a), if an operator fails to make timely payment of the recycling fee, there shall be added to the amount of fee actually due 5% of the amount of such fee, if the failure to file a timely payment is for not more than one month, with an additional 5% for each additional month, or fraction

thereof, during which such failure continues, not exceeding 25% in the aggregate.

(c) Assessment notices.—

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

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

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

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

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

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

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

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

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

Section 704. Records.

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

Section 705. Surcharge.

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

Section 706. Recycling Fund.

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

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

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

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

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

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

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

(d) Transfer.—On the first day of the 16th year after the fee imposed by section 701 becomes effective, all moneys in the Recycling Fund that are not obligated shall be transferred to the Solid Waste Abatement Fund and expended in the same manner as other moneys in the Solid Waste Abatement Fund. On the first day of the 19th year after the fee imposed by section 701 becomes effective, all moneys in the Recycling Fund that are not expended shall be transferred to the Solid Waste Abatement Fund and expended in the same manner as other moneys in the Solid Waste Abatement Fund.

(e) Advisory committee.—The secretary shall establish a Recycling Fund Advisory Committee composed of representatives of counties, other municipalities, municipal authorities, the municipal waste management industry, the municipal waste recycling industry, the municipal waste generating industry and the general public. The committee shall also include members of the General Assembly, one appointed by each of the following: the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the President pro tempore of the Senate and the Minority Leader of the Senate. The committee shall meet at least annually to review the Commonwealth's progress in meeting the goals under section 102(c), to recommend priorities on expenditures from the fund, and to advise the secretary on associated activities concerning the administration of the fund. The department shall reimburse members of the committee for reasonable travel, hotel and other necessary expenses incurred in performance of their duties under this section.

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

CHAPTER 9
GRANTS

Section 901. Planning grants.

The department shall, upon application from a county, award grants for the cost of preparing municipal waste management plans in accordance with this act; for carrying out related studies, surveys, investigations, inquiries,

research and analyses, including those related by siting; and for environmental mediation. The department may also award grants under this section for feasibility studies and project development for municipal waste processing or disposal facilities, except for facilities for the combustion of municipal waste that are not proposed to be operated for the recovery of energy. The application shall be made on a form prepared and furnished by the department. The application shall contain such information as the department deems necessary to carry out the provisions and purposes of this act. The grant to any county under this section shall be 80% of the approved cost of such plans and studies.

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

(a) Authorization.—The department shall award grants for development and implementation of municipal recycling programs, upon application from any municipality which meets the requirements of this section. The grant provided by this section may be used to identify markets, develop a public education campaign, purchase collection and storage equipment and do other things necessary to establish a municipal recycling program. The grant may be used to purchase collection equipment, only to the extent needed for collection of recyclable materials, and mechanical processing equipment, only to the extent that such equipment is not available to the program in the private sector. The application shall be made on a form prepared and furnished by the department. The application shall explain the structure and operation of the program and shall contain such other information as the department deems necessary to carry out the provisions and purposes of this act. The grant under this section to a municipality required by section 1501 to implement a recycling program shall be 90% of the approved cost of establishing a municipal recycling program. The grant under this section to a municipality not required by section 1501 to implement a recycling program shall be 90% of the approved cost of establishing a municipal recycling program. In addition to the grant under this section, a financially distressed municipality, as defined in section 203(f) of the act of July 10, 1987 (P.L.246, No.47), known as the Financially Distressed Municipalities Act, that is required by section 1501 to implement a recycling program shall be eligible for an additional grant equal to 10% of the approved cost of establishing a municipal recycling program.

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

(1) The application is complete and accurate.

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

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

(i) materials collected and persons affected;

(ii) contracts for the operation of the program;

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

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

(v) public information and education;

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

(vii) other information deemed necessary by the department.

(4) If the municipality proposes to use some or all of the grant funds to purchase mechanical processing equipment, the equipment is not available to the program in the private sector. Before submitting the application to the department, the municipality shall publish in a newspaper of general circulation a notice describing in reasonable detail the equipment which the municipality proposes to purchase, or cause to be purchased, and the proposed uses of the equipment, and allow 30 days for written response from any interested persons. The application shall describe the responses received and shall explain why the municipality has concluded that such equipment is not available from the private sector.

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

(d) Priority.—Each municipality, other than a county, which establishes and implements a mandatory source separation and collection program for recyclable materials shall be given the same priority with municipalities subject to the requirements of section 1501 for grants under this section.

Section 903. Grants for recycling coordinators.

(a) Authorization.—The department shall award grants to reimburse counties for authorized costs incurred for the salary and expenses of recycling coordinators, upon application from any county. The application shall be made on a form prepared and furnished by the department. The application shall explain the duties and activities of the county recycling coordinator. If a recycling coordinator has been active prior to the year for which the grant is sought, the application shall also explain the coordinator's activities and achievements in the previous year.

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

Section 904. Performance grants for municipal recycling programs.

(a) Authorization.—The department shall award annual performance grants for municipal recycling programs, upon application from a municipality. The application shall be made on a form prepared and furnished by the department. The application shall contain such information as the

department deems necessary to carry out the provisions and purposes of this act.

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

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

(d) Prerequisites.—The department shall not award any grant under this section unless the application is complete and accurate, and the materials were actually marketed. The department shall not award any grant under this section for the operation of a leaf waste composting facility.

Section 905. General limitations.

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

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

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

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

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

(f) Availability of funds.—All obligations of the Commonwealth under this chapter are contingent upon the availability of funds under section 706.

CHAPTER 11
ASSISTANCE TO MUNICIPALITIES

Section 1101. Information provided to host municipalities.

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

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

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

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

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

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

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

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

Section 1102. Joint inspections with host municipalities.

(a) Training of inspectors.—

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

(2) Certified municipal inspectors are authorized to enter property, inspect only those records required by the department, take samples and conduct inspections in accordance with department regulations as applicable to department inspectors. However, certified municipal inspectors may not issue orders except as provided in this subsection. A certified munici-

pal inspector may order the operator of a facility to cease any operation or activity at the facility which constitutes an immediate threat to public health and safety and which represents a violation of the Solid Waste Management Act, the regulations promulgated under that act, any order issued under that act or the terms or conditions of a permit issued under that act. The order shall expire within two hours unless the inspector notifies the department and the governing body of the host municipality. The department may, after conducting an inspection, supersede the inspector's order by issuing an order of its own which vacates or modifies the terms of the inspector's order. If the department does not supersede the order, the order shall expire after 24 hours unless otherwise extended, continued or modified by a court pursuant to section 1703(b).

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

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

(b) Departmental information.—

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

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

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

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

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

Section 1103. Water supply testing for contiguous landowners.

(a) Required water sampling.—Upon written request from persons owning land contiguous to a municipal waste landfill, the operator of such

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

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

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

(d) Written notice of rights.—On or before 60 days from the effective date of this act for permits issued under the Solid Waste Management Act prior to the effective date of this act, and at or before the time of permit issuance for permits issued under the Solid Waste Management Act after the effective date of this act, the operator of each municipal waste landfill shall provide contiguous landowners with written notice of their rights under this section on a form prepared by the department.

Section 1104. Water supply protection.

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

(b) Notification to department.—Any landowner or water purveyor suffering pollution, degradation or diminution of a public or private water supply as a result of solid waste management operations at a municipal waste management facility may so notify the department and request that an investigation be conducted. Within ten days of such notification, the department shall begin investigation of any such claims and shall, within 120 days of the notification, make a determination. If the department finds that the pollution, degradation or diminution was caused by the operation of a municipal waste management facility or if it presumes the owner or operator of a municipal waste facility responsible for pollution, degradation or diminution pursuant to subsection (c), then it shall issue such orders to the owner or operator as are necessary to ensure compliance with subsection (a).

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

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

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

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

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

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

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

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

Section 1105. Purchase of cogenerated electricity.

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

Section 1106. Pennsylvania Public Utility Commission.

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

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

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

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

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

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

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

Section 1107. Claims resulting from pollution occurrences.

(a) Financial responsibility.—

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

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

(i) Commercial pollution liability insurance.

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

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

(b) Municipal financial responsibility.—

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

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

(i) Commercial pollution liability insurance.

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

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

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

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

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

Section 1108. Site-specific postclosure fund.

(a) Establishment by county.—Each county shall establish an interest-bearing trust with an accredited financial institution for every municipal

waste landfill that is operating within its boundaries. This trust shall be established within 60 days of the effective date of this act for landfills permitted by the department prior to the effective date of this act. The trust shall be established prior to the operation of any landfill permitted by the department after the effective date of this act. The requirement to establish a trust shall be satisfied by the submission to the department of a preexisting trust agreement which is substantially similar to the requirements of this section.

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

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

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

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

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

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

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

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

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

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

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

Section 1109. Trust fund for municipally operated landfills.

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

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

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

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

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

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

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

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

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

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

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

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

Section 1110. Independent evaluation of permit applications.

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

Section 1111. Protection of capacity.

(a) Permit condition.—The following permits issued by the department under the Solid Waste Management Act shall include a permit condition, if provided pursuant to this section, which requires compliance with an agreement or arbitration award, setting forth the weight or volume of municipal waste generated within the county and municipality that the operator shall allow and the rates, terms or conditions with which municipal waste is to be delivered for disposal or processing at the facility for a specified period:

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

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

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

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

(1) The applicant shall notify the host county and host municipality upon filing an application for permit pursuant to subsection (a). Within 60 days after receiving written notice from the applicant that an application has been filed with the department, the host county and host municipality shall provide written notice to the applicant and the department if it intends to negotiate with the applicant. If the host county and host municipality do not provide such notice and, if the permit is issued, the permit condition shall state that no waste capacity is reserved for the host county and host municipality. The negotiation period shall commence upon the date of receipt of the written notice to the applicant from the host county and host municipality and shall continue for 30 days. The issues to be considered in negotiations shall include, but not be limited to, the weight or volume of capacity reserved to a host county and host municipality and an increase in the average volume of waste up to the amount of capacity set aside for municipal waste generated within the host county and host municipality.

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

(3) If the host county and host municipality and the applicant have failed to reach an agreement within the 30-day negotiation period, then

either party to the dispute, after written notice to the other party containing specifications of the issue or issues in dispute, may request the appointment of a board of arbitration pursuant to paragraph (7). Such notice shall be made in writing to the other party within five days of the end of the negotiation period. In making the decision as to the terms of the agreement, the board shall consider among other things the availability of disposal alternatives to the host county and host municipality. Should the host county and host municipality fail to request arbitration within five days, then the permit condition shall state that no waste capacity is reserved for the host county and host municipality.

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

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

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

(7) The board of arbitration shall be composed of three persons, one appointed by the applicant, one appointed by the host county and host municipality and a third member to be agreed upon by the applicant and such host county and host municipality. The members of the board representing the applicant and the host county and host municipality shall be named within five days from the date of the request for the appointment of such board. If, after a period of ten days from the date of the appointment of the two arbitrators appointed by the host county and host munici-

pality and the applicant, the third arbitrator has not been selected by them, then either arbitrator may request the American Arbitration Association, or its successor in function, to furnish a list of three members of said association who are residents of Pennsylvania from which the third arbitrator shall be selected. The arbitrator appointed by the applicant shall eliminate one name from the list within five days after publication of the list, following which the arbitrator appointed by the host county and host municipality shall eliminate one name from the list within five days thereafter. The individual whose name remains on the list shall be the third arbitrator and shall act as chairman of the board of arbitration. The board of arbitration thus established shall commence the arbitration proceedings within ten days after the third arbitrator is selected and shall make its determination within 30 days after the appointment of the third arbitrator.

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

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

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

Section 1112. Waste volumes.

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

(b) New permits.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Emergencies.—

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

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

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

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

CHAPTER 13
HOST MUNICIPALITY BENEFIT FEE

Section 1301. Host municipality benefit fee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 1303. Collection and enforcement of fee.

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

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

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

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

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

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

Section 1304. Records.

Each operator that is required to pay the host municipality benefit fee shall keep daily records of all deliveries of solid waste to the landfill or facility, as required by the host municipality, including, but not limited to, the name and address of the hauler, the source of the waste, the kind of waste received and the weight or volume of the waste. Such records shall be maintained in Pennsylvania by the operator for no less than five years and shall be made available to the host municipality for inspection upon request.

Section 1305. Surcharge.

The provisions of any law to the contrary notwithstanding, the operator of any municipal waste landfill or resource recovery facility subject to

section 1301 may collect the host municipality benefit fee as a surcharge on any fee schedule established pursuant to law, ordinance, resolution or contract for solid waste disposal or processing operations at the landfill or facility. In addition, any person who collects or transports solid waste subject to the host municipality benefit fee to a municipal waste landfill or resource recovery facility subject to section 1301 may impose a surcharge on any fee schedule established pursuant to law, ordinance, resolution or contract for the collection or transportation of solid waste to the landfill or facility. The surcharge shall be equal to the increase in processing or disposal fees at the landfill or facility attributable to the host municipality benefit fee. However, interest and penalties on the fee under section 1303(a) and (b) may not be collected as a surcharge.

CHAPTER 15
RECYCLING AND WASTE REDUCTION

Section 1501. Municipal implementation of recycling programs.

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

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

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

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

(i) Persons to separate at least three materials deemed appropriate by the municipality from other municipal waste generated at their homes, apartments and other residential establishments and to store such materials until collection. The three materials shall be chosen from the following: clear glass, colored glass, aluminum, steel and bimetallic cans, high-grade office paper, newsprint, corrugated paper and plastics. Nothing in the ordinance or regulation shall be deemed to impair the ownership of separated materials by the person who generated them unless and until such materials are placed at curbside or similar location for collection by the municipality or its agents.

(ii) Persons to separate leaf waste from other municipal waste generated at their homes, apartments and other residential establishments until collection unless those persons have otherwise provided for the

composting of leaf waste. The governing body of a municipality shall allow an owner, landlord or agent of an owner or landlord of multifamily rental housing properties with four or more units to comply with its responsibilities under this section by establishing a collection system for recyclable materials at each property. The collection system must include suitable containers for collecting and sorting materials, easily accessible locations for the containers and written instructions to the occupants concerning the use and availability of the collection system. Owners, landlords and agents of owners or landlords who comply with this act shall not be liable for the noncompliance of occupants of their buildings.

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

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

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

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

(5) Provisions for the recycling of collected materials.

(d) Notice.—Each municipality subject to this section shall establish a comprehensive and sustained public information and education program concerning recycling program features and requirements. As a part of this program, each municipality shall, at least 30 days prior to the initiation of the recycling program and at least once every six months thereafter, notify all persons occupying residential, commercial, institutional and municipal premises within its boundaries of the requirements of the ordinance. The governing body of a municipality may, in its discretion as it deems necessary and appropriate, place an advertisement in a newspaper circulating in the municipality, post a notice in public places where public notices are customarily posted, including a notice with other official notifications periodically mailed to residential taxpayers or utilize any combination of the foregoing.

(e) Implementation.—

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

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

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

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

(i) The municipality is not collecting and transporting municipal waste from such establishment or activity.

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

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

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

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

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

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

(2) The mechanical separation technology used in the recycling facility has been demonstrated to be effective for the life of operations at the facility.

Section 1502. Facilities operation and recycling.

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

(b) Drop-off centers.—

(1) Two years after the effective date of this act, no person may operate a municipal waste landfill, resource recovery facility or transfer station unless the operator has established at least one drop-off center for the collection and sale of at least three recyclable materials. The three materials shall be chosen from the following: clear glass, colored glass, aluminum, steel and bimetallic cans, high grade office paper, newsprint, corrugated paper and plastics. The center must be located at the facility or in a place that is easily accessible to persons generating municipal waste that is processed or disposed at the facility. Each drop-off center must contain bins or containers where recyclable materials may be placed and temporarily stored. If the operation of the drop-off center requires attendants, the center shall be open at least eight hours per week, including four hours during evenings or weekends.

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

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

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

Section 1503. Commonwealth recycling and waste reduction.

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

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

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

Section 1504. Procurement by Commonwealth agencies.

(a) Initial review.—Commonwealth agencies shall review and revise their existing procurement procedures and specifications for the purchase of goods, supplies, equipment, materials and printing to:

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

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

(b) Continuing review.—Commonwealth agencies shall review and revise their procedures and specifications on a continuing basis to encourage the use of goods, supplies, equipment, materials and printing with recycled content and shall, in developing new procedures and specifications, encourage the use of goods, supplies, equipment, materials and printing with recycled content.

(c) Recycled materials.—

(1) Commonwealth agencies shall review and revise their procurement procedures and specifications for the purchase of goods, supplies, equipment, materials and printing to ensure, to the maximum extent economically feasible, that such agencies purchase goods, supplies, equipment, materials and printing that may be recycled or reused when such goods, supplies, equipment, materials and printing are discarded.

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

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

Section 1505. Procurement by Department of General Services.

(a) Bidding.—In issuing invitations to bid for the purchase of goods, supplies, equipment, materials and printing, the Department of General Services shall set forth a minimum percentage of recycled content for the goods, supplies, equipment, materials and printing that must be certified by a bidder in order to qualify for the preference in subsection (b). For goods, supplies, equipment, materials and printing for which the Environmental Protection Agency has adopted procurement guidelines under the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 U.S.C. § 6901 et seq.), as amended, the minimum percentage of recycled content shall not be less than is specified in such guidelines. A person may submit a bid that does not certify that the goods, supplies, equipment, materials or printing contain such minimum percentage of recycled content. The Department of General

Services may waive this requirement for goods, supplies, equipment, materials and printing that cannot be procured with recycled content.

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

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

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

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

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

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

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

Section 1506. Testing by Department of Transportation.

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

(b) Grants.—The Department of Transportation may award research and demonstration grants concerning the potential beneficial use of a particular constituent of solid waste, or any product or material with recycled content, in lieu of another product or material in the Commonwealth's trans-

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

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

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

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

Section 1507. Procurement procedures for local public agencies.

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

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

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

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

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

Section 1508. Procurement options for local public agencies and certain Commonwealth agencies.

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

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

(1) In issuing invitations to bid for the purchase of goods, supplies, equipment, materials and printing, set forth a minimum percentage of recycled content for the goods, supplies, equipment, materials and printing that must be certified by a bidder in order to qualify for the preference in this paragraph. For goods, supplies, equipment, materials and printing for which the Environmental Protection Agency has adopted procurement guidelines under the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 U.S.C. § 6901 et seq.), as amended, the minimum percentage of recycled content shall not be less than is specified in such guidelines. A person may submit a bid that does not certify that the goods, supplies, equipment, materials or printing contain such minimum percentage of recycled content. Every bidder for the purchase of goods, supplies,

equipment, materials and printing which certifies that the goods, supplies, equipment, materials and printing subject to the bid contain the minimum percentage of recycled content that is set forth in the invitation for bids shall be granted a preference equal to 5% of the bid amount against any bidder that has not so certified.

(2) Establish specifications for bids for public contracts that require all bidders to propose that a stated minimum percentage of goods, supplies, equipment, materials or printing to be used for the contract be made from recycled material.

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

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

Section 1509. Recycling at educational institutions.

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

Section 1510. Lead acid batteries.

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

(b) Disposal by dealers.—No automotive battery retailer shall dispose of a used lead acid battery except by delivery to a secondary lead smelter permitted by the Environmental Protection Agency, or to a collection or recycling facility authorized under the laws of this Commonwealth, or to the agent of a battery manufacturer or wholesaler for delivery to a secondary lead smelter permitted by the Environmental Protection Agency, or a collection or recycling facility authorized under the laws of this Commonwealth.

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

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

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

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

(ii) "Recycle your used batteries."

(iii) "State law requires us to accept used motor vehicle or other lead acid batteries for recycling, in exchange for new batteries purchased."

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

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

(f) Enforcement.—The Department of Environmental Resources shall enforce this section.

Section 1511. Recycled paper products.

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

(b) Implementation.—The provisions of subsection (a) shall be implemented by the Department of General Services so that, of the total volume of paper purchased, recycled paper composes at least 10% of the volume in 1989, at least 25% of the volume in 1991 and at least 40% of the volume in 1993.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) License a collection contractor or contractors as defined and provided for in this section.

(4) Establish guidelines for the registration and operations of household hazardous waste collection programs within 90 days from the effec-

tive date of this act. The guidelines shall terminate after a period of one year or upon promulgation by the Environmental Quality Board of regulations for these activities, whichever occurs first.

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

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

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

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

(e) Collection contractor responsibilities.—

(1) Qualifications.—No collection contractor may be selected to operate a collection program or site unless the contractor can demonstrate to the satisfaction of the department its ability to collect, package, transport and dispose of hazardous waste collected under this program consistent with the requirements of Articles IV, V and VI of the Solid Waste Management Act and regulations promulgated thereunder and guidelines or regulations under this act.

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

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

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

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

(1) Radioactive waste.

(2) Biologically active waste.

(3) Gas cylinders and aerosol cans.

(4) Explosives and ordinance materials.

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

provide information to the public on matters relating to household hazardous waste management.

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

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

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

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

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

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

"Small business." Any commercial establishment not regulated under the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 U.S.C. § 6901 et seq.).

CHAPTER 17
ENFORCEMENT AND REMEDIES

Section 1701. Unlawful conduct.

(a) Offenses defined.—It shall be unlawful for any person to:

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

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

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

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

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

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

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

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

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

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

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

Section 1702. Enforcement orders.

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

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

Section 1703. Restraining violations.

(a) Injunctions.—In addition to any other remedies provided in this act, the department may institute a suit in equity in the name of the Commonwealth where unlawful conduct or public nuisance exists for an injunction to restrain a violation of this act, the regulations promulgated pursuant thereto, any order issued pursuant thereto, or the terms or conditions of any approved municipal waste management plan, and to restrain the mainte-

nance or threat of a public nuisance. In any such proceeding, the court shall, upon motion of the Commonwealth, issue a prohibitory or mandatory preliminary injunction if it finds that the defendant is engaging in unlawful conduct as defined by this act or is engaged in conduct which is causing immediate and irreparable harm to the public. The Commonwealth shall not be required to furnish bond or other security in connection with such proceedings. In addition to an injunction, the court, in such equity proceedings, may levy civil penalties as specified in section 1704.

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

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

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

Section 1704. Civil penalties.

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

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

interest accumulated by the escrow deposit. Failure to forward the money or the appeal bond to the department within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

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

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

Section 1705. Criminal penalties.

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

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

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

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

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

Nothing in this act shall be construed as estopping the Commonwealth or any district attorney of a county or solicitor of a municipality from proceed-

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

Section 1707. Production of materials; recordkeeping requirements.

(a) Authority of department.—The department and its agents and employees shall:

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

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

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

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

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

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

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

Section 1708. Withholding of State funds.

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

Section 1709. Collection of fines, fees, etc.

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

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

Section 1710. Right of citizen to intervene in proceedings.

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

Section 1711. Remedies of citizens.

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

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

(c) Notice.—No action may be commenced under this section prior to 60 days after the plaintiff has given notice of the violation to the secretary, to the host municipality and to any alleged violator of the act, of other environmental protection acts or of the regulation or order of the department which

has allegedly been violated; nor shall any action be commenced under this section if the secretary has commenced and is diligently prosecuting an administrative action before the Environmental Hearing Board, or a civil or criminal action in a court of the United States or a state to require compliance with such permit, standard, regulation, condition, requirement, prohibition or order.

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

Section 1712. Affirmative defense.

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

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

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

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

(c) Construction.—Nothing in this section shall be construed or understood:

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

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

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

(d) Exemption.—If the department approves a request, the municipality shall be exempt from the requirements of this section on and after the date of the department's approval. However, the municipality shall immediately pay to the department an amount equal to the depreciated value of any capital equipment, buildings, or other structures or facilities that were constructed or obtained through departmental grants under section 902. The municipality shall pay to the department within five years an amount equal to the depreciated value of any capital equipment purchased with funds provided by the department under section 902, less any contribution by the municipality for the purchase of such capital equipment, or the municipality shall convey within 90 days such capital equipment to the department.

Section 1713. Public information.

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

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

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

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

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

Section 1714. Whistleblower provisions.

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

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

(c) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

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

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

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

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

"Public body." All of the following:

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

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

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

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

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

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

Section 1715. Additional penalties.

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

(b) Responsibility for cost.—The operator of any vehicle or conveyance forfeited under subsection (a) shall be responsible for any costs incurred in properly disposing of waste in the vehicle or conveyance.

CHAPTER 19
MISCELLANEOUS PROVISIONS

Section 1901. Report to General Assembly.

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

Section 1902. Severability.

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

Section 1903. Repeals.

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

(b) Inconsistent repeals.—

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

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

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

Section 1904. Effective date.

This act shall take effect as follows:

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

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

APPROVED—The 28th day of July, A. D. 1988.

ROBERT P. CASEY