APPENDIX A-2
Pennsylvania Environmental Statutes

No. 1996-58

AN ACT

SB 1353

To enhance community and economic development in this Commonwealth by restructuring certain administrative functions and entities; changing the name of the Department of Commerce to the Department of Community and Economic Development; transferring functions of the Department of Community Affairs into the Department of Community and Economic Development and other agencies; providing for a Deputy Secretary for Community Affairs and Development in the Department of Community and Economic Development; establishing the Center for Local Government Services and the Local Government Advisory Committee; establishing the Small Business Advocacy Council; conferring powers and duties on the Legislative Reference Bureau; and making repeals.

TABLE OF CONTENTS

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

CHAPTER 1
PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Community and Economic Development Enhancement Act.

Section 102. Declaration of purpose.

It is the purpose of this act to more effectively address the problems of Pennsylvania's communities by recognizing that community development and economic development are inextricably linked, by expanding and providing for the more efficient delivery of local services, by effecting the maximum feasible coordination of community and economic development resources to

restore and maintain the vigor of our communities, by advancing the economic well-being of communities through the maximization of community and economic development resources, by promoting housing and community revitalization in conjunction with economic development activities, by providing greater opportunity for local jurisdictions to be fully represented in State government and by providing a one-stop agency to carry out the community and economic development programs which are of vital importance to all areas of this Commonwealth.

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:

"Administrative entities," "entity" or "entities." A general reference to one or more departments, divisions, boards, agencies, commissions or organizations involved in the performance of the executive or administrative work of the Commonwealth.

"Center." The Center for Local Government Services.

"Committee." The Local Government Advisory Committee.

"Department." The Department of Community and Economic Development of the Commonwealth.

"Secretary." The Secretary of Community and Economic Development of the Commonwealth.

"Subjects of transfer." Powers, duties, personnel, appropriations, allocations, documents, files, records, contracts, agreements, equipment, materials, orders, rights and obligations utilized or accruing in connection with functions transferred from one entity to another under this act.

Section 104. Name change.

To reflect the enhancement and consolidation of community and economic development functions, the Department of Commerce shall hereafter be known as the Department of Community and Economic Development.

CHAPTER 3
TRANSFERS OF FUNCTIONS

Section 301. To Department of Community and Economic Development.

(a) Transfers.—The following functions of the Department of Community Affairs are transferred to the Department of Community and Economic Development:

(1) The provision of technical assistance to political subdivisions with regard to land use and zoning matters conducted pursuant to the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, and related laws.

(2) The promotion and facilitation of joint initiatives by political subdivisions.

(3) The provision, monitoring and coordination of municipal training designed to meet the comprehensive educational needs of local government.

(4) Administration of the act of July 12, 1972 (P.L.781, No.185), known as the Local Government Unit Debt Act.

(5) The approval required under section 634 and the receipt of reports of amounts of taxes collected under section 2501 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

(6) The HOME program under the act of December 18, 1992 (P.L.1376, No.172), known as the Pennsylvania Affordable Housing Act.

(7) The Community Development Block Grant Program under:

The act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.

The act of October 11, 1984 (P.L.906, No.179), known as the Community Development Block Grant Entitlement Program for Nonurban Counties and Certain Other Municipalities.

(8) Enterprise zones under:

The act of July 2, 1984 (P.L.520, No.105), known as the Business Infrastructure Development Act.

The act of July 9, 1986 (P.L.1216, No.108), known as the Enterprise Zone Municipal Tax Exemption Reimbursement Act.

(9) Housing, community assistance and other functions under:

Section 404.2 of The Insurance Company Law of 1921.

Article XVI-B of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

The act of May 28, 1937 (P.L.955, No.265), known as the Housing Authorities Law.

The act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law.

The act of May 20, 1949 (P.L.1608, No.485), known as the State Planning Code.

The act of May 20, 1949 (P.L.1633, No.493), known as the Housing and Redevelopment Assistance Law.

The act of December 3, 1959 (P.L.1688, No.621), known as the Housing Finance Agency Law.

The act of January 26, 1968 (P.L.48, No.9), entitled "An act authorizing grants by the Commonwealth of Pennsylvania to duly constituted community action agencies providing conditions and making an appropriation."

The act of July 20, 1968 (P.L.456, No.214), known as the Community Development Research and Training Act.

The act of July 31, 1968 (P.L.736, No.232), known as the Manpower Employment Assistance and Training Act.

Article V-A of the Pennsylvania Municipalities Planning Code.

Article XIX-A of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

The Business Infrastructure Development Act.

The act of December 20, 1985 (P.L.483, No.113), known as the Tax-Exempt Bond Allocation Act.

The act of June 27, 1986 (P.L.267, No.70), known as the Pennsylvania Convention Center Authority Act.

The act of July 9, 1986 (P.L.1223, No.110), known as the Financially Disadvantaged Municipalities Matching Assistance Act.

The act of July 10, 1986 (P.L.1263, No.116), known as the Community Services Act.

The act of July 10, 1987 (P.L.246, No.47), known as the Municipalities Financial Recovery Act.

The act of July 11, 1990 (P.L.421, No.102), known as the Neighborhood Housing Services Act.

The act of December 19, 1990 (P.L.1358, No.210), known as the Local Government Capital Project Loan Fund Act.

The act of June 26, 1992 (P.L.325, No.65), known as the Rural Leadership Training Act.

The act of December 27, 1994 (P.L.1375, No.162), known as the Third Class County Convention Center Authority Act.

Section 305(a) of the act of May 19, 1995 (P.L.4, No.2), known as the Land Recycling and Environmental Remediation Standards Act.

66 Pa.C.S. § 3105 (relating to reports to Department of Community Affairs).

(10) The weatherization functions of the Department of Community Affairs under the act of July 10, 1986 (P.L.1398, No.122), known as the Energy Conservation and Assistance Act.

(11) The Downtown Pennsylvania Program.

(12) State planning assistance grants as the General Assembly may from time to time appropriate.

(13) Building energy conservation under the act of December 15, 1980 (P.L.1203, No.222), known as the Building Energy Conservation Act.

(14) Industrialized and mobile housing under:

The act of May 11, 1972 (P.L.286, No.70), known as the Industrialized Housing Act.

The act of November 17, 1982 (P.L.676, No.192), known as the Manufactured Housing Construction and Safety Standards Authorization Act.

(15) Floodplain management under the act of October 4, 1978 (P.L.851, No.166), known as the Flood Plain Management Act.

(16) All other powers and duties delegated to the Department of Community Affairs not otherwise expressly transferred elsewhere by this act and currently performed by the Department of Community Affairs under:

The Insurance Company Law of 1921.

The act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, as amended by the acts of February 1, 1966 (1965 P.L.1849, No.582) and December 18, 1968 (P.L.1232, No.390), and other such related laws.

The act of June 23, 1931 (P.L.932, No.317), known as The Third Class City Code.

Sections 235, 1003, 1701, 1701.1 and 1701a of the act of June 24, 1931 (P.L.1206, No.331), known as The First Class Township Code.

Sections 206, 904, 3202 and 3203[1] of the act of May 1, 1933 (P.L.103, No.69), known as The Second Class Township Code.

The act of June 24, 1937 (P.L.2017, No.396), known as the County Institution District Law.

The act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945.

The act of May 25, 1945 (P.L.1050, No.394), known as the Local Tax Collection Law.

Section 2 of the act of May 2, 1949 (P.L.819, No.215), entitled, as amended, "An act requiring the secretary or clerk of every political subdivision to file in the Department of Community Affairs a copy of every tax-levying ordinance or resolution of such political subdivision."

Sections 2, 3, 4 and 5 of the act of May 2, 1949 (P.L.873, No.237), entitled, as amended, "An act requiring that the results of all local option referenda in political subdivisions be certified to the Department of Community Affairs by county boards of elections; and requiring secretaries of political subdivisions to make certain reports to said department and to the county commissioners of the county in which the political subdivision is located."

The act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.

Sections 1720, 1721, 1781, 1782.1, 1782.3, 1783 and 1785 of the act of August 9, 1955 (P.L.323, No.130), known as The County Code.

The act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act.

The act of February 1, 1966 (1965 P.L.1656, No.581), known as The Borough Code.

The act of March 16, 1972 (P.L.108, No.39), known as the Environmental Improvement Compact.

The act of April 13, 1972 (P.L.184, No.62), known as the Home Rule Charter and Optional Plans Law.

The act of December 18, 1984 (P.L.1005, No.205), known as the Municipal Pension Plan Funding Standard and Recovery Act.

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[1] "240, 513, 547, 902 and 902.2" in enrolled bill.

42 Pa.C.S. § 2705(a) (relating to responsibility for reports to executive agencies).

45 Pa.C.S. § 722(b) (relating to deposit of documents required).

53 Pa.C.S. § 737 (relating to consolidation or merger agreement).

66 Pa.C.S. § 3105 (relating to reports to Department of Community Affairs).

All other acts or parts of acts, reorganization plans and executive orders that imposed powers and duties upon the Department of Community Affairs and the Secretary of Community Affairs.

(b) Functions to be consolidated.—The functions transferred to the department shall be consolidated within the department into a bureau, division, section or other organizational entity devoted to community and economic development. The Governor shall appoint a Deputy Secretary for Community Affairs and Development. The deputy secretary shall have the powers and perform the functions and duties transferred to the department in subsection (a) as well as other such functions and duties authorized by the Governor.

(c) Center for Local Government Services established.—A Center for Local Government Services shall be established and maintained in the department to serve as the link between the Commonwealth and local governments. The center shall be a provider of services to local governments, shall serve as the point of contact for local governments on issues and problems of local concern, shall be responsible for coordinating State program resources in response to local issues and problems and shall establish a systematic process for addressing local issues and problems involving the resources of more than a single agency. In carrying out its responsibilities, the center shall use and have access to the information, services, functions and other resources transferred under subsection (a). The center shall, when authorized by the Governor, use and have access to any other information, services, functions and other resources in the possession of executive agencies under the Governor's jurisdiction deemed necessary to the fulfillment of its responsibilities. The center shall provide to local governments, at no cost, information on purchase contracts for materials, supplies and equipment entered into by the Department of General Services in which local governments may participate pursuant to the provisions of section 2403(h) of The Administrative Code of 1929. The Deputy Secretary for Community Affairs and Development shall be responsible for the administration of the center and shall report in writing to the Governor and Lieutenant Governor on the activities of the center. The center shall have permanent staff both in its headquarters as well as in the regional offices of the Governor and shall additionally make a toll-free telephone number available to local governments to assist the center in accommodating requests for assistance. Funding for the center shall be provided by the department.

(d) Department staff.—The department shall maintain staff within the center and regional offices with expertise in matters relating to local governments and community development.

(e) Fees for services provided.—In order to maintain an affordable cost for local governments, any contract for services to local governments entered into by the department shall be evaluated annually. This evaluation shall serve in part to help ensure that fees reflect an average of costs historically charged to local governments for similar services.

(f) Priority of employment.—Positions created from establishment of the center shall be offered to personnel employed by the Department of Community Affairs with expertise in planning and organizing the effective provision of technical, consultive, training, information and financial assistance to local governments in this Commonwealth.

(g) Toll-free telephone report.—The Legislative Budget and Finance Committee shall review the activities relating to the toll-free telephone number program established by the Center for Local Government Services and issue a report to the General Assembly not later than one year from its initiation date.

Section 302. To Department of Community and Economic Development.

The functions of the Department of Community Affairs provided for in the following statutes, or selected portions of statutes, are transferred to the Department of Community and Economic Development:

The power to receive deeds or other legal instruments under section 1906-A(8) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

The act of November 26, 1978 (P.L.1415, No.333), known as the Schuylkill Scenic River Act.

The act of March 24, 1980 (P.L.50, No.18), known as the Stony Creek Wild and Scenic River Act.

The act of April 5, 1982 (P.L.222, No.71), known as the Lehigh Scenic River Act.

The act of April 29, 1982 (P.L.351, No.97), known as the French Creek Scenic Rivers Act.

The act of December 17, 1982 (P.L.1402, No.324), known as the Lick Run Wild and Scenic River Act.

Section 303. To Pennsylvania Emergency Management Agency.

The following function of the Department of Community Affairs is transferred to the Pennsylvania Emergency Management Agency:

The 911 program under the act of July 9, 1990 (P.L.340, No.78), known as the Public Safety Emergency Telephone Act.

Section 304. To Department of Transportation.

The following function of the Department of Community Affairs is transferred to the Department of Transportation:

The establishment of the Pennsylvania Coordinate System under section 1210 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

Section 305. Subjects of transfer.

(a) General rule.—The subjects of transfer from the Department of Community Affairs under this chapter are transferred to the Department of Community and Economic Development, the Pennsylvania Historical and Museum Commission, the Pennsylvania Emergency Management Agency and the Department of Transportation, respectively, with the same force and effect as if those subjects of transfer had originally belonged to or had been incurred or entered into by those entities.

(b) Employees.—The transfers made under this chapter shall not affect the civil service status of affected employees of the Department of Community Affairs.

Section 306. Regulations.

(a) Authorization.—The Department of Community and Economic Development, the Department of Transportation, the Pennsylvania Historical and Museum Commission and the Pennsylvania Emergency Management Agency shall have the power and duty to promulgate regulations to administer the respective functions transferred to each under this chapter.

(b) Continuation.—The regulations of the Department of Community Affairs for the administration of the functions transferred under this chapter shall remain in effect until such time as new regulations are promulgated under subsection (a). However, the eligibility requirements for funding within any program subject to review under this section shall not be changed, amended or altered in any way.

CHAPTER 5
LOCAL GOVERNMENT ADVISORY COMMITTEE

Section 501. Committee established.

There is hereby established within the Office of the Governor a Local Government Advisory Committee. The committee shall have the same status as that granted to other advisory boards under the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

Section 502. Powers and duties.

The Local Government Advisory Committee shall serve as an advocate and representative of local government before both the Governor and the Center for Local Government Services in the Department of Community and Economic Development. It shall, among other things, make recommendations to the Governor and the center with regard to both the needs of local governments and the best manner in which the center can service those needs. The committee shall provide advice to the center with regard to the promulgation of forms and regulations in connection with performance of the functions transferred to the department under this act.

Section 503. Committee membership.

The Local Government Advisory Committee shall consist of the Lieutenant Governor, who shall be the chairperson thereof, and fourteen additional members. Five members of the committee shall be elected officials of local government appointed by the Governor, representing, one each, the Pennsylvania State Association of Boroughs, the Pennsylvania State Association of Township Supervisors, the County Commissioners Association of Pennsylvania, the Pennsylvania League of Cities and Municipalities and the Pennsylvania State Association of Township Commissioners. Each of these associations shall submit a list of three nominees to the Governor. The Governor shall select one member from each list within 30 days of the receipt of such list, or else may request one or more associations to submit, within 30 days, one substitute list. If an association fails to submit a substitute list as requested by the Governor, the Governor may appoint any member of that association at his or her discretion. Four members of the committee shall be appointed by the Governor, and shall be representative of persons or entities having an interest in the local affairs of the Commonwealth, who may include, but are not necessarily limited to, nonprofit organizations supporting local government and members of the general public. One member of the committee shall be a representative of the Pennsylvania Municipal Authorities Association, appointed by the Governor. The four remaining members shall be appointed, one each, by the President pro tempore of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives and the Minority Leader of the House of Representatives.

Section 504. Terms of members.

The terms of office for appointed committee members shall be two years and until their successors shall have been appointed and qualified, but no committee member shall serve more than six months beyond the expiration of his or her term unless reappointed. In no event shall a committee member serve more than two terms. Terms of office of members shall expire on the third Tuesday of January of each odd-numbered year. In the case of a vacancy in a position filled by appointment of the Governor, the Governor shall make an appointment for the unexpired portion of the term. In the case of a vacancy in a position filled by appointment of a legislative leader, that legislative leader shall make an appointment for the unexpired portion of the term.

Section 505. Quorum and meetings.

The Local Government Advisory Committee shall meet at least twice per year, as well as at the call of the Governor or Lieutenant Governor. A majority of the members of the committee shall constitute a quorum.

Section 506. Compensation and expenses.

(a) Compensation.—The members of the committee shall serve without compensation. However, members other than the Lieutenant Governor shall

be entitled to receive traveling and other reasonable expenses incurred in the discharge of their official duties.

(b) Expenses.—The expenses of the committee, provided for in this section, shall be borne by the Executive Office of the Governor.

CHAPTER 7
SMALL BUSINESS ADVOCACY COUNCIL

Section 701. Legislative intent.

The General Assembly finds and declares as follows:

(1) There are in excess of 250,000 small businesses throughout this Commonwealth which are potentially affected by the laws, regulations, policies and programs put forth by the Commonwealth.

(2) The intent of this chapter is to ensure that the impact on small business of certain Commonwealth policies and programs, laws and regulations receive due consideration and to ensure that the small business community and its experts have the opportunity to provide comment to the Department of Community and Economic Development regarding these matters.

Section 702. Definitions.

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

"Council." The Small Business Advocacy Council established under this chapter.

"Small business." A person, sole proprietorship, partnership, corporation, association or other business entity which employs fewer than 25 employees.

Section 703. Small Business Advocacy Council.

(a) Establishment.—The Small Business Advocacy Council shall be established in order to assist with developing policies and regulations that might affect small business in this Commonwealth. The council shall also provide advice relating to the nature of small business practices and problems in this Commonwealth and provide a review of existing policies and regulations which are relevant to small business.

(b) Representative membership.—This council shall consist of 13 members. Members shall have a background in small business practices and problems. They shall represent present owners and operators of small businesses in this Commonwealth, members of the academic community who have expertise regarding small business practices and problems and professionals who specialize in representing businesses with 25 or fewer employees.

(c) Appointments.—Five of the council members shall be appointed by the Governor. Two members shall be appointed by each of the following:

(1) The President pro tempore of the Senate.

(2) The Minority Leader of the Senate.

(3) The Speaker of the House of Representatives.

(4) The Minority Leader of the House of Representatives.

(d) Term.—Each member of this council shall serve for two years.

(e) Organization.—

(1) The council shall elect a chairperson by majority vote.

(2) The council may adopt bylaws or procedural guidelines it deems necessary to accomplish its purposes.

(3) Recommendations, positions and other actions of the council shall require approval by a majority of its members.

(f) Administrative assistance.—The department shall provide appropriate administrative and technical support needed by the council in order to accomplish its purposes. The department shall publish notices of meeting dates, times, locations and a list of topics to be discussed no less than 14 days before the meeting, in accordance with the notice requirements set forth in the act of July 3, 1986 (P.L.388, No.84), known as the Sunshine Act.

(g) Mailing list.—The department shall maintain a mailing list of persons who have requested specific notification of meetings and activities of the council. The department shall name a deputy secretary to attend council meetings and serve as the public's liaison to seek and obtain information relating to the council's work.

(h) Access to documents.—The council may request and shall be provided with any and all policies, procedures and drafts of proposed regulations, final regulations and policy papers of any department regulating or undertaking the regulation of small business in this Commonwealth which the council deems necessary to carry out its purpose.

(i) Expenses.—Members of the council shall be reimbursed for their travel, room and board expenses incurred when attending council meetings.

Section 704. Regulatory review.

(a) Duty of a department to notify.—Not less than 120 days before beginning to develop policies or regulations which might affect small businesses of this Commonwealth, a department or agency shall notify the council and provide it with the opportunity to review the proposal and provide that department with advice.

(b) Conference.—Upon the council's request, representatives of a department shall meet with the council to confer on that department's regulatory proposals and policy initiatives which might affect small businesses of this Commonwealth.

(c) Written comments.—Written comments regarding the council's position on the proposed regulations shall be published in the Pennsylvania Bulletin. These comments shall contain an impact statement and any other information the committee deems important for the public to make an informed opinion on the proposals.

(d) Exceptions.—While a department is required to advise the council as soon as possible of promulgation of regulations, the requirements of subsections (a) and (b) shall not apply to the promulgation of the following regulations relating to small businesses:

(1) Regulations required by court order to be adopted.

(2) Regulations necessitated by a Federal or State declaration of emergency.

(3) Interim regulations which are authorized by statute.

CHAPTER 9
RESTRUCTURING OF CERTAIN ADMINISTRATIVE ENTITIES

Section 901. Board of Property.

The Board of Property as provided for in section 202 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is hereby placed and made a departmental administrative board in the Department of Community and Economic Development.

Section 902. Land Office.

The Land Office as provided for in section 1203 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, shall hereafter be an administrative entity located in the Pennsylvania Historical and Museum Commission.

CHAPTER 11
RESTRUCTURING OF CERTAIN MEMBERSHIPS AND PARTICIPATION

Section 1101. Appointment to board of directors of Pennsylvania Economic Development Financing Authority.

In place of the membership of the Secretary of Community Affairs on the board of directors of the Pennsylvania Economic Development Financing Authority under section 6.1(b)(4) of the act of August 23, 1967 (P.L.251, No.102), known as the Economic Development Financing Law, the Governor shall make an additional appointment under section 6.1(b)(1) of the Economic Development Financing Law.

Section 1102. Appointment to board of The Pennsylvania Industrial Development Authority.

In place of the membership of the Secretary of Community Affairs on the board of The Pennsylvania Industrial Development Authority under section 4 of the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act, the Governor shall make an additional appointment under section 4 of the Pennsylvania Industrial Development Authority Act.

Section 1103. Membership on Pennsylvania Housing Finance Agency.

(a) Secretary of Public Welfare.—In place of the membership of the Secretary of Community Affairs on the Pennsylvania Housing Finance Agency under section 202 of the act of December 3, 1959 (P.L.1688, No.621), known as the Housing Finance Agency Law, the Secretary of Public Welfare shall serve on that agency.

(b) Chairperson.—The Secretary of Community and Economic Development shall continue to be a member of the Pennsylvania Housing

Finance Agency, and on and after the effective date of this act, the Secretary of Banking shall serve as chairperson of that agency.

Section 1104. Membership on the Board of Property.

In place of the membership of the Secretary of Community Affairs on the Board of Property under section 406 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, the Secretary of Community and Economic Development shall serve on that board. The General Counsel shall be a member of the Board of Property in place of the Attorney General, and on and after the effective date of this act, the Secretary of the Commonwealth shall be the chairperson of the Board of Property.

Section 1105. Membership on the State Transportation Advisory Committee.

In place of the membership of the Secretary of Community Affairs on the State Transportation Advisory Committee under section 2001.4 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, the Governor shall make an additional appointment under section 2001.4.

Section 1106. Membership on the State Planning Board.

In place of the membership of the Secretary of Community Affairs as an ex officio member of the State Planning Board as provided in section 451(b) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, the Governor shall make an additional appointment.

Section 1107. Membership on the Community Service Advisory Board.

In place of the membership of the Secretary of Community Affairs on the Community Service Advisory Board as provided in section 2207-B(b) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, the Secretary of Community and Economic Development shall serve on that board.

Section 1108. Membership on the State Agricultural Land Preservation Board.

In place of the membership of the Secretary of Community Affairs on the State Agricultural Land Preservation Board under section 14.1 of the act of June 30, 1981 (P.L.128, No.43), known as the Agricultural Area Security Law, the Governor shall make an additional appointment under section 14.1(a)(1)(ii) of the Agricultural Area Security Law.

Section 1109. Membership on the Pennsylvania Infrastructure Investment Authority.

In place of the membership of the Secretary of Community Affairs on the Pennsylvania Infrastructure Investment Authority under section 4 of the act of March 1, 1988 (P.L.82, No.16), known as the Pennsylvania Infrastructure Investment Authority Act, the Governor shall make an additional appointment.

Section 1110. Membership on the Pennsylvania Minority Business Development Authority.

In place of the membership of the Secretary of Community Affairs on the Pennsylvania Minority Business Development Authority under section 4 of the act of July 22, 1974 (P.L.598, No.206), known as the Pennsylvania

Minority Business Development Authority Act, the Governor shall make an additional appointment.

CHAPTER 21
MISCELLANEOUS PROVISIONS

Section 2101. Recodification of regulations.

The Legislative Reference Bureau has the power and duty to recodify regulations to effectuate the provisions of section 306.

Section 2102. Administrative expenses.

For each federally funded program administered by the department, the maximum amount of the actual allocation for administrative expenses provided by Federal law shall be used to support administrative activities to ensure that programs are effectively and adequately managed.

Section 2103. Repeals and references.

(a) Absolute repeal.—The act of December 16, 1992 (P.L.1209, No.156), known as the Heritage Affairs Act, is repealed.

(b) Inconsistent repeals.—All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

(c) References.—

(1) In accordance with subsection (b), all references to the Department of Community Affairs, which shall cease to exist pursuant to this act, and to the Secretary of Community Affairs in affected acts and portions of acts shall now be deemed to refer to the Department of Community and Economic Development and Secretary of Community and Economic Development, respectively, unless otherwise provided by this act.

(2) All references to the Department of Commerce and the Secretary of Commerce in affected acts and portions of acts shall now be deemed to be references to the Department of Community and Economic Development and the Secretary of Community and Economic Development, respectively, unless otherwise provided by this act.

Section 2104. Implementation.

Implementation of the provisions of this act shall begin immediately and shall be fully completed on or before July 1, 1996.

Section 2105. Performance audit.

The House of Representatives shall direct the Legislative Budget and Finance Committee to conduct a performance audit every two years on the Department of Community and Economic Development. The final audit shall be concluded four years from the effective date of this act. The audit shall specifically include a comprehensive program evaluation of all community development programs administered by the department in conjunction with the provisions of this act. In addition, the audit shall evaluate the delivery costs of the local government service provided by the department.

Section 2106. Existing office supplies and materials.

The Department of Community and Economic Development shall continue to use or recycle all forms, stationery, business cards and other office

supplies or materials which contain references to its predecessor department until the existing supplies and materials are depleted.

Section 2107. Effective date.

This act shall take effect immediately.

APPROVED—The 27th day of June, A.D. 1996.

THOMAS J. RIDGE

No. 1995-18

AN ACT

HB 1400

Creating the Department of Conservation and Natural Resources consisting of certain functions of the Department of Environmental Resources and the Department of Community Affairs; renaming the Department of Environmental Resources as the Department of Environmental Protection; defining the role of the Environmental Quality Board in the Department of Environmental Protection; making changes to responsibilities of the State Conservation Commission and the Department of Agriculture; transferring certain powers and duties to the Department of Health; and repealing inconsistent acts.

TABLE OF CONTENTS

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

CHAPTER 1
PRELIMINARY PROVISIONS

Section 101. Findings and statement of purpose.

(a) Findings.—The General Assembly finds and declares as follows:

(1) Pennsylvania's public natural resources are to be conserved and maintained for the use and benefit of all its citizens as guaranteed by section 27 of Article I of the Constitution of Pennsylvania.

(2) Pennsylvania's State forests and parks cover almost 2.3 million acres in this Commonwealth and contain some of our State's most precious and rare natural areas.

(3) Pennsylvania has the third largest system of State parks in the United States.

(4) Our State parks and forests and community recreation and heritage conservation areas are critical to the continued success of our tourism and recreation industry, the second largest industry in the State.

(5) Our forest products industry employs over 100,000 people and contributes over $4.5 billion a year to our economy, making it the State's fourth largest industry.

(6) Preserving, enhancing, maintaining and actively managing our system of State parks, forests, community recreation and heritage conservation areas contributes greatly to the quality of life of Pennsylvania's citizens and the economic well-being of the State.

(7) The current structure of the Department of Environmental Resources impedes the Secretary of Environmental Resources from devoting enough time, energy and money to solving the problems facing our State parks and forests.

(8) State parks and forests have taken a back seat to other environmental issues because polluted air and water and toxic waste sites, for example, are more immediate, life-threatening and publicly visible issues than natural resource concerns.

(9) State parks, forests and community recreation and heritage conservation areas have lost out in the competition for financial and staff resources because they have no cabinet-level advocate to highlight these issues for the public.

(b) Intent.—It is the intent of the General Assembly and the purpose of this act:

(1) To create a new Department of Conservation and Natural Resources to serve as a cabinet-level advocate for our State parks, forests, rivers, trails, greenways and community recreation and heritage conservation programs to provide more focused management of the Commonwealth's recreation, natural and river environments. The primary mission of the Department of Conservation and Natural Resources will be to maintain, improve and preserve State parks, to manage State forest lands to assure their long-term health, sustainability and economic use, to provide information on Pennsylvania's ecological and geologic resources and to administer grant and technical assistance programs that will benefit rivers conservation, trails and greenways, local recreation, regional heritage conservation and environmental education programs across Pennsylvania.

(2) To change the name of the Department of Environmental Resources to the Department of Environmental Protection.

(3) To retain the rulemaking powers of the Environmental Quality Board in relation to the Department of Environmental Protection.

Section 102. Short title.

This act shall be known and may be cited as the Conservation and Natural Resources Act.

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:

"Commonwealth." The Commonwealth of Pennsylvania.

"Department." The Department of Conservation and Natural Resources of the Commonwealth established in section 301.

"Secretary." The Secretary of Conservation and Natural Resources.

CHAPTER 3
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Section 301. Creation of department.

The Department of Conservation and Natural Resources is hereby established as an administrative department within the executive branch of the government of this Commonwealth. The department shall be headed by the Secretary of Conservation and Natural Resources. The secretary shall be appointed by the Governor, subject to the approval of a majority of the members elected to the Senate. The secretary shall receive a salary equal to that of the Secretary of Environmental Protection.

Section 302. Forests.

(a) Acquisition, establishment and disposition.—The department has the following powers and duties with respect to the acquisition, establishment and disposition of State forest lands and certain other Commonwealth-owned resources:

(1) To acquire, in the name of the Commonwealth, by purchase, gift, lease or condemnation and hold as State forests, subject to the conditions of any lease and subject to reservations, if any, of mineral rights, stumpage rights, rights-of-way or other encumbrances as the department considers consistent with such holding, any lands, including tax-delinquent lands, which in the judgment of the department the Commonwealth should hold, manage, control, protect, maintain, utilize and regulate as State forests or for reforestation, for adding to and extending the existing State forests, for the purpose of lessening soil erosion and silting up of reservoirs, to control the flow of streams and extinguish interior holdings or for the establishment and maintenance of fire observation towers and stations and adjoining lands as may be deemed necessary to control, maintain and develop such towers and stations and furnish access to them.

(2) To purchase and hold as State forests unseated, vacant or unappropriated lands, lands advertised for sale for taxes and land sold for taxes as may now or hereafter be provided by law.

(3) To hold, manage, control, protect, maintain, utilize, develop and regulate the occupancy and use of all lands, heretofore or hereafter acquired, owned, leased and maintained as State forests or for reforestation, for extending existing State forests, for the purpose of lessening soil erosion and the silting up of reservoirs, to control stream flow, to extinguish interior holdings and for fire observation tower and station purposes, together with the resources thereof.

(4) To divide this Commonwealth into such convenient forest districts as it considers economical and effective, to administer, protect, develop, utilize and regulate the occupancy and use of the lands and resources of the State forests, to protect all forest land in this Commonwealth from forest fires, fungi, insects and other enemies, to promote and develop forestry and knowledge of forestry throughout this Commonwealth, to advise and assist landowners in the planting of forest and shade trees, to obtain and publish information respecting forest lands and forestry in this Commonwealth, to assist in Arbor Day work and promote and advance any other activity in local forestry which the department may consider

helpful to the public interest and to execute the rules and regulations of the department for the protection of forests from fire and depredation. It may also assign district foresters to take active charge of such forest districts and also foresters, forest rangers and other help for the administration of forest districts as the secretary considers necessary and for the accomplishment throughout this Commonwealth of the purposes for which the department is established.

(5) To cooperate with the authorities of townships, boroughs and cities of this Commonwealth in the acquisition and administration of municipal forests, as may now or hereafter be provided by law.

(6) Whenever it shall appear that the welfare of this Commonwealth, with reference to reforesting and the betterment of the State forests, with respect to control, scientific management, protection, utilization, development and regulation of their occupancy and use, will be advanced by selling or disposing of any of the timber on the State forests, to dispose of timber on terms most advantageous to this Commonwealth. The department is authorized and directed to set aside, within the State forests, unusual or historical groves of trees or natural features especially worthy of permanent preservation, to make the same accessible and convenient for public use and to dedicate them in perpetuity to the citizens of this Commonwealth for their recreation and enjoyment. The department is hereby empowered to make and execute contracts or leases in the name of the Commonwealth for the mining or removal of any valuable minerals that may be found in State forests, or of oil and gas beneath those waters of Lake Erie owned by the Commonwealth, or of oil and gas beneath the land of Woodville State Hospital owned by the Commonwealth, whenever it shall appear to the satisfaction of the department that it would be for the best interests of this Commonwealth to make such disposition of those minerals. Any proposed contracts or leases of valuable minerals exceeding $1,000 in value shall have been advertised once a week for three weeks, in at least two newspapers published nearest the locality indicated, in advance of awarding such contract or lease. The contracts or leases may then be awarded to the highest and best bidder, who shall give bond for the proper performance of the contract as the department shall designate. However, where the Commonwealth owns a fractional interest in the oil, natural gas and other minerals under State forest lands, the requirement of competitive bidding may be waived, and the department may enter into a contract to lease that fractional interest, with the approval of the Governor, and upon such terms and conditions as the department deems to be in the best interest of this Commonwealth.

(7) To appoint and, with the approval of the Governor, fix the compensation of a Chief Forest Fire Warden and such district forest fire wardens, and to appoint and fix the compensation of such local forest fire wardens and other assistants as shall be required for the prevention, control, and extinction of forest fires.

(8) To establish and administer auxiliary forest reserves, in the manner and under the terms and conditions as may now or hereafter be provided by law.

(9) To distribute young forest trees, shrubs and vines as provided by law to those desiring to plant them.

(10) To furnish information and issue certificates and requisitions necessary for the payment of the fixed charges, in lieu of taxes on State forest and auxiliary forest reserves, to school districts, road districts and counties, as may now or hereafter be provided by law.

(11) To sell or exchange State forest land, as provided by law, whenever it shall be to the advantage of the State forest interests, provided that such action has been approved by the Governor.

(12) To set aside, when in the judgment of the department it is considered necessary, for exclusive use for parks, parkways and other places of scientific, scenic, historic or wildlife interest, any State-owned lands which are now or which may hereafter be under the jurisdiction of the department.

(13) To have the authority, with the approval of the Governor, to enter into agreements with owners or lessees of property or property rights located in the same area as lands owned or leased by the Commonwealth, for the protection, preservation or recovery of metallic or nonmetallic ore, fuel, oil, natural gas or any other mineral deposits underlying those lands, provided the deposits are owned by the Commonwealth.

(b) Utilization and protection.—The department has the following powers and duties with respect to the utilization and protection of State forest lands:

(1) To lease for a period not exceeding ten years, on terms and conditions as it may consider reasonable, to any person, corporation, association, church organization or school board of this Commonwealth, such portion of any State forest, whether owned or leased by the Commonwealth, as the department may consider suitable, as a site for buildings and facilities to be used by such person, corporation, association, church organization or school board for health and recreation, or as a site for a church or school purposes. However, the department may, with the approval of the Governor, if a substantial capital investment is involved and if it is deemed in the best interests of this Commonwealth, enter into such leases for a period not to exceed 35 years. The department shall not terminate the lease of a person whose cabin has been destroyed or seriously damaged by fire, storm, flood or other natural causes and shall permit the rebuilding of such cabin. The department shall permit persons holding leases to renovate or make additions to existing cabins with the approval of the department.

(2) To lease, for not more than ten years, small areas in State forests, whether owned or leased by the Commonwealth, which it considers to be better suited for the growing of other crops than for the growing of forest trees. If more than one person shall apply for the same tract, the lease shall be advertised for sale in three local county papers, if there be so

many, once a week for three weeks, and may then be awarded to the highest responsible bidder, but the department may nevertheless reject any or all bids. Upon the termination of any such lease, the lessee may remove buildings and fences placed thereon at his own expense, or the same may be purchased by the lessor as a part of the permanent improvement of the tract, upon such terms as may be agreed upon by the department and the lessee.

(3) To grant rights-of-way through State forests to individuals or corporations who may apply therefor when it shall appear to the department that the grant of a right-of-way will not so adversely affect the land as to interfere with its usual and orderly administration, and when it shall appear that the interests of the Commonwealth or its citizens will be promoted by such grant. Right-of-way, as used in this subsection, is hereby construed to include rights of passage and haulage for any lawful purpose, also rights of flowage or transmission for any lawful purpose.

(4) To give to street railway companies, duly incorporated under the laws of this Commonwealth, upon such terms and subject to such restrictions and regulations as the department considers proper, the privilege to construct, maintain and operate their lines of railway over, along and upon public highways now laid out and in actual use, which lie within or border on any State forests, whenever the interests of the Commonwealth will be benefited.

(5) To give to boroughs and other municipalities of this Commonwealth and to related municipal authorities, upon such terms and subject to restrictions and regulations as the department considers proper, the privilege of impounding water and drilling water wells upon any State forest, and of constructing, maintaining and operating lines of pipes upon and through State forests for the purpose of conveying water therefrom, whenever it shall be to the public interest so to do.

(6) In all cases where there are public roads, regularly established, running into or through or bordering upon State forests, from time to time, to expend such reasonable sums for the maintenance, repair or extension of such roads as may be necessary for the proper administration and protection of State forests. All expenses that may thus be incurred shall be paid in the same manner as the other expenses of the department.

(7) To enter into cooperative agreements with county, township, municipal and private agencies for the prevention and suppression of forest fires as provided by law.

(8) To grant to public utility companies lawfully doing business in this Commonwealth the privilege to construct, maintain and operate their lines over, along and upon highways and roads which lie within or border on any State forests and to grant right of access by such companies to or through State forest lands, in order to bring public utilities to camps and cottages in State forest lands and in other homes and farms adjacent to State forest lands.

(9) To grant to individuals, groups of individuals, associations, firms, partnerships or corporations the privilege to erect, construct, maintain and operate, on and over State-owned or -leased lands under the jurisdiction of the department, antennas, towers, stations, cables and other devices and apparatus, helpful, necessary or required for broadcasting, telecasting, transmission, relaying or reception of television. It may charge for such privilege such rental and damages as the department deems the conditions and circumstances warrant.

(10) To lease, with the approval of the Governor, State forest lands for the underground storage of natural gas, upon such terms and conditions as the secretary deems to be in the best interest of this Commonwealth.

(11) To lease, with the approval of the Governor, and in cooperation with the Department of Commerce, those State forest lands acquired by gift from Pennsylvania State University or by acquisition from the Curtiss-Wright Corporation which are located at Quehanna, Pennsylvania, or recovered through the termination of a lease with Curtiss-Wright Corporation relating to Quehanna, Pennsylvania, and upon which are erected certain industrial buildings constructed by the Curtiss-Wright Corporation for industrial or economic development purposes or for nuclear reactor safety zone purposes. Such leases may be made with industrial tenants or nonprofit industrial development corporations. The department in securing tenants shall cooperate fully with the Department of Commerce. Every such lease entered into shall conform in general to the terms of the standard industrial lease used by the department and approved by the General Counsel and the Attorney General. Every such lease shall otherwise than as in this act prescribed be upon such terms and conditions as the secretary considers in the best interests of this Commonwealth. However, all paved roads through the Quehanna project shall remain open to the general public use. Any such lease may permit the tenant to alter or expand, at its own expense and with the approval of the department first obtained in writing, existing buildings to meet the requirements of its particular industrial operation. Every such lease shall provide for the deposit of industrial floor space rentals and sewage and water rentals in a restricted revenue account from which the department may draw moneys for use in developing, operating and maintaining the water and sewage disposal facilities, and replacing machinery, equipment and fixtures appurtenant thereto, at aforesaid Quehanna. The restricted revenue account shall be audited two years from the effective date of this act and at two-year intervals thereafter, with any residue appearing in the account at the end of each auditing period to be deposited in the General Fund. The department is hereby authorized to indemnify and hold harmless PermaGrain Products, Inc., from and against any and all damages incurred by PermaGrain Products, Inc., related to personal injury or property damage, resulting from radioactive contamination arising exclusively from performance by this Commonwealth or its contractors of the characterization, remediation, decontamination and removal of radioactive

materials from contaminated structures on those State forest lands acquired from the Pennsylvania State University or Curtiss-Wright Corporation and located at Quehanna, Pennsylvania.

(c) Authority of officers.—The persons employed, under the provisions of this act, by the department for the protection of the State parks and State forests shall after taking the proper official oath before the clerk of the court of common pleas of any county of this Commonwealth be vested with the same powers as are by existing laws conferred upon constables and other peace officers, to arrest on view, without first procuring a warrant therefor, persons detected by them in the act of trespassing upon any forest or timber land within this Commonwealth, under such circumstances as to warrant the reasonable suspicion that such person or persons have committed, are committing or are about to commit any offense or offenses against any of the laws now enacted or hereafter to be enacted for the protection of forests and timber lands. The officers shall likewise be vested with similar powers of arrest in the case of offenses against the laws or rules and regulations enacted or established, or to be enacted or established, for the protection of the State forests or for the protection of the fish and game contained therein. However, the above-mentioned rules and regulations shall have been previously conspicuously posted upon the State forests. The officers shall further be empowered and it shall be their duty immediately upon any such arrest to take and convey the offender or offenders before a justice of the peace or other magistrate having jurisdiction, for hearing and trial or other due process of law. The powers conferred in this subsection upon forest officers shall extend only to the case of offenses committed upon the State forests and lands adjacent thereto, and the powers conferred in this subsection upon the officers shall not be exercised beyond the limits thereof, except where necessary for the purpose of pursuing and arresting such offenders, or of conveying them into the proper legal custody for punishment as aforesaid, and except where those officers are specially commissioned by the department as provided in this section. The department may at the discretion of the secretary or his designee specially commission certain forest officers to preserve order in the State parks and State forests, with all of the powers conferred on park officers by section 303(a)(7).

(d) Chief Forest Fire Warden.—The Chief Forest Fire Warden, subject to the approval of the secretary, shall have the following powers and duties to:

(1) Take such measures for the prevention, control and extinction of forest fires as will assure a reasonable protection from fire to woodlots, forest and wild land within this Commonwealth.

(2) Supervise and manage the forest fire wardens throughout this Commonwealth and, when necessary, to appoint persons who shall serve without compensation as special or as ex officio fire wardens. Such special or ex officio fire wardens shall have the same powers as local forest fire wardens, but their duties may be changed or extended by the chief forest fire warden. Any special or ex officio forest fire warden, appointed as

herein provided, shall be entitled to receive the necessary expenses incurred by him in the performance of his duties as fire warden.

(3) Report to the secretary, at such times as the secretary shall require, covering all phases of the work done under his direction.

(4) Collect, with the assistance of the fire wardens under his supervision, data as to location and fire hazards of woodlots, forests and wild lands within this Commonwealth, as to forest fires and losses resulting therefrom, and such other data as he may desire to present to the department or the public.

(5) Plan and to put into operation and maintain a system of fire towers and observation stations, which shall cover the regions subject to forest fires and to purchase the necessary materials and equipment and hire the necessary labor.

(6) Appoint certain forest fire wardens as patrolmen for regions subject to great fire risk during dry seasons, whenever necessary.

(7) Enter into agreements with persons, associations or corporations, upon satisfactory terms, for forest fire prevention or control.

(8) Conduct educational work in relation to the protection of forests from fire.

(9) Approve and transmit to the secretary all correct bills for expenses incurred by him or under his supervision.

(10) Declare a public nuisance any property which by reason of its condition or operation is a special forest fire hazard and, as such, endangers other property or human life. He shall notify the owner of the property or the person responsible for the condition declared a public nuisance and advise him of the abatement of such public nuisance. In case of a railroad, such notice shall be served upon the superintendent of the division where the nuisance exists.

(11) Collect and arrange information concerning violation of laws relating to the protection of forests from fire and present the same to the secretary, who shall file it with the Office of Attorney General for legal action.

(12) Issue, to persons appointed forest fire wardens, certificates of appointment and, when deemed advisable, to issue badges to such persons.

(e) District fire warden.—Each district fire warden shall have the power and his duty shall be to:

(1) Establish headquarters at some advantageous place within his district.

(2) Act as the field representative of the Chief Forest Fire Warden.

(3) Collect and forward to the Chief Forest Fire Warden such data within his district as may be required by the Chief Forest Fire Warden.

(4) Make recommendations to the Chief Forest Fire Warden for the appointment of local fire wardens, the location of towers, the employment of patrolmen, the region to be patrolled and such other matters as may come to his attention which would tend to improve the protective system.

(5) Arrange for annual meetings of fire wardens within his district for instruction in forest fire matters.

(6) Report to the Chief Forest Fire Warden conditions existing within his district, which are or may become forest fire hazards, and to serve notices for the correction or removal of such conditions, after and when issued by the Chief Forest Fire Warden.

(7) Receive, audit and, if correct, approve the reports and accounts of the local fire wardens before submitting them to the Chief Forest Fire Warden.

(8) Act as an inspector of the work of the local fire wardens and render assistance to them.

(9) Conduct educational work and develop cooperation between local agencies and the department for the prevention and suppression of forest fires.

(10) Perform such other duties as may be assigned to him by the secretary and the Chief Forest Fire Warden.

(f) Local forest fire wardens.—It shall be the duty of each local forest fire warden:

(1) Whenever fire is discovered in or approaching woodlots, forests or wild lands, whether the same be owned by individuals, corporations or by the Commonwealth, immediately to take such measures as are necessary to extinguish the fire.

(2) Whenever fires have been combated or extinguished, to prepare a correct statement of expenses, upon forms to be furnished by the department, which must be filed with the district forest fire warden and forwarded to the Chief Forest Fire Warden within 60 days of the date of the fire.

(3) Promptly to investigate the cause of each fire which comes to his knowledge, collect such evidence as may be discovered relating thereto, and such other facts as he may be directed to investigate, and report the same to the Chief Forest Fire Warden.

(4) To attend an annual meeting of forest fire wardens in his district when notified or present a reasonable excuse.

(5) When designated as a patrolman or watchman, to perform such duties as may be assigned him by the Chief Forest Fire Warden or by the district forest fire warden.

(g) Powers of wardens generally.—Every forest fire warden, appointed as provided in this act, shall have the power to:

(1) Employ such other persons, as in his judgment may be necessary, to render assistance in extinguishing forest fires and to compel the attendance of persons and to require their assistance in the extinguishing of forest fires.

(2) Administer an oath or affirmation in order to examine any person who he believes knows facts relating to any forest fire or who claims compensation for services rendered.

(3) Enter upon any land at any time for the purpose of performing duties in accordance with this act.

(4) Arrest on view, without first procuring a warrant, any person detected by him in the act of committing an offense against any of the laws for the protection of forests, woodlots or wild lands or when he shall have a reasonable suspicion that any person is committing or about to commit some such offense. Such forest warden shall have further power to take the offender before a justice of the peace, magistrate or other officer having jurisdiction for hearing, trial or other due process of law.

(5) Exercise the foregoing powers, not only in the jurisdiction for or within which he may have been appointed but also in adjacent or other boroughs, townships or counties.

(h) Administration of certain statutes.—The department shall hereafter exercise the powers and duties heretofore conferred upon the agencies and officials by the following statutes:

The Commissioner of Forestry by the act of March 30, 1897 (P.L.11, No.10), entitled "An act authorizing the purchase by the Commonwealth of unseated lands for the non-payment of taxes for the purpose of creating a State Forest Reservation."

The Commissioner of Forestry and the State Forestry Reservation Commission by the act of February 25, 1901 (P.L.11, No.9), entitled "An act to establish a Department of Forestry, to provide for its proper administration, to regulate the acquisition of land for the Commonwealth, and to provide for the control, protection and maintenance of Forestry Reservations by the Department of Forestry."

The Commissioner of Forestry by the act of April 22, 1909 (P.L.124, No.79), entitled "An act to permit the acquisition of forest or other suitable lands by municipalities, for the purpose of establishing municipal forests; and providing for the administration, maintenance, protection, and development of such forests."

The Commissioner of Forestry by section 15 of the act of May 13, 1909 (P.L.781, No.601), entitled "An act to create a system of fire-wardens to preserve the forest of the Commonwealth, by preventing and suppressing forest fires, and prescribing penalties for the violation thereof; providing for the compensation of the fire-wardens and those who assist in extinguishing fire, and making an appropriation therefor."

The State Forestry Reservation Commission by the act of May 11, 1911 (P.L.271, No.173), entitled "An act empowering the United States of America to acquire land in the State of Pennsylvania for National Forest Reserves, by purchase or by condemnation proceedings; and granting to the United States of America all rights necessary for control and regulation of such reserves."

The State Forestry Reservation Commission by the act of June 5, 1913 (P.L.426, No.284), entitled "An act to classify certain surface lands as auxiliary forest reserves; to prescribe the terms and conditions for their

continuance in said classification, or their withdrawal therefrom; and to provide for the expenses attendant thereon."

The Department of Forestry by the act of July 22, 1913 (P.L.906, No.432), entitled "A supplement to an act, entitled 'An act to create a system of fire-wardens to preserve the forests of the Commonwealth, by preventing and suppressing forest fires, and prescribing penalties for the violation thereof; providing for the compensation of the fire-wardens and those who assist in extinguishing fire, and making an appropriation therefor,' approved the thirteenth day of May, one thousand nine hundred and nine; conferring authority upon the Department of Forestry to enter into cooperative relations with local associations established for the purpose of preventing forest fires, and providing for and regulating a local fire patrol and the compensation thereof."

The Department of Forests and Waters by the act of April 21, 1915 (P.L.140, No.68), entitled "An act directing the county commissioners of the several counties to offer for sale to the Department of Forestry tracts of land which they may have purchased at county treasurers' sales, for acceptance or refusal for forestry purposes, and to convey to the Commonwealth of Pennsylvania the tracts so offered to be sold, if accepted by the department."

The Department of Environmental Resources and the Secretary of Environmental Resources by section 601 of the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act.

The Commissioner of Forestry, the Department of Forests and Waters and the Bureau of Forest Protection by Articles I, V through VII and IX through XI of the act of June 3, 1915 (P.L.797, No.353), referred to as the Forest Fire Protection Law.

The Department of Forestry by the act of May 8, 1917 (P.L.156, No.88), entitled "An act authorizing the Department of Forestry to purchase surface rights to lands, for use as State forests."

The State Forest Commission by the act of May 5, 1921 (P.L.418, No.194), entitled "An act authorizing the State Forest Commission to exchange or sell certain portions of the State forest land, and providing for the procedure."

The Department of Forestry and the Commissioner of Forestry by the act of May 21, 1923 (P.L.290, No.186), entitled "An act authorizing the Department of Forestry to grant, on terms, conditions, and stipulations, rights to occupy and use any portions of the State forests for dams, reservoirs, canals, pipe lines, and other water conduits, for certain water supply purposes; and providing remedies for violations of this act, or regulations or orders hereunder, or of such terms, conditions, or stipulations; and providing for revocation of the grant in certain cases."

The Department of Forestry by the act of May 28, 1923 (P.L.458, No.250), entitled "An act authorizing the Department of Forestry, with the approval of the Governor and Attorney General, to lease for periods of not more than fifty years, on terms, conditions, and stipulations expressed in

each lease, any portions of the State forests for dams, reservoirs, canals, pipe lines and other water conduits, power houses and transmission lines, for the development of water power, for steam raising and condensation, and for the generation and transmission of electric energy."

The Department of Forestry by the act of June 14, 1923 (P.L.761, No.300), entitled "An act to authorize the Department of Forestry to offer and to pay rewards for evidence sufficient to convict anyone maliciously setting forest fire, and to authorize payment of such rewards to local forest fire wardens under certain conditions."

The Department of Forests and Waters and the Secretary of Forests and Waters by the act of April 11, 1925 (P.L.232, No.153), entitled "An act making an appropriation; and providing for the hearing, adjusting, and paying of moral claims against the Commonwealth for injury to, or death of, persons while fighting forest fires under orders of agents of the Department of Forests and Waters."

The Department of Forests and Waters and the State Forest Commission by the act of May 13, 1925 (P.L.643, No.346), entitled "An act to provide for the purchase by the Commonwealth of agricultural land suited to the growing of forest tree seedlings, and fixing a maximum amount that may be paid therefor."

The Department of Forests and Waters and the Department of Environmental Resources by the act of May 5, 1927 (P.L.817, No.412), entitled, as amended, "An act authorizing and regulating the growth, sale, and distribution of forest tree seedlings, transplants, shrubs and vines by the Department of Forests and Waters; regulating the use of such forest tree seedlings, transplants, shrubs and vines and imposing duties upon the Department of Agriculture with regard to the enforcement of this act."

The Department of Forests and Waters by the act of April 3, 1929 (P.L.135, No.137), entitled "An act authorizing the Department of Justice, acting for the Department of Forests and Waters, to institute suits on behalf of the Commonwealth to recover from persons, associations, copartnerships, and corporations, and their officers, agents, and employes, causing forest fires, the expenses incurred by the Department of Forests and Waters on account of such fires."

The Secretary of Environmental Resources by section 712 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

The Secretary of Forest and Waters by the act of April 11, 1929 (P.L.515, No.219), entitled "An act for the elimination of special forest fire hazards; authorizing the Chief Forest Fire Warden, under certain circumstances, to declare any such hazard a public nuisance; providing for the abatement of the same, and for the collection of the cost of abatement; and imposing penalties."

The Secretary of Forests and Waters by the act of May 17, 1929 (P.L.1798, No.591), referred to as the Forest Reserves Municipal Financial Relief Law.

The Department of Environmental Resources by section 17 of the act of May 21, 1931 (P.L.149, No.105), known as The Liquid Fuels Tax Act.

The Secretary of Forests and Waters and the Department of Forests and Waters by subarticle (c) of Article XXXVIII of the act of June 23, 1931 (P.L.932, No.317), known as The Third Class City Code.

The Department of Forests and Waters by the act of June 23, 1931 (P.L.1202, No.328), entitled "An act authorizing the Department of Forests and Waters to cooperate with and to receive contributions from the Federal Government for forestry purposes; and providing for the use of such contributions."

The Department of Forests and Waters by subarticle (c) of Article XXX of the act of June 24, 1931 (P.L.1206, No.331), known as The First Class Township Code.

The Department of Forests and Waters by the act of April 13, 1933 (P.L.35, No.30), entitled "An act for the development and use of unredeemed seated and unseated lands purchased by county commissioners at tax sales; providing for the holding and permanent retention of such lands by the county for forest or recreational uses beneficial to the local community, or for their transfer to the State, under suitable restrictions for similar uses, subject to certain annual charges; providing for the use of revenues derived from such lands; providing a procedure for the discharge of liens of record against such lands by sale after notice to owners and lien creditors; providing for the sale by counties of such lands as are retained by the county; providing for the appointment by local State Forest Advisory Councils; and conferring powers upon the Department of Forests and Waters and the Board of Game Commissioners with respect to the acquisition and exchange of such lands, their proper organization and development, and the acceptance of gifts of lands."

The Department of Forests and Waters by sections 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916 and 1917 of the act of May 1, 1933 (P.L.103, No.69), known as The Second Class Township Code.

The Department of Forests and Waters by the act of May 22, 1933 (P.L.853, No.155), known as The General County Assessment Law.

The Department of Forests and Waters by the act of May 22, 1933 (P.L.907, No.165), entitled "An act empowering the Department of Forests and Waters and the Board of Game Commissioners to purchase, in the name of the Commonwealth, seated and unseated lands at tax sales held by county treasurers; providing for and regulating the payment of the purchase price and redemptions in such cases; and providing for the payment of State charges on such lands."

The Secretary of Forests and Waters by the act of July 29, 1953 (P.L.970, No.235), referred to as the Middle Atlantic Interstate Forest Fire Protection Compact Act.

The Secretary of Forests and Waters and the Department of Forests and Waters by the act of July 9, 1959 (P.L.510, No.137), known as the Pennsylvania Public Lands Act.

The Department of Forests and Waters by the act of June 15, 1961 (P.L.418, No.208), known as the State Forest Lands Prospecting Act.

The Secretary of Forests and Waters and the Department of Forests and Waters by subarticle (c) of Article XXVII of the act of February 1, 1966 (1965 P.L.1656, No.581), known as The Borough Code.

The Department of Forests and Waters by subarticle (e) of Article III of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

The Department of Environmental Resources by the act of June 27, 1973 (P.L.70, No.30), entitled "An act amending the act of May 13, 1915 (P.L.286, No.177), entitled 'An act to provide for the health, safety, and welfare of minors: By forbidding their employment or work in certain establishments and occupations, and under certain specified ages; by restricting their hours of labor, and regulating certain conditions of their employment; by requiring employment certificates or transferable work permits for certain minors, and prescribing the kinds thereof, and the rules for the issuance, reissuance, filing, return, and recording of the same; by providing that the Industrial Board shall, under certain conditions, determine and declare whether certain occupations are within the prohibitions of this act; requiring certain abstracts and notices to be posted; providing for the enforcement of this act by the Secretary of Labor and Industry, the representative of school districts, and police officers; and defining the procedure in prosecutions thereunder, and establishing certain presumptions in relation thereto; providing for the issuance of special permits for minors engaging in the entertainment and related fields; providing penalties for the violation of the provisions thereof; and repealing all acts or parts of acts inconsistent therewith,' providing for participation in certain training and fire-fighting activities."

The Department of Environmental Resources by the act of July 20, 1974 (P.L.524, No.178), referred to as the Interstate Cooperation Fire Protection Act.

The Department of Environmental Resources by the act of April 29, 1982 (P.L.369, No.103), entitled "An act authorizing the Department of Environmental Resources to reimburse cooperating counties for a portion of each county's costs incurred under State-County-Federal gypsy moth programs and out of a Federal Augmentation appropriation made to the department."

The Department of Environmental Resources by the act of December 20, 1983 (P.L.257, No.71), entitled "An act prohibiting the cutting, digging, removal, transportation or sale within this Commonwealth for any purpose of Christmas trees, without a bill of sale or other proof of ownership from the owner of the land on which the same are grown; and providing a penalty."

The Department of Environmental Resources by 34 Pa.C.S. § 723 (relating to exchange or sale).

The Department of Environmental Resources by 74 Pa.C.S. § 5905 (relating to certain State-owned airport).

Section 303. Parks.

(a) Powers and duties enumerated.—The department shall have the following powers and duties with respect to parks:

(1) To supervise, maintain, improve, regulate, police and preserve all parks belonging to the Commonwealth.

(2) For the purpose of promoting healthful outdoor recreation and education and making available for such use natural areas of unusual scenic beauty, especially such as provide impressive views, waterfalls, gorges, creeks, caves or other unique and interesting features, to acquire, in the name of the Commonwealth, by purchase, gift, lease or condemnation, any lands which in the judgment of the department should be held, controlled, protected, maintained and utilized as State park lands. Such lands may be purchased or accepted, subject to the conditions of any such lease and subject to such reservations, if any, of mineral rights, rights-of-way or other encumbrances as the department may deem not inconsistent with such holdings. However, the amount expended for the acquisition of lands for State park purposes shall not be more than the amount specifically appropriated for such purposes.

(3) To see that conveniences and facilities for the transportation, shelter, comfort and education of people shall be so designed and constructed as to retain, so far as may be, the naturalistic appearance of State park areas, surroundings and approaches, and conceal the hand of man as ordinarily visible in urban, industrial and commercial activities.

(4) To lease for a period not to exceed ten years, on such terms as may be considered reasonable, to any person, corporation, association or organization of this Commonwealth a portion of any State park, whether owned or leased by the Commonwealth, as may be suitable as a site for buildings and facilities to be used for health, recreational or educational purposes, or for parking areas or concessions for the convenience and comfort of the public. However, the department may, with the approval of the Governor, if a substantial capital investment is involved and if it is deemed in the best interests of the Commonwealth, enter into such leases for a period of not more than 35 years.

(5) To study, counsel and advise in reference to gifts of lands or money for park purposes.

(6) To counsel and advise in reference to the development of park lands by concessionaires with facilities and equipment for the accommodation and education of the public.

(7) To appoint and commission persons to preserve order in the State parks, which persons shall have all of the following powers:

(i) To make arrests without warrant for all violations of the law which they may witness and to serve and execute warrants issued by the proper authorities. However, in cases of offenses for violation of any of the provisions of 75 Pa.C.S. (relating to vehicles), the power to

make arrests without warrant shall be limited to cases where the offense is designated a felony or a misdemeanor or in cases causing or contributing to an accident resulting in injury or death to any person.

(ii) To have all the powers and prerogatives conferred by law upon members of the police force of cities of the first class.

(iii) To have all the powers and prerogatives conferred by law upon constables of this Commonwealth.

(iv) To serve subpoenas issued for any examination, investigation or trial under any law of this Commonwealth.

(v) When authorized by the secretary or his designee, to exercise all of the foregoing powers on State forest lands or in other areas administered by the department.

(8) For the purpose of providing parking facilities and incidental services within the borders of any State park area situate in the City of Philadelphia to lease or grant, by and with the written approval of the Governor, any portion of any such State park area, underground, aboveground, or both, to the city or to any parking authority now or hereafter existing in the city, pursuant to the provisions of the act of June 5, 1947 (P.L.458, No.208), known as the Parking Authority Law, as the same may now or hereafter be amended, if:

(i) the City of Philadelphia or the parking authority agrees that the lands and interests and privileges therein shall be used by the city or parking authority, or any lessee or sublessee holding under either of them, pursuant to any lease or sublease granted by the city or parking authority as may be permitted by law, to promote the establishment of parking services and facilities, but portions of the street level or lower floors of the parking facilities may be leased for commercial use, including emergency automobile repair service and the sale by the lessee of any commodity of trade or commerce or any service except the sale of gasoline or automobile accessories; and

(ii) The department, with the written approval of the Governor, determines that the lease or grant:

(A) will aid in promoting the public safety, convenience and welfare of the people of Philadelphia by aiding in the establishment of adequate parking services for the convenience of the public and otherwise promoting the public policy of the Commonwealth in authorization for the creation of parking authorities; and

(B) will not unduly interfere with the promotion of those public objects for which the State park area was acquired and for which it is held.

Any lease or grant shall be upon the terms and conditions of the period or periods of time the department, with the written approval of the Governor, may prescribe. The department shall execute and deliver and is empowered to receive deeds or other legal instruments necessary to effectuate any lease or grant. All deeds and instruments shall have the prior approval of

the Office of General Counsel and the Office of Attorney General, and a copy thereof shall be filed with the Department of Community Affairs.

(9) To make and execute contracts or leases in the name of the Commonwealth for the mining or removal of any oil or gas that may be found in a State park whenever it shall appear to the satisfaction of the department that it would be for the best interests of this Commonwealth to make such disposition of said oil and gas. Any proposed contracts or leases of oil and gas more than $1,000 in value shall be advertised once a week for three weeks in at least two newspapers published nearest the locality indicated in advance of awarding such contract or lease. Such contracts or leases may then be awarded to the highest and best bidder who shall give bond for the proper performance of the contract as the department shall designate.

(10) To grant rights-of-way in and through State parks to municipal authorities and political subdivisions of this Commonwealth for the laying of water lines and of lines for the transportation of sewage to sewage lines or sewage treatment facilities on State park land under such terms and conditions, including the payment of fees, as the department may deem proper and when it shall appear that the grant of such right-of-way will not so adversely affect the land as to interfere with its usual and orderly administration and that the interests of this Commonwealth or its citizens will be promoted by such grant.

(11) To issue permits under emergency situations, upon such terms and subject to such restrictions, fees and regulations as the department may deem proper, for the utilization of water at a State park and for constructing, maintaining and operating lines of pipes upon and through a State park for the purpose of conveying water therefrom, wherever it shall be in the public interest to do so.

(b) Administration of certain statutes.—The department shall hereafter exercise the powers and duties heretofore conferred upon those agencies and officials listed below under the following statutes:

The Snyder-Middleswarth Park Commission and the Department of Forests and Waters by the act of April 12, 1921 (P.L.123, No.73), entitled "An act providing for the establishment and the regulation of a State park, to be known as the Snyder-Middleswarth State Park."

The Pennsylvania State Park and Harbor Commission of Erie by the act of May 27, 1921 (P.L.1180, No.436), entitled "An act dedicating certain lands of the Commonwealth of Pennsylvania, situated in the city and county of Erie, to public use as an historical memorial and public State park; aiding in the development of the harbor of Erie; and creating a commission to manage and control said lands and said harbor improvements; empowering said commission to purchase or receive by gift other lands for the purpose of this act; providing for the appointment of members of said commission, and that the Secretary of Internal Affairs and the Commissioner of Fisheries shall be ex officio members thereof;

defining the duties and powers of said commission; excepting rights and privileges in said lands heretofore granted; and making an appropriation."

The Department of Forests and Waters by the act of April 14, 1927 (P.L.295, No.168), entitled "An act providing for the acquisition by the Department of Forests and Waters, in the name of the Commonwealth, of certain lands in Jefferson, Forest, and Clarion Counties, Pennsylvania, belonging to the A. Cook Sons Company, for use as a State Park and Forest Reservation; making an appropriation for said acquisition; providing for the management of said property by said department and defining the uses to which the property shall be put."

The Department of Forests and Waters and the Water and Power Resources Board by the act of May 2, 1929 (P.L.1530, No.456), referred to as the Pymatuning Swamp Reservoir Project Law.

The Department of Forests and Waters by the act of June 2, 1933 (P.L.1415, No.301), entitled "An act dedicating and setting aside certain lands in Cameron and Clinton Counties as a public park and pleasure-ground, to be known as "Bucktail State Park"; and imposing certain powers and duties in connection therewith upon the Department of Forests and Waters and the Department of Justice of the Commonwealth."

The Department of Forests and Waters and the Pennsylvania State Park and Harbor Commission of Erie by the act of July 15, 1935 (P.L.1002, No.320), entitled "An act relating to the Pennsylvania State Park at Erie, authorizing the Department of Forests and Waters to revoke and terminate certain revocable grants and to acquire, by purchase or eminent domain, private property rights or interests in respect to any lands within said park."

The Department of Forests and Waters by the act of July 1, 1937 (P.L.2651, No.516), entitled "An act dedicating and setting aside certain lands in Lackawanna County as a public park and pleasure-ground; and imposing certain powers and duties in connection therewith on the Department of Forests and Waters."

The Secretary of Forests and Waters, the Department of Forests and Waters and the State Parks Commission by the act of June 21, 1939 (P.L.621, No.290), entitled "An act authorizing the Secretary of Forests and Waters to utilize or transfer to the Department of Highways, canal properties or parts thereof acquired by the Department of Forests and Waters, and, in connection with such use, to sell waters from such canals."

The Secretary of Forests and Waters by the act of June 21, 1939 (P.L.622, No.291), entitled "An act authorizing the Secretary of Forests and Waters, with approval of the Governor, to accept and acquire by gift, grant or other lawful means certain canal properties."

The Department of Forests and Waters by the act of August 1, 1941 (P.L.609, No.257), entitled "An act providing for the acquisition by the Department of Forests and Waters, in the name of the Commonwealth, of certain lands in Luzerne, Sullivan and Wyoming Counties for use as a State Park; making an appropriation for said acquisition; providing for the

management of said property by said department, and defining the uses to which the property shall be put."

The Department of Forests and Waters by the act of August 12, 1963 (P.L.658, No.343), entitled "An act providing for the acquisition by the Department of Forests and Waters of the Kinzua Bridge and certain adjoining grounds for a State park, and making an appropriation."

The Department of Forests and Waters by the act of June 22, 1964 (Sp.Sess., P.L.131, No.8), known as the Project 70 Land Acquisition and Borrowing Act.

The Department of Environmental Resources by the act of July 20, 1974 (P.L.543, No.187), entitled "An act authorizing the lease of Independence Mall State Park in the City of Philadelphia, Philadelphia County, to the Government of the United States of America for use as a National Park, and further authorizing the conveyance of said State Park to the United States of America for use as a National Park, and, with certain reservations, ceding jurisdiction over such lands."

The Department of Environmental Resources by 30 Pa.C.S. § 902 (relating to enforcement of other laws).

Section 304. Facility development.

(a) General rule.—The department has all powers and duties previously vested in the Department of Environmental Resources to design, construct, improve, maintain and repair those lands and facilities which it deems necessary or appropriate in the exercise of the powers and duties transferred by this act.

(b) Powers not restricted.—The powers and duties conferred by this section are not restricted by Article XXIV of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, to any greater extent than were the powers and duties of the Department of Environmental Resources in accordance with section 2401.2 of that act.

(c) Administration of certain statutes.—The department shall hereafter exercise the powers and duties heretofore conferred upon the agencies and officials listed below under the following statutes:

The Department of Forests and Waters and the Secretary of Forests and Waters by the act of May 20, 1921 (P.L.984, No.353), entitled "An act providing for the condemnation by the Commonwealth of lands suitable and desirable for forest purposes or game preserve purposes or the perpetuation and protection of fish; and defining the powers and duties of the Department of Forestry, the Board of Game Commissioners, and the Department of Fisheries, respectively, in relation thereto."

The Department of Forests and Waters by the act of March 26, 1925 (P.L.84, No.53), entitled "An act authorizing the Department of Forests and Waters to accept gifts, donations, or contributions under certain circumstances; and providing for the use of such gifts."

The Secretary of Forests and Waters, the Department of Forests and Waters and the Chief Forest Fire Warden by the act of March 1, 1945

(P.L.15, No.7), entitled "An act to authorize the Department of Forests and Waters to lease or sell its telephone lines or parts thereof."

The Department of Forests and Waters by the act of May 22, 1945 (P.L.834, No.335), entitled "An act providing for the acceptance by the Commonwealth of a gift of lands from the United States of America, or any Federal agency, and placing such lands under the control and supervision of the Department of Forests and Waters."

The Department of Forests and Waters and the Secretary of Forests and Waters by the act of December 15, 1955 (P.L.865, No.256), entitled "An act requiring rents and royalties from oil and gas leases of Commonwealth land to be placed in a special fund to be used for conservation, recreation, dams, and flood control; authorizing the Secretary of Forests and Waters to determine the need for and location of such projects and to acquire the necessary land."

The Department of Forests and Waters by the act of January 19, 1968 (1967 P.L.992, No.442), entitled "An act Authorizing the Commonwealth of Pennsylvania and the counties thereof to preserve, acquire or hold land for open space uses."

The Department of Environmental Resources by the act of November 29, 1990 (P.L.600, No.151), entitled "An act amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, providing an opportunity for municipalities to purchase real property being disposed of by public utilities engaged in a railroad business."

The Department of Environmental Resources by the act of July 2, 1993 (P.L.359, No.50), known as the Keystone Recreation, Park and Conservation Fund Act.

Section 305. Ecological and geological services.

(a) Powers and duties enumerated.—The department shall have the power and its duty shall be with respect to the study and protection of the Commonwealth's ecological and geological resources:

(1) To undertake, conduct and maintain the organization of a thorough and extended survey of this Commonwealth for the purpose of elucidating the geology and topography of this Commonwealth. The survey shall disclose the chemical analysis and location of ores, coals, oils, clays, soils, fertilizing and of other useful minerals, and of waters, as shall be necessary to afford the agricultural, forestry, mining, metallurgical and other interests of this Commonwealth and the public a clear insight into the character of its resources. It shall also disclose the location and character of such rock formations as may be useful in the construction of highways or for any other purpose.

(2) To collect such specimens as may be necessary to form a complete cabinet collection of specimens of the geological and mineral resources of this Commonwealth and deposit the same in the State Museum of Pennsylvania.

(3) To put the results of the survey, with the results of previous surveys, into a form convenient for reference.

(4) To collect copies of the surveys of this and other states and countries and digest the information therein contained to the end that the survey hereby contemplated may be made as thorough, practical and convenient as possible.

(5) To enter into and upon all lands and localities in this Commonwealth which it may be necessary to examine for the purpose of survey; but, in such entry, no damage to property shall be done.

(6) To avail itself as fully as possible of the information, maps and surveys possessed by citizens and corporations of this Commonwealth, relative to the geology and topography of this Commonwealth.

(7) To transmit all publications of the survey, or any part thereof, to the Department of General Services to be copyrighted by the Secretary of General Services in the name of the Commonwealth.

(8) To arrange for the cooperation of the United States Geological Survey or of such other national organization as may be authorized to engage in such work.

(9) To exercise the powers and duties vested in the Department of Environmental Resources by the act of June 23, 1982 (P.L.597, No.170), known as the Wild Resource Conservation Act. Notwithstanding any provision in the act to the contrary, the department may use any funds appropriated to it to carry out the purposes of this section.

(10) To undertake, conduct and maintain the organization of a thorough and extended survey of this Commonwealth for the purpose of inventory, survey and elucidation of the ecological resources of this Commonwealth, to gather and digest information from sources within and outside this Commonwealth and to put the results of the survey into a form convenient for reference. The ecological survey should identify the significant natural features of this Commonwealth and the species which comprise these features.

(b) Administration of certain statute.—The department shall exercise and is vested with the powers and duties established by the act of May 29, 1956 (1955 P.L.1840, No.610), known as the Water Well Drillers License Act.

Section 306. Community recreation and heritage conservation.

(a) Powers and duties.—The department shall have the following powers and duties with respect to community recreation and heritage conservation:

(1) To administer Federal and State programs for grants and loans to local governments, municipal authorities and nonprofit organizations for community and regional projects involving the planning, acquisition, rehabilitation and development of public park, recreation and conservation areas, facilities and programs.

(2) To provide technical assistance and other services to communities, nonprofit groups, regional organizations, Federal and State agencies and organizations and the general public on any aspect of planning, acquiring, improving, managing, operating and maintaining public park, recreation and conservation areas, facilities and programs.

(3) To administer Federal and State heritage conservation programs, such as the Pennsylvania Heritage Parks Program and other programs that preserve, enhance and promote natural, recreational, cultural and scenic resources for heritage conservation, tourism and economic development.

(4) To provide grants and technical assistance to communities and zoo organizations for the rehabilitation and development of public zoological parks or other areas.

(b) Agreements with other agencies.—The department has the powers and duties to coordinate and enter into agreements with Federal agencies, State agencies, local governments and nonprofit organizations to carry out the aforementioned powers and duties.

(c) Community affairs.—The department shall have the powers and duties previously vested in the Secretary of Community Affairs and the Department of Community Affairs by the following acts:

The act of January 19, 1968 (1967 P.L.996, No.443), known as the Land and Water Conservation and Reclamation Act.

The act of December 21, 1973 (P.L.425, No.148), entitled "An act authorizing the establishment of environmental advisory councils by certain political subdivisions."

The act of July 2, 1984 (P.L.527, No.106), known as the Recreational Improvement and Rehabilitation Act.

The act of July 2, 1993 (P.L.359, No.50), known as the Keystone Recreation, Park and Conservation Fund Act.

(d) Project 70.—The department shall have the powers and duties vested in the Department of Commerce by the act of June 22, 1964 (Sp.Sess., P.L.131, No.8), known as the Project 70 Land Acquisition and Borrowing Act, and transferred to the Department of Community Affairs by section 2501-C(h) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

Section 307. Rivers conservation.

(a) General rule.—The department shall have the power and duty to assist in the conservation, enhancement and restoration of the river resources of this Commonwealth and may make grants and provide technical assistance to local governments and nonprofit organizations for river conservation projects.

(b) Scenic rivers.—

(1) The department shall have the powers and duties previously vested in the Department of Environmental Resources by the act of December 5, 1972 (P.L.1277, No.283), known as the Pennsylvania Scenic Rivers Act.

(2) The department shall have the powers and duties previously vested in the Department of Environmental Resources by the following acts:

The act of November 26, 1978 (P.L.1415, No.333), known as the Schuylkill Scenic River Act.

The act of March 24, 1980 (P.L.50, No.18), known as the Stony Creek Wild and Scenic River Act.

The act of April 5, 1982 (P.L.222, No.71), known as the Lehigh Scenic River Act.

The act of April 29, 1982 (P.L.351, No.97), known as the French Creek Scenic Rivers Act.

The act of December 17, 1982 (P.L.1402, No.324), known as the Lick Run Wild and Scenic River Act.

The act of October 21, 1983 (P.L.171, No.43), known as the Octoraro Creek Scenic Rivers Act.

The act of March 30, 1988 (P.L.318, No.42), known as the LeTort Spring Run Scenic River Act.

The act of December 19, 1988 (P.L.1286, No.161), known as the Tucquan Creek and Bear Run Scenic Rivers Act.

The act of June 16, 1989 (P.L.22, No.7), known as the Lower Brandywine Scenic Rivers Act.

The act of December 4, 1992 (P.L.763, No.116), known as the Yellow Breeches Creek Scenic River Act.

The act of December 4, 1992 (P.L.767, No.118), known as the Tulpehocken Creek and Yellow Breeches Creek Scenic River Act.

The act of December 4, 1992 (P.L.784, No.124), known as the Pine Creek Scenic Rivers Act.

Section 308. Trails and greenways.

(a) General rule.—The department shall have the power and duty to assist in the planning, establishment and development of trails and greenways throughout this Commonwealth and may make grants and provide technical assistance to local governments and nonprofit organizations for the planning, acquisition and development of recreational trail and greenway projects.

(b) Rails to trails.—The department shall have the powers and duties previously vested in the Department of Environmental Resources and the Environmental Quality Board by the act of December 18, 1990 (P.L.748, No.188), known as the Rails to Trails Act.

(c) Snowmobiles and ATV's.—The department shall have the powers and duties vested in the Department of Environmental Resources by 75 Pa.C.S. Ch. 77 (relating to snowmobiles and all-terrain vehicles).

(d) Appalachian Trail.—The department shall have the powers and duties vested in the Department of Environmental Resources by the act of April 28, 1978 (P.L.87, No.41), known as the Pennsylvania Appalachian Trail Act.

(e) Construction.—Nothing in this act shall be construed to be grounds for the imposition of responsibility by the Pennsylvania Public Utility Commission for maintenance or costs of any railroad crossing or abandoned railroad crossing under 66 Pa.C.S. Ch. 27 (relating to railroads).

Section 309. Youth conservation programs.

(a) Powers and duties.—The department shall have the powers and duties previously vested in the Department of Environmental Resources by the act of July 2, 1984 (P.L.561, No.112), known as the Pennsylvania Conservation Corps Act.

(b) Federal funding.—The department shall have the power to establish and maintain conservation work experience programs authorized and funded

under Federal law and to accept, use and grant funds made available by Federal agencies for such programs.

Section 310. Volunteers.

(a) Services of individuals without compensation.—The secretary is authorized to recruit, train and accept without regard to the civil service classification laws, rules or regulations, the services of individuals without compensation as volunteers for or in aid of interpretive functions, visitor services, conservation measures and development or other activities in and related to State park and forest areas and other conservation and natural resource activities administered by the department.

(b) Expenses.—The secretary is authorized to provide for incidental expenses, such as transportation, uniforms, lodging and subsistence.

(c) Status of volunteers.—

(1) Except as otherwise provided in this section, a volunteer shall not be deemed to be a Commonwealth employee and shall not be subject to the provisions of law relating to Commonwealth employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation and Commonwealth employee benefits.

(2) Volunteers performing work under the terms of this act shall be authorized to operate Commonwealth vehicles and shall be treated for the purposes of automotive and general liability as employees of the Commonwealth.

(3) For the purposes of the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, volunteers under this act shall be deemed employees of the Commonwealth.

(4) No volunteer shall be assigned to any position, covered by any labor agreement, presently filled or authorized in the department.

(d) Natural Resource Volunteer Program.—The department shall have the power and authority to do all things necessary and expedient to establish and operate a Natural Resource Volunteer Program and to promulgate rules and regulations under this section.

Section 311. Environmental education.

The department shall establish a program to provide and promote environmental education related to the conservation, utilization and preservation of the natural resources of this Commonwealth. For these purposes, the department may use funds provided by the Department of Environmental Protection pursuant to the act of June 22, 1993 (P.L.105, No.24), known as the Environmental Education Act, and any other available funds. The amount of funds provided by the Department of Environmental Protection shall not be less than 25% of the annual receipts of the Environmental Education Fund and may be used for the purpose stated in this section notwithstanding any limitations in the Environmental Education Act.

Section 312. Whitewater recreation.

(a) General rule.—The department shall have the power and duty to promulgate rules and regulations to protect, manage and regulate the recreational use of designated whitewater zones, to license whitewater

outfitters operating within designated whitewater zones and to establish fees, royalties and charges for licenses and for using public lands, waters and facilities.

(b) License guidelines.—For each specific designated whitewater zone, a license to continue operating as a whitewater rafting outfitter shall be issued by the department to any whitewater rafting outfitter who:

(1) has provided whitewater rafting services on a designated whitewater zone for a period of five or more years;

(2) has provided those services under formal agreement with the department;

(3) has demonstrated an acceptable measure of compliance with the safety and operational requirements of that agreement; and

(4) has provided whitewater rafting services on that designated whitewater zone prior to operation and management of that designated whitewater zone through formal agreement with the department.

Each whitewater rafting outfitter presently conducting whitewater rafting trips under agreement with the Department of Environmental Resources shall be deemed to fulfill the foregoing criteria.

(c) Renewal.—Licenses issued by the department to continue to operate as a whitewater rafting outfitter:

(1) shall be for a period of ten years and shall be renewable under guidelines appropriate and necessary to protect the public health, safety and interest and provide stability to the outfitting industry;

(2) shall be transferable under reasonable guidelines of the department relating to transfer of licenses and required qualifications of transferees;

(3) shall include the right to continue to utilize or lease any premises leased before the effective date of this act by a whitewater rafting outfitter from the department or offer to lease such access areas as the department deems appropriate for use by whitewater rafting outfitters; and

(4) shall supersede, after the adoption of regulations, any agreement between the department and a whitewater rafting outfitter, except fee agreements in which a whitewater rafting outfitter is required to pay the department a fee, which fee agreements shall continue for the life of the agreement and which shall not preclude the issuance of a license.

(d) Additional whitewater rafting outfitter licenses.—The department may, with regard to a specific designated whitewater zone, accept bids, issue licenses and charge fees and royalties for an additional whitewater rafting outfitter only if the department determines that there is additional whitewater rafting outfitter carrying capacity on the waterway and that there is a need for additional whitewater rafting outfitter allocations. Such licenses shall apply only for that specific designated whitewater zone and only for a period not to exceed ten years.

(e) Operation and safety of whitewater zone.—Licensed whitewater rafting outfitters shall be subject to all appropriate rules, regulations and guidelines promulgated by the department for the purposes of regulating the operation and safety of each designated whitewater zone.

(f) Termination.Licenses granted by the department may be terminated by the department for noncompliance after a 30-day written notice to the outfitter and a hearing in accordance with 2 Pa.C.S. (relating to administrative law and procedure).

Section 313. Rulemaking authority.

(a) Interests of Commonwealth.—The department shall, in the manner provided by law, promulgate such rules and regulations, not inconsistent with law, for the control, management, protection, utilization, development, occupancy and use of the lands and resources of State parks and State forests, as it may deem necessary or proper to conserve the interests of the Commonwealth.

(b) State parks.—Rules and regulations with respect to State parks shall be compatible with the purposes for which State parks are created.

(c) State forests.—Rules and regulations with respect to State forests shall be compatible with the purposes for which the State forests are created, namely to provide a continuous supply of timber, lumber, wood and other forest products, to protect the watersheds, conserve the waters and regulate the flow of rivers and streams of this Commonwealth and to furnish opportunities for healthful recreation to the public.

(d) General rule.—The department shall promulgate such rules and regulations as are necessary to carry out this act.

(e) Conduct on Commonwealth property.—The department shall have the powers vested in the Department of Environmental Resources under 18 Pa.C.S. § 7506 (relating to violation of rules regarding conduct on Commonwealth property).

(f) Powers of Environmental Quality Board.—The department shall continue to exercise any power to formulate, adopt and promulgate rules and regulations heretofore vested in the Environmental Quality Board set forth in section 1920-A(c) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, insofar as that power relates to the power and duty to promulgate regulations imposed upon the Department of Forests and Waters, the Secretary of Forests and Waters, the Pennsylvania State Park and Harbor Commission of Erie and the State Forest Commission.

(g) Powers and duties conferred by statute.—The department shall have the powers and duties previously vested in the Environmental Quality Board by the following:

Sections 7, 8 and 9 of the act of June 23, 1982 (P.L.597, No.170), known as the Wild Resource Conservation Act.

Section 5 of the act of December 18, 1990 (P.L.748, No.188), known as the Rails to Trails Act.

(h) Existing rules.—Any such rules and regulations promulgated prior to the effective date of this act shall be the rules and regulations of the department until such time as they are modified or repealed by the department.

(i) Law applicable.—The department shall promulgate its rules and regulations subject to the act of July 31, 1968 (P.L.769, No.240), referred to

as the Commonwealth Documents Law, the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, and the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, except for the establishment of fees and charges under section 314.

Section 314. Fees and charges.

Whenever the department imposes fees or charges for activities, admissions, uses or privileges, including charges for concessions, at or relating to State parks, such charges or fees shall be used solely for the acquisition, maintenance, operation or administration of the State park system and are hereby appropriated for such purposes. The department shall not adopt or impose any charges or fees for parking or general admission to State parks unless the charges were imposed prior to January 1, 1995. The department may continue to impose and modify parking charges and fees applicable to specific services or units within the State park system which were imposed prior to January 1, 1995, and may impose charges or fees for admission to and for use of specific services and facilities in State parks. The department shall continue to exercise the powers previously vested in the Environmental Quality Board regarding the imposition of fees and charges for State parks and State forests.

Section 315. Conservation and Natural Resources Advisory Council.

(a) Composition.—The Conservation and Natural Resources Advisory Council shall consist of the Secretary of Conservation and Natural Resources, six members who shall be appointed by the Governor, no more than three of whom shall be of the same political party, six members who shall be appointed by the President pro tempore of the Senate, no more than three of whom shall be of the same political party, and six members who shall be appointed by the Speaker of the House of Representatives, no more than three of whom shall be of the same political party. The appointed members of the council shall be citizens of this Commonwealth who, during their respective terms, shall hold no other Commonwealth office to which any salary is attached. The council shall include persons knowledgeable in fields related to the work of the department.

(b) Term.—The term of office of each appointed member shall be three years, measured from the third Tuesday of January of the year in which he takes office, or until his successor has been appointed; except that in the initial appointments of the members of the council, the respective appointing authorities shall appoint two members for terms of one year each, two members for terms of two years each and two members for terms of three years each.

(c) Officers and meetings.—The council shall annually elect one of its appointed members as chairman and shall elect a secretary who need not be a member of the council. Meetings of the council shall be held at least quarterly or at the call of the chairman.

(d) Powers and duties.—

(1) The council shall review all conservation and natural resource laws of the Commonwealth and make appropriate suggestions for the revision, modification and codification thereof.

(2) The council shall consider, study and review the work of the department, and for this purpose the council shall have access to all books, papers, documents and records pertaining or belonging to the department.

(3) The council shall advise the department, on request, and shall make recommendations upon its initiative for the improvement of the work of the department.

(4) The council shall report annually to the Governor and to the General Assembly and may make such interim reports as are deemed advisable.

(5) The council shall have power to employ and fix the compensation of such experts, stenographers and assistants as may be deemed necessary to carry out the work of the council, but due diligence shall be exercised by the council to enlist such voluntary organizations and other agencies in Pennsylvania or elsewhere generally recognized as qualified to aid the council.

Section 316. Advisory committees.

(a) Creation.—The department is authorized to create advisory committees to help develop or discuss proposed regulation, final regulation or policy guidance and to provide continuing advice on implementing programs administered by the department.

(b) Organization.—Membership on an advisory committee shall be balanced and shall be representative of the interests affected by the particular regulation, policy, issue or program assigned to the committee.

(c) Appointments.—The secretary shall appoint the members of an advisory committee.

(d) Chairperson.—A chairperson shall be chosen by a majority vote of the advisory committee members present at a regularly scheduled meeting. A person employed by the department shall not chair an advisory committee.

(e) Expenses.—Members of an advisory committee may be reimbursed for their travel expenses to attend committee meetings as authorized by the Executive Board. Employees of the Commonwealth who serve as members of an advisory committee shall only be entitled to the compensation and expenses they receive as public employees.

(f) Support.—The department shall provide the appropriate administrative and technical support needed by an advisory committee in order to accomplish its objectives.

Section 317. Ex officio memberships of secretary.

The secretary shall serve in lieu of the Secretary of Environmental Resources on the following boards and commissions:

(1) The Boating Advisory Board.

(2) The Board of Trustees of The Pennsylvania State University.

(3) The Hardwoods Development Council.

(4) The Wild Resource Conservation Board.

Section 318. Contracts and agreements.

(a) Authorized entities.—The department may enter into contracts and agreements with persons, associations, corporations, partnerships, municipalities, municipal authorities and units of Federal, State and local government to exercise the powers and fulfill the duties established by this act.

(b) State System of Higher Education.—The department may enter into agreements for studies and services with State-related institutions and institutions which are part of the State System of Higher Education without the need for competitive procurement.

(c) Rights-of-way.—The department shall have the power to lease rights-of-way for a period of not more than 35 years, on terms and conditions as it may consider reasonable, to owners of real property abutting State lands under the jurisdiction of the department.

Section 319. Transfer of funds.

(a) Transfer from Department of Environmental Resources.—The administration of the following funds or portions of funds, as may be administered by the Department of Environmental Resources, shall be transferred from the Department of Environmental Resources to the department:

(1) State Parks User Fees Restricted Receipts Account.
(2) Forestry Stumpage Sales Restricted Receipts Account.
(3) Quehanna Fund - Act 275 Restricted Revenue Account.
(4) Snowmobile/ATV Program Restricted Revenue Account.
(5) Quehanna Fund - Act 55 Restricted Revenue Account.
(6) Purchase of State Forest Land Restricted Revenue Account.
(7) Keystone Recreation, Park and Conservation Fund.
(8) Land and Water Development Fund (Public Outdoor Recreation Areas appropriation only).
(9) Motor License Fund.
(10) Oil and Gas Lease Fund.
(11) Wild Resource Conservation Fund.

(b) Transfer from Department of Community Affairs.—The administration of the following funds or portions of funds shall be transferred from the Department of Community Affairs to the department:

(1) Keystone Recreation, Park and Conservation Fund.
(2) Pennsylvania Heritage Parks Program appropriations from the General Fund.

(c) State forests.—A minimum of 10% of the previous fiscal year's receipts of the Forestry Stumpage Sales Restricted Receipts Account shall be transferred to a separate Forest Regeneration Restricted Revenue Account and is hereby appropriated to the department, in addition to the funds necessary for the operation, maintenance and administration of the State forest system, to expend on forest regeneration activities, including, but not limited to, erecting deer fences, planting trees and treating forests with herbicides. Any balance in the Forest Regeneration Restricted Revenue Account in excess of

5% of the previous year's receipts at the end of the fiscal year shall be returned to the Forestry Stumpage Sales Restricted Receipts Account.

Section 320. Renumbering regulations.

The department shall deposit a notice with the Legislative Reference Bureau renumbering the following regulations and statements of policy to the appropriate title of the Pennsylvania Code and making at that time needed editorial changes to reflect the transfers of powers and duties under this act:

16 Pa. Code Ch. 5 Subch. E (relating to land and water conservation fund-statement of policy)

25 Pa. Code Ch. 11 Subch. A (relating to scenic rivers)

25 Pa. Code Ch. 11 Subch. B (relating to natural areas and wild areas)

25 Pa. Code Ch. 11 Subch. C (relating to campsites)

25 Pa. Code Ch. 17 (relating to transfer or exchange of State park land-statement of policy)

25 Pa. Code Ch. 18 (relating to transfer or exchange of State forest land-statement of policy)

25 Pa. Code Ch. 31 (relating to general provisions)

25 Pa. Code Ch. 51 (relating to general provisions)

25 Pa. Code Ch. 52 (relating to State forest picnic areas)

25 Pa. Code Ch. 81 (relating to prevention of railroad-caused forest fires)

25 Pa. Code Ch. 82 (relating to conservation of Pennsylvania native wild plants)

25 Pa. Code Ch. 195 (relating to snowmobile and all-terrain vehicle registration and operation).

Section 321. Transfer provisions.

(a) Transfer enumerated.—The following are transferred to the department:

(1) All bureaus, organizations and divisions in the Department of Environmental Resources responsible for the functions enumerated in this act.

(2) The Bureau of Recreation and Conservation in the Department of Community Affairs.

(3) All personnel, allocations, appropriations, equipment, files, records, contracts, agreements, obligations and other materials which are used, employed or expended by the Department of Environmental Resources in connection with the functions transferred by this act to the Department of Conservation and Natural Resources in the first instance and as if these contracts, agreements and obligations had been incurred or entered into by the Department of Conservation and Natural Resources.

(4) All personnel, allocations, appropriations, equipment, files, records, contracts, agreements, obligations and other materials which are used, employed or expended by the Department of Community Affairs in connection with the functions transferred by this act to the Department of Conservation and Natural Resources in the first instance and as if these

contracts, agreements and obligations had been incurred or entered into by the Department of Conservation and Natural Resources.

(b) Apportionment.—The personnel, appropriations, equipment and other items and material transferred by this section shall include an appropriate portion of the general administrative, overhead and supporting personnel, appropriations, equipment and other material of the agency and shall also include, where applicable, Federal grants and funds and other benefits from any Federal program.

(c) Status of employees.—All personnel transferred pursuant to this act shall retain any civil service employment status assigned to the personnel.

Section 322. Civil service status.

All positions in the department shall be deemed to be included in the list of positions set forth in section 3(d) of the act of August 5, 1941 (P.L.752, No.286), known as the Civil Service Act, and the provisions and benefits of that act shall apply to the employees of and positions in the department.

CHAPTER 5
RENAMING DEPARTMENT OF ENVIRONMENTAL RESOURCES AND DEFINING RULEMAKING AUTHORITY OF DEPARTMENT OF ENVIRONMENTAL PROTECTION

Section 501. Department of Environmental Protection.

The Department of Environmental Resources is renamed the Department of Environmental Protection.

Section 502. Rulemaking authority.

(a) Continuance.—The Environmental Quality Board shall continue to exercise any power to formulate, adopt and promulgate rules and regulations currently vested in the Environmental Quality Board set forth in section 1920-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, except that the Department of Conservation and Natural Resources shall be vested with the power and the duty to promulgate regulations imposed upon the Department of Forests and Waters, the Secretary of Forests and Waters, the Pennsylvania State Park and Harbor Commission of Erie and the State Forest Commission.

(b) Existing rules.—Any rules and regulations provided for in subsection (a) promulgated prior to the effective date of this act shall continue to be the rules and regulations of the Environmental Quality Board until such time as they are modified or repealed by that board.

(c) Environmental Quality Board.—The Environmental Quality Board shall have the powers and duties currently vested in the Environmental Quality Board, except as vested in the Department of Conservation and Natural Resources by this act, which powers and duties are more specifically set forth, but not limited by, the following:

Sections 1920-A(h) and (i) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

Sections 1, 5, 8 and 612 of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law.

The act of May 15, 1945 (P.L.547, No.217), known as the Conservation District Law.

The act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act.

The act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act.

Sections 2, 7.2, 8 and 9 of the act of January 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities Act.

The act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence and Land Conservation Act.

Sections 3.1, 3.2 and 14 of the act of September 24, 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal Control Act.

Section 6 of the act of July 20, 1974 (P.L.572, No.198), known as the Pennsylvania Solid Waste - Resource Recovery Development Act.

Sections 5 and 9 of the act of July 9, 1976 (P.L.931, No.178), referred to as the Coal Mine Emergency Medical Personnel Law.

Section 301 of the act of June 23, 1978 (P.L.537, No.93), known as the Seasonal Farm Labor Act.

Sections 207 and 302 of the act of October 4, 1978 (P.L.851, No.166), known as the Flood Plain Management Act.

Sections 14 and 17 of the act of October 4, 1978 (P.L.864, No.167), known as the Storm Water Management Act.

Sections 5, 7, 10, 11, 17 and 26 of the act of November 26, 1978 (P.L.1375, No.325), known as the Dam Safety and Encroachments Act.

Sections 4, 5, 6 and 7 of the act of May 13, 1980 (P.L.122, No.48), known as the Bluff Recession and Setback Act.

Sections 104, 105(a), (b), (c), (e) and (j), 402, 506 and 610 of the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

Sections 3 and 4 of the act of May 1, 1984 (P.L.206, No.43), known as the Pennsylvania Safe Drinking Water Act.

Section 302 of the act of July 10, 1984 (P.L.688, No.147), known as the Radiation Protection Act.

Sections 11, 24 and 25 of the act of December 19, 1984 (P.L.1093, No.219), known as the Noncoal Surface Mining Conservation and Reclamation Act.

Sections 201, 215, 216, 603.1 and 604 of the act of December 19, 1984 (P.L.1140, No.223), known as the Oil and Gas Act.

Sections 301, 302(a), 304, 305, 314 and 321 of the act of February 9, 1988 (P.L.31, No.12), known as the Low-Level Radioactive Waste Disposal Act.

Section 5 of the act of July 6, 1988 (P.L.487, No.82), known as the Abandoned Mine Subsidence Assistance Act.

Section 4(b) of the act of July 13, 1988 (P.L.525, No.93), referred to as the Infectious and Chemotherapeutic Waste Law.

Sections 302, 1102 and 1512 of the act of July 28, 1988 (P.L.556, No.101), known as the Municipal Waste Planning, Recycling and Waste Reduction Act.

Sections 303, 501, 504, 510 and 1104 of the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act.

Sections 3 and 4 of the act of July 5, 1989 (P.L.166, No.31), known as the Phosphate Detergent Act.

Sections 105, 106, 505, 701 and 1102 of the act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill Prevention Act.

Sections 7 and 9 of the act of July 6, 1989 (P.L.207, No.33), known as the Plumbing System Lead Ban and Notification Act.

Sections 3 and 5 of the act of May 28, 1992 (P.L.249, No.41), known as the Sewage System Cleaner Control Act.

75 Pa.C.S. § 4909 (relating to transporting foodstuffs in vehicles used to transport waste).

(d) Rules and regulations.—The Environmental Quality Board shall, in the manner provided by law, promulgate the rules and regulations necessary to carry out this chapter.

(e) Environmental Quality Board.—Rulemakings of the Environmental Quality Board that have not been printed in the Pennsylvania Bulletin as final regulations on the effective date of this act shall continue to be rulemakings of the Environmental Quality Board and shall not be required to meet the requirements of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, or the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, which were met prior to the effective date of this act.

Section 503. Continued authority of Department of Environmental Protection, State Conservation Commission and Department of Agriculture.

(a) Powers and duties.—The Department of Environmental Protection shall continue to exercise the same powers and perform the same duties and functions by law vested in and imposed upon the Department of Environmental Resources not otherwise amended or transferred by this act to the Department of Conservation and Natural Resources.

(b) Administrative officers.—All appointive administrative officers holding office in the Department of Environmental Resources when this act becomes effective shall continue in office in the Department of Environmental Protection until the term for which they were respectively appointed shall expire or until they shall die, resign or be removed from office.

(c) Sand and gravel permits.—Section 1808(d) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is saved from repeal and the Department of Environmental Protection and Pennsylvania Fish and Boat Commission shall continue to exercise the rights, powers and duties thereof, provided that the Pennsylvania Fish and Boat Commission may, by

regulation, with the concurrence of the Department of Environmental Protection, adjust the amount of the royalty payments per ton or cubic foot of usable and/or merchantable sand and/or gravel.

(d) State Conservation Commission.—The State Conservation Commission established under the act of May 15, 1945 (P.L.547, No.217), known as the Conservation District Law, shall continue to have all the powers and duties assigned under that act and all the powers and duties assigned under the act of May 20, 1993 (P.L.12, No.6), known as the Nutrient Management Act, except as modified below. The following provisions are intended to modify the authority and responsibilities of the State Conservation Commission and the Department of Environmental Protection and the Department of Agriculture:

(1) The chairmanship of the State Conservation Commission shall rotate on an annual basis between the Secretary of Agriculture and the Secretary of Environmental Protection with the Secretary of Agriculture chairing the State Conservation Commission for the first annual rotation beginning July 1, 1995.

(2) The State Conservation Commission by a majority vote shall select and employ an independent executive secretary to act as staff to the State Conservation Commission who is not supervised by either the Department of Environmental Protection or the Department of Agriculture. The State Conservation Commission is authorized to assign the executive secretary duties and responsibilities as required to fulfill its obligations under State law to develop, implement and enforce conservation programs, including the Nutrient Management Act.

(3) To enhance the ability of the State Conservation Commission to accomplish its obligations, the Secretary of Agriculture shall designate an office and staff within that agency to coordinate and assist in the development, implementation and enforcement of programs adopted by the State Conservation Commission that solely affect production agriculture. The office and staff designated by the Secretary of Agriculture shall be an advocate for production agriculture in the development of programs by the State Conservation Commission, assist in developing methods of managing excess manure in an environmentally sound manner, develop programs to assist those engaged in production agriculture to comply with the Nutrient Management Act and act as an ombudsman to help resolve issues related to county conservation district implementation of State Conservation Commission programs solely affecting production agriculture.

(4) The Secretary of Environmental Protection shall designate an office and staff within the agency to coordinate and assist in the development, implementation and enforcement of programs adopted by the State Conservation Commission which are intended, in whole or in part, to protect surface or ground water.

(5) The State Conservation Commission shall be responsible for taking enforcement actions under the Nutrient Management Act. In the exercise of its enforcement authority, the State Conservation Commission shall be

assisted by the staff of the Department of Environmental Protection for actions resulting in violations of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, and shall be assisted by the Department of Agriculture for all other violations.

Section 504. Energy programs.

(a) Building Energy Conservation Act.—The Department of Environmental Protection has the powers and duties previously vested in the Governor's Energy Council by the act of December 15, 1980 (P.L.1203, No.222), known as the Building Energy Conservation Act.

(b) Energy Conservation and Assistance Act.—The Department of Environmental Protection has the powers and duties previously vested in the Governor's Energy Council by the act of July 10, 1986 (P.L.1398, No.122), known as the Energy Conservation and Assistance Act.

(c) Alternative fuels.—The Department of Environmental Protection has the powers and duties previously vested in the Pennsylvania Energy Office by 75 Pa.C.S. Ch. 72 (relating to alternative fuels).

(d) Other powers and duties transferred.—Any reference to the Pennsylvania Energy Office in any other act shall be interpreted to mean the Department of Environmental Protection, and any such powers and duties in such acts and other functions currently performed or administered by the Pennsylvania Energy Office are hereby transferred to the Department of Environmental Protection.

Section 505. Department of Health.

Notwithstanding any other provisions of this act, the Department of Health shall exercise the powers and duties and perform the duties by law heretofore vested in and imposed upon the Department of Environmental Resources as follows:

(1) The control of nuisances arising from the sanitary condition of tenements, lodging and boarding houses and management of the sanitary affairs of this Commonwealth relating to tenements, lodging and boarding houses, organized camps and public bathing places.

(2) The act of November 10, 1959 (P.L.1400, No.497), entitled "An act providing for the annual registration of organized camps for children, youth and adults; defining the duties of the Department of Health of the Commonwealth of Pennsylvania; and prescribing penalties."

(3) The act of June 23, 1931 (P.L.899, No.299), known as the Public Bathing Law. As to the Public Bathing Law, the Department of Health shall have the authority to promulgate rules and regulations to protect the public health and safety at all public places.

Section 506. Department of Agriculture.

Notwithstanding any other provisions of this act, the Department of Agriculture shall exercise the powers and duties and perform the duties by law heretofore vested in and imposed upon the Department of Environmental Resources under the act of June 23, 1978 (P.L.537, No.93), known as the Seasonal Farm Labor Act.

Section 507. Transfer of funds.

The administration of the following funds or portions of funds, as may be administered by the Pennsylvania Energy Office, shall be transferred from the Pennsylvania Energy Office to the Department of Environmental Protection:

(1) Energy Conservation and Assistance Fund.

(2) Alternative Fuels Incentive Grant Fund.

(3) All other funds or portions of funds currently administered by the Pennsylvania Energy Office.

Section 508. Regulations.

Any regulations, guidelines or statements of policy issued by the Pennsylvania Energy Office for the functions transferred to the Department of Environmental Protection shall remain in effect until such time as the Department of Environmental Protection shall determine the need to amend such regulations, guidelines or statements of policy.

Section 509. Transfer of personnel.

(a) General rule.—Certain personnel, allocations, appropriations, fixed assets, equipment, files, records, contracts, agreements, obligations and all other materials and supplies which are used, employed or expended by the Pennsylvania Energy Office in connection with the functions transferred by this act to the Department of Environmental Protection in the first instance shall be transferred from the Pennsylvania Energy Office to the Department of Environmental Protection and shall be considered as if these contracts, agreements and obligations had been incurred or entered into by the Department of Environmental Protection.

(b) Federal programs.—The items transferred by this section shall include, where applicable, Federal grants and funds and other benefits from any Federal program.

(c) Civil service status.—All personnel transferred under this act shall retain any civil service employment status assigned to said personnel. Those employees transferred pursuant to this act who do not have civil service status and who have six months of service or less in their present classification on the effective date of this act are hereby granted probationary status without examination. Those employees transferred pursuant to this act who do not have civil service status and who have more than six months of service in their present classification are hereby granted regular civil service status.

CHAPTER 11
GENERAL PROVISIONS

Section 1101. Savings provision.

(a) Matters transferred to Department of Conservation and Natural Resources.—All orders, permits, regulations, decisions and other actions of the Department of Environmental Resources related to the functions transferred to the Department of Conservation and Natural Resources shall remain in full force and effect until modified, repealed, suspended, superseded or otherwise changed by appropriate action of the Department of Conservation and Natural Resources.

(b) Matters remaining with Department of Environmental Protection.—All other orders, permits, regulations, decisions and other actions of the Department of Environmental Resources shall remain in full force and effect until modified, repealed, suspended, superseded or otherwise changed by appropriate action of the Department of Environmental Protection.

(c) Construction.—The provisions of this act, insofar as they are the same as those of existing laws, shall be construed as a continuation of these laws and not as new enactments.

Section 1102. Repeals.

(a) Absolute.—The following acts and parts of acts are repealed:

Sections 1902-A, 1903-A, 1906-A, 1907-A, 1908-A(2), 1910-A, 1911-A, 1912-A, 1913-A, 1914-A, 1924-A and 1926-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

The act of December 17, 1981 (P.L.472, No.136), entitled "An act authorizing the Secretary of Environmental Resources to establish a Volunteers in State Parks and Forests Program and for other purposes."

(b) General.—All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 1103. Effective date.

This act shall take effect July 1, 1995.

APPROVED—The 28th day of June, A.D. 1995.

THOMAS J. RIDGE

HAZARDOUS SITES CLEANUP ACT (HSCA)

P.L. 756, NO. 108, 35 P.S. §6020.101 et. seq.

Providing for the cleanup of hazardous waste sites; providing further powers and duties of the Department of Environmental Resources and the Environmental Quality Board; providing for response and investigations for liability and cost recovery; establishing the Hazardous Sites Cleanup Fund; providing for certain facts and for enforcement, remedies and penalties; and repealing certain provisions relating to the rate of the capital stock franchise tax.

TABLE OF CONTENTS

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

CHAPTER 1
PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Hazardous Sites Cleanup Act.

Section 102. Declaration of policy.

The General Assembly finds and declares as follows:

(1) The citizens of this Commonwealth have a right to clean water and a healthy environment, and the General Assembly has a responsibility to ensure the protection of that right.

(2) Hazardous substances which have been released into the environment through improper disposal or other means pose a real and substantial threat to the public health and welfare of the residents of this Commonwealth and to the natural resources upon which they rely.

(3) The cleanup of sites that are releasing or threatening the release of hazardous substances into the environment and the replacement of contaminated water supplies protects the public health, preserves and restores natural resources and is vital to the economic development of this Commonwealth .

(4) When releases of hazardous substances contaminate public water supplies, the replacement of those water supplies is frequently beyond the resources of the people affected.

(5) Traditional legal remedies have not proved adequate for preventing the release of hazardous substances into the environment or for preventing the contamination of water supplies. It is necessary, therefore, to clarify the responsibility of persons who own, possess, control or dispose of hazardous

substances; to provide new remedies to protect the citizens of this Commonwealth against the release of hazardous substances; and to assure the replacement of water supplies.

(6) Traditional methods of administrative and judicial review have interfered with responses to the release of hazardous substances into the environment. It is, therefore, necessary to provide a special procedure which will postpone both administrative and judicial review until after the completion of the response action.

(7) The Federal Superfund Act provides numerous opportunities for states to participate in the cleanup of hazardous sites. It is in the interest of the citizens of this Commonwealth that the Commonwealth be authorized to participate in such cleanups and related activities to the fullest extent.

(8) Many of the hazardous sites in this Commonwealth which do not qualify for cleanup under the Federal Superfund Act pose a substantial threat to the public health and environment. Therefore, an independent site cleanup program is necessary to promptly and comprehensively address the problem of hazardous substance releases in this Commonwealth, whether or not these sites qualify for cleanup under the Federal Superfund Act.

(9) Extraordinary enforcement remedies and procedures are necessary and appropriate to encourage responsible persons to clean up hazardous sites and to deter persons in possession of hazardous substances from careless or haphazard management.

(10) Persons engaged in the transportation and management of hazardous waste should contribute to the fund through a hazardous waste management fee that is designed to encourage and reward sound waste management practices such as source reduction, recycling and onsite treatment.

(11) It is the intent of the General Assembly that the department shall undertake such measures and steps as are necessary to expedite the siting, review, permitting and development of hazardous waste treatment and disposal facilities within this Commonwealth, in order to protect public health and safety, foster economic growth and protect the environment.

(12) The following are the purposes of this act:

(i) Authorize the department to participate in the investigation, assessment and cleanup of sites under the Federal Superfund Act to the full extent provided by that act.

(ii) Establish independent authority for the department to conduct site investigations and assessments; to provide for the cleanup of sites in this Commonwealth that are releasing or threatening the release of hazardous substances or contaminants into the environment; to require the replacement of water supplies contaminated by these substances; to take other appropriate response actions and recover from responsible persons its costs for conducting the responses.

(iii) Establish the fund to provide to the department the financial resources needed to plan and implement a timely and effective response to the release of hazardous substances and contaminants, including emergency response actions, studies and investigations, planning, remedial response, maintenance and monitoring activities, replacement of water supplies and protection of the public from the hazardous site.

(iv) Establish hazardous waste transportation and management fees to encourage preferred hazardous

waste management practices and implement the hazardous waste management hierarchy described in the hazardous waste facilities plan and to generate revenues for the fund.

(v) Establish and maintain a cooperative State and Federal program for the investigation and cleanup of sites containing hazardous substances or contaminants and for the replacement of affected water supplies and to take other appropriate response actions.

(vi) Protect the public health, safety and welfare and the natural resources of this Commonwealth from the short-term and long-term effects of the release of hazardous substances and contaminants into the environment.

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

(viii) Encourage the siting of new hazardous waste management facilities to properly store, treat and dispose of hazardous materials.

(ix) Encourage responsible persons to voluntarily perform response activities by enabling the department to enter into settlement agreements with responsible persons to perform response activities that protect human health and the environment; by enabling the department to enter into settlement agreements with responsible persons to settle a minor portion of response costs; and by authorizing the department to utilize moneys from the fund established by this act to enter into settlement agreements that allow the department, when necessary to achieve a cleanup, to pay for a portion of the costs associated with response activities.

(x) It is in the public interest to eliminate hazardous waste by encouraging and providing incentives to reduce the volume of hazardous waste materials produced, transported and disposed of in this Commonwealth by providing a special grant from the fund to persons who purchase or lease and install recycling equipment which is used exclusively for the elimination of such materials by reclaiming them on site and converting them into a raw-material product that is reusable and nonhazardous.

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:

"Act of God." An unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

"Alternative water supplies." Includes, but is not limited to, drinking water and household water supplies.

"Board." The Environmental Hearing Board of the Commonwealth.

"Captive facility." A captive facility as defined and permitted under the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

"Claim." A demand in writing for a sum certain.

"Commercial hazardous waste disposal facility." A hazardous waste disposal facility permitted under the act of July 7, 1980 (P.L. 380, No. 97), known as the Solid Waste Management Act, which is not a captive facility.

"Commercial hazardous waste storage facility." A hazardous waste storage facility permitted under the act of July 7, 1980 (P.L. 380, No. 97), known as the Solid Waste Management Act, which is not a captive facility.

"Commercial hazardous waste treatment facility." A hazardous waste treatment facility permitted under the act of July 7, 1980 (P.L. 380, No. 97), known as the Solid Waste Management Act, which is not a captive facility.

"Contaminant." An element, substance, compound or mixture which is defined as a pollutant or contaminant pursuant to the Federal Superfund Act. The term shall not include an element, substance, compound or mixture from a coal mining operation under the jurisdiction of the department or from a site eligible for funding under Title IV of the Surface Mining Control and Reclamation Act of 1977 (Public Law 9-87, 30 U.S.C. §1201 et seq.); nor shall the term include natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel or mixtures of natural gas and synthetic gas usable for fuel, except for the purposes of an emergency response. The term shall also not include the following wastes generated primarily from the combustion of coal or other fossil fuels for the production of electricity: slag waste; flue gas emission control waste; and fly ash waste and bottom ash waste which is disposed of or beneficially used in accordance with the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, and the regulations promulgated thereto or which has been disposed of under a valid permit issued pursuant to any other environmental statute.

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

"Disposal." The incineration, combustion, evaporation, air stripping, deposition, injection, dumping, spilling, leaking, mixing or placing of a hazardous substance or contaminant into the air, water or land in a manner which allows it to enter the environment.

"Drinking water supply." A raw or finished water source that is or may be used by a public water system, as defined in the Safe Drinking Water Act (Public Law 95-323, 21 U.S.C. §349 and 42 U.S.C. §201 and 300 et seq.), or as drinking water by one or more individuals.

"Environment." Surface water, groundwater, drinking water supply, land surface or subsurface strata or ambient air within this Commonwealth.

"Federal Superfund Act." The Comprehensive Environmental Response Compensation and Liability Act of 1980 (Public Law 96-510, 94 Stat. 2767), as amended.

"Federal Superfund Program." The hazardous waste site cleanup program provided for in the Federal Superfund Act.

"Fund." The Hazardous Sites Cleanup Fund established by section 901. "Groundwater." Water occurring in a saturated zone or stratum or percolating beneath the surface of land.

"Hazardous substance."

(1) Any element, compound or material which is:

(i) Designated as a hazardous waste under the act of July 7, 1980 (P.L. 380, No.97), known as the Solid Waste Management Act, and the regulations promulgated thereto.

(ii) Defined or designated as a hazardous substance pursuant to the Federal Superfund Act.

(iii) Contaminated with a hazardous substance to the degree that its release or threatened release poses a substantial threat to the public health and safety or the environment as determined by the department.

(iv) Determined to be substantially harmful to public health and safety or the environment based on a standardized and uniformly applied department testing procedure and listed in regulations proposed by the department and promulgated by the Environmental Quality Board.

(2) The term does not include petroleum or petroleum products, including crude oil or any fraction thereof, which are not otherwise specifically listed or designated as a hazardous substance under paragraph (1); natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel or mixtures of natural gas and synthetic gas usable for fuel; or an element, substance, compound or mixture from a coal mining operation under the jurisdiction of the department or from a site eligible for funding under Title IV of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C. §1201 et seq.). The term shall also not include the following wastes generated primarily from the combustion of coal or other fossil fuels for the production of electricity: slagwaste; flue gas emission control waste; and fly ash waste and bottom ash waste which is disposed of or beneficially used in accordance with the Solid Waste Management Act and the regulations promulgated thereto or which has been disposed of under a valid permit issued pursuant to any other environmental statute.

"Hazardous waste." Any waste defined as hazardous under the act of July 7, 1980 (P.L 380, No. 97), known as the Solid Waste Management Act, and any regulations promulgated under that act.

"Interim response." Response which does not exceed 12 months in duration or $2,000,000 in cost. An interim response may exceed these limitations only where one of the following applies:

(1) Continued response actions are immediately required to prevent, limit or mitigate an emergency.

(2) There is an immediate risk to public health, safety or welfare or the environment.

(3) Assistance will not otherwise be provided on a timely basis.

(4) Continued response action is otherwise appropriate and consistent with future remedial response to be taken.

"Natural resources." Land, fish, wildlife, biota, air, water, groundwater, drinking water supplies and other resources belonging to, managed by, held in trust by, appertaining to or otherwise controlled by the United States, the Commonwealth or a political subdivision. The term includes resources protected by section 27 of Article I of the Constitution of Pennsylvania.

"Owner or operator." A person who owns or operates or has owned or operated a site, or otherwise controlled activities at a site. The term does not include a person who, without participating in the management of a site, holds indicia of ownership primarily to protect a security interest in the site nor a unit of State or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign. The term also shall not include a financial institution, an affiliate of a financial institution, a parent of a financial institution, nor a corporate instrumentality of the Federal Government, which acquired the site by foreclosure or by deed in lieu of foreclosure as a result of the enforcement of a mortgage or security interest held by such financial institution, parent of such financial institution, affiliate of such financial institution or a corporate instrumentality of the Federal Government before it had knowledge that the site was included on the National Priority List or corresponding State list and did not manage or control activities at the site which contributed to the release or threatened release of a hazardous substance. For the purposes of this subsection, the term "management" shall not include participation in or supervising the finances or fiscal operations of a responsible person or an owner or operator in connection with a loan to, services provided for or fiscal obligation of that responsible person or owner or operator or actions taken to protect or preserve the value of the site or operations conducted on the site. This exclusion does not apply to a political subdivision which has caused or contributed to the release or threatened release of a hazardous substance from the site.

"Person." An individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, authority, interstate body or other legal entity which is recognized by law as the subject of rights and duties. The term includes the Federal Government, state governments and political subdivisions.

"Recycling equipment." Machinery used exclusively to process and reclaim hazardous waste materials into a raw material product that is nonhazardous and reusable, thereby reducing the total amount of hazardous material produced at a particular location.

"Release." Spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposal into the environment. The term includes the abandonment or discarding of barrels, containers, vessels and other receptacles containing a hazardous substance or contaminant. The term does not include:

(1) any release which results in exposure to persons solely within a workplace which may be subject to the assertion of a claim against the employer of such persons;

(2) combustion exhaust emissions from the engine of a motor vehicle, rolling stock, aircraft, vessel or pipeline compressor station;

(3) release of source material, by-product material or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (68 Stat. 921, 28 U.S.C. §§2341(3)(A)-(C) and 2342(1)-(4) and 42 U.S.C. §2014), if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of the Atomic Energy Act of 1954, or, for the purpose of section 104 of this act or any other response action, any release of source by-products, or special nuclear material from any processing site designated under section 102(a)(l) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (Public Law 95-604, 42 U.S.C. §7901 et seq.); and

(4) the normal application of fertilizer or pesticides.

"Remedial response or remedy." Any response which is not an interim response.

"Response." Action taken in the event of a release or threatened release of a hazardous substance or a contaminant into the environment to study, assess, prevent, minimize or eliminate the release in order to protect the present or future public health, safety or welfare or the environment. The term includes, but is not limited to:

(1) Emergency response to the release of hazardous substances or contaminants.

(2) Actions at or near the location of the release, such as studies; health assessments; storage; confinement; perimeter protection using dikes, trenches or ditches; clay cover; neutralization; cleanup or removal of released hazardous substances, contaminants or contaminated materials; recycling or reuse, diversion, destruction or segregation of reactive wastes; dredging or excavations; repair or replacement of leaking containers; collection of leachate and runoff; onsite treatment or incineration; offsite transport and offsite storage; treatment, destruction, or secure disposition of hazardous substances and contaminants; treatment of groundwater, provision of alternative water supplies, fencing or other security measures; and monitoring and maintenance reasonably required to assure that these actions protect the public health, safety, and welfare and the environment.

(3) Costs of relocation of residents and businesses and community facilities when the department determines that, alone or in combination with other measures, relocation is more cost effective than and environmentally preferable to the transportation, storage, treatment, destruction or secure disposition offsite of hazardous substances or contaminants or may otherwise be necessary to protect the public health or welfare.

(4) Actions taken under section 104(b) of the Federal Superfund Act (42 U.S.C. §9604(b)) and any emergency assistance which may be provided under the Disaster Relief Act of 1974 (Public Law 93-288, 88 Stat. 43).

(5) Other actions necessary to assess, prevent, minimize or mitigate damage to the public health, safety or welfare or the environment which may otherwise result from a release or threatened release of hazardous substances or contaminants.

(6) Investigation, enforcement, abatement of nuisances, and oversight and administrative activities related to interim or remedial response enforcement, abatement of nuisances, and oversight and administrative activities related to interim or remedial response.

"Responsible person." A person responsible for the release or threatened release of a hazardous substance as described in section 701. In no case shall a financial institution or its affiliate or a corporate instrumentality of the Federal Government be deemed to be a responsible person or to be jointly or contingently liable for the actions of a responsible person by virtue or supervision of, or other involvement with, the finances and operations of a responsible person in connection with a loan, obligation or other service provided.

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

"Service station operator." A person who owns or operates a motor vehicle service station, filling station, garage or similar operation engaged in selling, repairing or servicing motor vehicles who accepts or undertakes the collection, accumulation and delivery to an oil recycling facility of recycled oil that has been removed from the engine of a motor vehicle or appliance and that is presented for collection, accumulation and delivery to an oil recycling facility. The term includes a government agency that establishes a facility solely for the purpose of accepting recycled oil and owners or operators of refuse collection services who are compelled by law to collect, accumulate and deliver recycled oil to an oil recycling facility.

"Site." Any building; structure; installation; equipment; pipe or pipeline, including any pipe into a sewer or publicly owned treatment works; well; pit; pond; lagoon; impoundment; ditch; landfill; storage container; tank; vehicle; rolling stock; aircraft; vessel; or area where a contaminant or hazardous substance has been deposited, stored, treated, released, disposed of, placed or otherwise come to be located. The term does not include a location where the hazardous substance or contaminant is a consumer product in normal consumer use or where pesticides and fertilizers are in normal agricultural use.

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

"Transportation." The conveyance of a hazardous substance or contaminant by any mode, including pipeline.

"Treatment." A method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of a hazardous substance so as to neutralize the hazardous substance or to render the hazardous substance nonhazardous, safer for transport, suitable for recovery, suitable for storage or reduced in volume. The term includes activity or processing designed to change the physical form or chemical composition of a hazardous substance so as to render it neutral or nonhazardous.

"Vessel." A watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

Section 104. Construction.

Nothing in this act shall be construed to affect, impair or repeal any provision of any other statute. No action by the department under this act shall be understood or construed as precluding the department from taking any action authorized by this act or any other statute administered by the department.

[Table of Contents] [Hazardous Sites Cleanup Homepage]

CHAPTER 3
POWERS AND DUTIES

Section 301. Powers and duties of department.

The department has the following powers and duties:

(1) Develop, administer and enforce a program to provide for the investigation, assessment and cleanup of hazardous sites in this Commonwealth pursuant to the provisions of this act and regulations adopted under this act.

(2) Undertake activities necessary or proper to cooperate with and fully participate in the Federal Superfund Program, including serving as the agency of the Commonwealth for the receipt of moneys from the Federal Government or other public or private agencies.

(3) Develop, administer and enforce an independent State response program for the investigation, assessment and cleanup of hazardous sites and replacement of water supplies and the protection of the citizens and natural resources of this Commonwealth from the dangers of hazardous substances and contaminants that have been released or are threatened to be released into the environment.

(4) Cooperate with appropriate Federal, State, interstate and local government agencies in carrying out its duties under this act by, among other things, accepting an appropriate delegation or agency relationship from such an agency to facilitate the cleanup of hazardous sites in this Commonwealth.

(5) Administer the fund and any fund for hazardous waste facilities siting and expend money from the funds in accordance with this act.

(6) Administer and expend funds appropriated to the department or granted to the Commonwealth under the Federal Superfund Act or other authority for the protection of the public and the natural resources of this Commonwealth from releases of hazardous substances or contaminants.

(7) Promulgate the State standards and requirements applicable, relevant or appropriate for the cleanup of hazardous sites under this act and the Federal Superfund Act.

(8) Develop a program for public participation in the assessment of sites and selection of appropriate remedial responses.

(9) Issue orders to enforce provisions of this act and regulations promulgated under it.

(10) Institute, in a court of competent jurisdiction, proceedings to compel compliance with this act, regulations promulgated under it or an order of the department.

(11) Institute prosecutions under this act.

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

(13) Acquire special scientific and technical staff resources to provide specialized expertise in areas related to the evaluation of sites and selection of responses to advise the department regarding standards, technologies, risk assessments and other matters related to the cleanup of hazardous sites, the regulation of hazardous substances and contaminants, and the enforcement of this act.

(14) Act as trustee of this Commonwealth's natural resources. The department may assess and collect damages to natural resources for the purposes of this act and the Federal Superfund Act for those natural resources under its trusteeship.

(15) Provide for emergency response capability for spills, accidents and other releases of hazardous substances and contaminants.

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

(17) 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 under it.

Section 302. Special science and technology resources.

(a) Establishment. The department shall establish an additional complement with expertise and advanced degrees in specialized fields of science and technology relevant to administration and enforcement of this act.

(b) Expertise. The special science and technology staff shall have expertise in fields relating to the identification, analysis, assessment, prevention or abatement of hazards to the public health or the environment resulting from the release of hazardous substances or contaminants into the environment. The special science and technology staff may include, without limitation, individuals trained in toxicology, hydrogeology, chemistry, biology, soil science, biochemistry, environmental engineering, epidemiology, value engineering and risk assessment sciences.

(c) Availability. The special science and technology staff shall be available to review consultants contracts, reports and feasibility studies; prepare and review environmental assessments; serve as expert witnesses in department litigation; provide scientific analysis or studies to support rulemaking activities of the department; and perform other duties as assigned by the secretary in furtherance of this act or other environmental protection laws administered by the department.

(d) Civil service. In order to obtain the most highly qualified individuals for the special science and technology staff, the secretary may hire the staff without regard to the provisions of the act of August 5, 1941 (P.L. 752, No. 286), known as the Civil Service Act.

Section 303. Powers and duties of Environmental Quality Board.

The board, exercising its powers and duties under section 1920-A of the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929, has the power and duty to promulgate the regulations of the department to accomplish the purposes and to carry out the provisions of this act, including, but not limited to, regulations relating to the protection, from the release of hazardous substances, of the safety, health, welfare and property of the public and of the air, water, land and other natural resources of this Commonwealth.

Section 304. Host municipality incentives and guarantees.

(a) Information required.

(1) The department shall provide all of the following information to the governing body of host municipalities for a commercial hazardous waste storage, treatment or disposal facility permitted by the department under the Solid Waste Management Act, and located within that municipality:

(i) Copies of each department inspection report for the facility 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 the reports.

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

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

(2) An operator of a commercial hazardous waste storage, treatment or disposal facility shall provide to the host municipality copies of all air and water quality monitoring data for the facility conducted by or on behalf of the operator under State or Federal statutes or regulations, within five days after the data becomes available to the operator.

(3) All information provided to the host municipality shall be made available by the host municipality to the public for review upon request.

(b) Inspection of facilities.

(1) The department shall establish and conduct a training program to certify host municipality inspectors for commercial hazardous waste storage, treatment or disposal facilities. No more than two persons from each host municipality shall be eligible for the program. Each host municipality shall inform the department, in writing, of the persons it has designated to participate in the training program. The department shall hold training sessions 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 shall be authorized to enter property, inspect records, take samples and conduct inspections. Certified municipal inspectors may not issue orders. Upon the completion of an inspection, certified municipal inspectors shall transmit all findings from the inspection to the department. The department shall notify certified municipal inspectors of regular inspections of permitted facilities within their jurisdiction and shall provide opportunity for the inspectors to accompany department inspectors on inspections.

(3) The department shall reimburse the host municipalities for 50% of the approved cost of employing certified host municipality inspectors for a period not to exceed five years.

(4) The department shall promptly inspect a facility when a host municipality presents information to the department which gives the department reason to believe that a commercial hazardous waste

storage, treatment or disposal facility is in violation of any requirement of The Clean Streams Law, the Air Pollution Control Act, the Dam Safety and Encroachments Act, the Solid Waste Management Act or this act; a regulation promulgated under these statutes; or the condition of a permit issued under these statutes.

(i) The department shall notify the host municipality of this inspection and shall permit a certified municipal inspector from the host municipality to accompany the department inspector during the inspection.

(ii) When the department determines that there is not sufficient information to give the department reason to believe that a violation is occurring or has occurred, the department shall provide a written explanation to the host municipality of its decision not to conduct an inspection within 30 days of the request for inspection.

(iii) Host municipalities may appeal the department's decision not to conduct a requested inspection to the Environmental Hearing Board. When the Environmental Hearing Board determines that failure to perform a requested inspection may be detrimental to public health and safety, it shall order the department to perform the requested inspection .

(c) Water sampling and analysis.

(1) Upon written request from persons owning property within 2,500 feet of a commercial hazardous waste storage, treatment or disposal facility, the operator of the facility shall have quarterly sampling and analysis conducted of private water supplies used by those persons for drinking water. 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 facility operator.

(2) The laboratory performing sampling and analysis shall provide written copies of sample results to the landowner, the operator and the department.

(3) When the analysis indicates possible contamination from a facility, the department shall either conduct, or require the operator to have the laboratory conduct, additional sampling and analysis to determine more precisely the nature, extent and source of contamination.

(4) Within 60 days from the effective date of this section, the operator of a commercial hazardous waste storage, treatment or disposal facility shall provide written notice to landowners within 2,500 feet of the facility of their rights under this section on a form prepared by the department. Landowners who rent or lease property within 2,500 feet of the facility shall provide written notice to tenants of the availability of this water testing program. Upon the request of a tenant to a landowner, the landowner shall be required to request quarterly water sampling and analysis under paragraph (1).

(d) Financial assistance.

(1) The department shall reimburse host municipalities for costs incurred by host municipalities for professional technical review of a permit application under the Solid Waste Management Act for a commercial hazardous waste disposal facility or for a permit modification that would result in additional capacity for the facility. The reimbursement shall not exceed $50,000 per complete

application.

(2) The department may reimburse a county for costs incurred by a county's planning board or commission for professional technical planning and review for the potential siting of new commercial hazardous waste disposal facilities in the county. The reimbursement shall not exceed $50,000 per county.

Section 305. Host Municipalities Fund.

(a) Establishment. There is established within the State Treasury a separate account which shall be known as the Host Municipalities Fund. Two million dollars annually of all proceeds or as much thereof as may be necessary from hazardous waste transportation and management fees imposed under section 303, including any interest generated thereon, shall be deposited in the fund.

(b) Purpose. The purpose of the fund is to provide host municipality assistance programs under section 304 and direct financial assistance to host municipalities with certain categories of commercial hazardous waste facilities within their jurisdiction.

(c) Appropriation. All money placed in the fund is appropriated to the department for the purposes set forth in this section.

(d) Allocation. The department shall annually allocate moneys in the fund for the following purposes:

(1) Conducting the host municipality inspector training program, employing a certified host municipality inspector, reimbursing municipalities and counties for independent evaluations and providing similar assistance related to the implementation of section 304.

(2) Providing a one-time payment, as provided in subsection (e)(2), to municipalities for each new or expanded commercial facility which is permitted after the effective date of this act which fulfills the commercial hazardous waste treatment or disposal capacity needs identified in the Pennsylvania Hazardous Waste Facilities Plan.

(e) Reimbursement amount.

(1) At a minimum, each payment shall be in an amount sufficient to reimburse the host municipality for the host municipality's eligible share of any activities carried out under section 304.

(2) After a new or expanded commercial hazardous waste treatment or disposal facility is permitted and operating, the department shall distribute the balance contained in the fund after payments have been made under paragraph (1). The balance shall be distributed according to an allocation formula established by regulation. The allocation formula shall do all of the following:

(i) Consider the degree to which the facility meets the hazardous waste capacity needs of the Commonwealth as identified in the Pennsylvania Hazardous Waste Facilities Plan under the Solid Waste Management Act.

(ii) Distribute funds to each host municipality based on all of the following:

(A) The toxicity, mobility and other characteristics of the hazardous waste.

(B) The proximity of the facility to persons or natural resources which would be endangered by the escape of the hazardous waste from the facility.

(C) The weight or volume of waste treated or disposed annually at the facility in proportion to the weight or volume of waste treated or disposed annually in this Commonwealth.

(D) The amount of waste disposed or treated at the facility generated inside this Commonwealth.

(3) A host municipality may expend money received under this subsection for any purpose for which the municipality is otherwise authorized by law to expend public funds, including, but not limited to, economic development activities and the payment on behalf of its residents of any county or school district taxes that would otherwise be imposed on its residents.

(f) Construction of section. Nothing in this section shall be construed to prevent the host municipality and the owner or operator of a commercial hazardous waste treatment or disposal facility from entering contractual or other agreements by which the owner or operator provides additional benefits or fees to the host municipality.

Section 306. Host municipality benefit fee.

(a) Imposition. There shall be imposed a host municipality benefit fee upon the operator of each commercial hazardous waste treatment or disposal 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 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 shall be $1 per ton of weighed hazardous waste or $1 per three cubic yards of volume-measured hazardous waste for all hazardous waste received at a 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 307 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 307, if the host municipality and the operator of the commercial hazardous waste treatment or disposal facility agree in writing.

Section 307. Form and timing of host municipality benefit fee payment.

(a) Quarterly payment. Each operator subject to section 306 shall make the host municipality benefit fee payment quarterly. The fee shall be paid on or before the twentieth 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 hazardous waste received by the facility during the payment period and provide any other information deemed necessary by the department to carry out the purposes of the 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 who makes a timely payment of the host municipality benefit fee as provided in this section shall be entitled to a credit and shall 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 308. 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 commercial hazardous waste treatment or disposal facility has not made a timely payment of the host municipality benefit fee, it shall 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 hazardous waste received at the 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 a payment of lawful obligation of the operator from such trust 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. All 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 ail 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.

(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 309. Hazardous Waste Facility Siting Team.

(a) Establishment. Within 30 days after the effective date of this act, the secretary shall establish a Hazardous Waste Facility Siting Team consisting of department personnel with the particular expertise necessary for the complete review of permit applications for commercial hazardous waste treatment or disposal facilities. The secretary shall select siting team representatives from each section of review required to determine conformity of applications with siting criteria contained in Phase I of 25 Pa. Code Ch. 75 Subch. F (relating to siting hazardous waste treatment and disposal facilities) and other applicable law and regulations relating to the review and approval of permit applications. Members of the siting team shall include attorneys, engineers and such other administrative and program personnel considered essential by the secretary for expedited review of permit applications. The performance of the siting team's duties pursuant to this section shall be deemed a priority with regard to any other work assignments and responsibilities.

(b) Application procedures. Within three months after the effective date of this act, the secretary shall set forth guidelines by which any person interested in establishing a commercial hazardous waste treatment or disposal facility may submit the siting modules and the remainder of a permit application directly to the siting team. The guidelines shall instruct applicants on siting criteria and permit requirements, application timetables and the review process.

(c) Expedited site review. Within five months of the receipt of an administratively complete siting module portion of a permit application for a commercial hazardous waste treatment or disposal facility, the siting team shall complete its review of the siting modules to determine the conformity of the proposed site to the siting criteria established pursuant to Phase I of 25 Pa. Code Ch. 75 Subch. F. Upon filing the siting modules with the siting team, an applicant shall provide written notification of such filing to the governing bodies of the proposed host county and host municipality. To facilitate review by the host county and host municipality, grants may be made available pursuant to section 304 (d). In addition, members of the department's siting team shall be available to the applicant and the governing bodies of the proposed host county and host municipality for the purpose of discussing the siting modules and their conformity with the siting criteria. The siting team shall conduct one public hearing and at least one public information meeting on the application at locations near the proposed site during the five-month review period. The siting team shall notify the applicant, the host county and host municipality of its determination regarding the conformity of the siting modules with the siting criteria in writing.

(d) Expedited permit review. Within 90 days of receipt of the remainder of a permit application to operate a commercial hazardous waste treatment or disposal facility, the siting team shall review the permit application to determine whether it is administratively complete. Should the siting team find that the permit application is not administratively complete, it shall return the permit application to the applicant, along with a written statement indicating the deficiencies of the permit application.

(e) Review period. Within ten months of the date of the determination by the siting team that a permit application is administratively complete, the siting team shall complete its review of the permit application and shall recommend to the secretary either the approval or the disapproval of the permit application. The secretary shall publish notice of the intent to either approve or disapprove the permit application within 30 days after receipt of the recommendation of the siting team. Appeal of any decision of the secretary on the permit application shall be as provided by applicable law.

(f) Public education. The department shall develop a comprehensive, innovative and effective public education program to inform the public with regard to the nature and extent of hazardous waste generation and the need for environmentally sound management, treatment and disposal of hazardous waste.

Section 310. Certificate of public necessity.

Within 30 days of the effective date of this act, the department shall publish for proposed rulemaking the certificate of public necessity regulations as provided under the Solid Waste Management Act.

Section 311. Siting assistance.

(a) General rule. The Department of Commerce shall be responsible for identifying and encouraging potential commercial hazardous waste treatment or disposal facility developers to establish within this Commonwealth the commercial hazardous waste treatment or disposal facilities needed to properly manage Pennsylvania's hazardous waste. The Department of Commerce shall coordinate business outreach efforts with the needs and priorities established by the Pennsylvania Hazardous Waste Facilities Plan and siting criteria adopted under the Solid Waste Management Act.

(b) Siting coordinator. The Secretary of Commerce shall designate a commercial hazardous waste facility siting coordinator to serve as the department's liaison with potential commercial treatment or disposal facility developers, other State agencies and local governments. The siting coordinator shall develop and be responsible for State efforts aimed at business outreach, preliminary site evaluation assistance and the packaging of available financial assistance programs. For the effective performance of these duties, the siting coordinator shall have the ability to directly utilize members of the department's siting team, as well as employees of other State agencies, to coordinate necessary activities pursuant to this act.

(c) Technical assistance. The siting coordinator shall assist interested developers in the identification of potential locations for proposed commercial hazardous waste treatment or disposal facilities. The assistance shall be limited to the examination of nonenvironmental site selection factors, including access to transportation networks and markets.

(d) Assistance programs. The Department of Commerce shall ensure that interested developers are advised of and assisted in the use of available State financial assistance programs in order to encourage

the siting of new commercial hazardous waste treatment or disposal facilities in this Commonwealth. Programs that may be considered shall include, but are not limited to, the Pennsylvania industrial Development Authority, business infrastructure development, site development, the Ben Franklin Partnership and the Pennsylvania Infrastructure Investment Authority. The Department of Commerce shall also ensure, as allocations permit, the availability of tax exempt industrial development bonds for commercial hazardous waste treatment or disposal facilities.

Section 312. Hazardous Waste Facility Siting Commission.

(a) Establishment. In the event that no commercial hazardous waste disposal facility has been permitted within this Commonwealth pursuant to the Solid Waste Management Act by July 1, 1992, an independent agency, known as the Hazardous Waste Facility Siting Commission, is hereby established. The commission shall consist of seven members, three of whom shall be appointed by the Governor, one of whom shall be designated as chairman, one of whom shall be appointed by the President pro tempore of the Senate, one of whom shall be appointed by the Speaker of the House of Representatives, one of whom shall be appointed by the Minority Leader of the Senate and one of whom shall be appointed by the Minority Leader of the House of Representatives. Those persons appointed shall be knowledgeable in the fields of hazardous waste management, environmental protection, municipal government or other pertinent fields and shall be appointed in such a manner as to fairly represent local government, industry and public interest groups. No member of the General Assembly or any officer or employee of the State government shall serve as a member of the commission.

(b) Terms of members. Each appointment shall be for a term of three years. All vacancies shall be filled, for the remainder of the unexpired term, by the respective appointing authority. Any member, upon the expiration of his term, shall continue to hold office until his successor shall be appointed. No member may be removed from office during his term, except for cause, by the respective appointing authority.

(c) Compensation. Members shall receive such compensation for their services as shall be set by the Executive Board. The members shall be entitled to reimbursement for travel and other necessary expenses incurred as a result of their duties as members of the commission.

(d) Meetings. The commission shall meet as necessary to carry out its business, but not less than four times per year, at such times and places as shall be set by the chairman. For purposes of conducting official business, a quorum shall consist of four members.

(e) Organizational meeting. Within two weeks following the appointment of the members of the commission, the chairman shall convene an organizational meeting. Within 60 days of the organizational meeting, the commission shall appoint and fix the compensation of an executive director, who shall devote his full time to the general supervision of all the affairs of the commission. In addition, the commission may appoint and fix the compensation of such other employees as the commission may, from time to time, find necessary for the proper performance of its functions.

(f) Federal deadline. Notwithstanding the provisions of subsection (a), in the event the Environmental Protection Agency, or its successor, notifies the department that Federal funds for response actions shall not be provided to the Commonwealth for failure to comply with the provisions of section 104(b)(9) of the Federal Superfund Act, the commission shall be established within one year from receipt of the notice by the department, unless the department and the Environmental Protection Agency reach

an agreement prior to the establishment of the commission that provides for the continued usage of Federal funds for response actions.

Section 313. Powers and duties of commission.

(a) General rule. The commission shall have the power and its duties shall be to:

(1) Cooperate with interested persons to identify areas suitable for siting hazardous waste disposal facilities.

(2) Review and approve or disapprove the siting module portion of applications for hazardous waste disposal facility sites brought before the commission to determine conformity with Phase I of departmental siting criteria as found in 25 Pa. Code Ch. 75 Subch. F (relating to siting hazardous waste treatment and disposal facilities).

(3) Assist local governments in planning for the siting of hazardous waste disposal facilities or in reviewing the siting module portion of applications for such facilities.

(b) Schedule for facilities. Within 90 days following the commission's organizational meeting, the commission shall establish a schedule that outlines the process for siting new hazardous waste disposal facilities identified as necessary in the Pennsylvania Hazardous Waste Facilities Plan. The commission may amend such schedule from time to time.

(c) Criteria. The commission shall use existing departmental regulations for the siting of hazardous waste disposal facilities as set forth in Phase I of departmental siting criteria found in 25 Pa. Code Ch. 75 Subch. F.

(d) Selection of site by commission. The commission shall apply the siting criteria to the entire Commonwealth and shall identify potentially suit able sites for hazardous waste disposal facilities throughout this Commonwealth. The commission may, at any time, solicit proposals from interested persons to develop hazardous waste disposal facilities at such sites as may be identified by the commission. If no such proposals are received by January 1, 1994, the commission may make application to the department, in the name of the Commonwealth, for the necessary permits to establish a State owned hazardous waste disposal facility. In carrying out its duties under this subsection, the commission shall be authorized to lease such real estate owned by the Commonwealth which is not being used in connection with the work of any department, board or commission thereof for a period of not more than 50 years to individuals, firms, corporations or the Federal Government pursuant to section 2402(i) of the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929, and shall also have the power of eminent domain to acquire a site or sites as may be deemed necessary, for the purpose of establishing a hazardous waste disposal facility.

(e) Transition. The department shall complete its review of any permit application for a commercial hazardous waste disposal facility, which is deemed administratively complete and has been filed with the department prior to or on July 1, 1992. The siting module portion of a permit application for a commercial hazardous waste disposal facility that is subject to review subsequent to July 1, 1992, shall be filed with the commission in accordance with this section. For the purpose of implementing this section, the authority of the department with regard to the review and approval of the siting module portion of a permit application for a commercial hazardous waste disposal facility as set forth in section 309(c) and applicable provisions of the Solid Waste Management Act is hereby transferred to

the commission only to the extent that it relates to the siting of a commercial hazardous waste disposal facility within this Commonwealth.

(f) Applicability. Nothing in this section shall be construed to affect, impair or supersede the authority of the department to issue a permit for a hazardous waste disposal facility pursuant to the Solid Waste Management Act.

[Table of Contents] [Hazardous Sites Cleanup Homepage]

CHAPTER 5
RESPONSE AND INVESTIGATION

Section 501. Response authorities.

(a) General rule. Where there is a release or substantial threat of release of a contaminant which presents a substantial danger to the public health or safety or the environment or where there is a release or threat of a release of a hazardous substance, the department shall investigate and, if further response action is deemed appropriate, the department shall notify the owner, operator or any other responsible person of such release or threat of a release if such persons are known and may allow such person or persons to investigate and undertake an appropriate response, or may undertake any further investigation, interim response or remedial response relating to the contaminant or hazardous substance which the department deems necessary or appropriate to protect the public health, safety or welfare or the environment.

(b) Effect on liability. No response action taken by any person shall be construed as an admission of liability for a release or threatened release.

(c) Exclusion.

(1) The department shall not provide for an interim response or remedial response under this section in response to a release or threat of release:

(i) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

(ii) from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures;

(iii) into public or private drinking water supplies due to deterioration of the system through ordinary use; or

(iv) from a coal mining operation under the jurisdiction of the department or from a site eligible for funding under Title IV of the Surface Mining Control and Reclamation Act of 1977 (Public Law 9587, 30 U.S.C. §1201 et seq.).

(2) Notwithstanding paragraph (1), to the extent authorized by this section, the department may respond to a release or threat of release when, in the department's discretion, it determines that the

release or threat of release constitutes a public health, safety or environmental emergency and that no other person with the authority and capability to respond to the emergency will do so in a timely manner.

(d) Investigations. The department shall undertake or cause to be undertaken by the owner, operator or any other responsible person as permitted under subsection (a), investigations, monitoring, surveys, testing and other similar activities necessary or appropriate to identify the existence and extent of the release or threat of release, the source and nature of the hazardous substances or contaminants and the extent of danger to the public health or welfare or the environment. The department may also undertake planning, legal, fiscal, economic, engineering, architectural and other studies or investigations necessary or appropriate to plan and direct a response action, to recover the costs of the response action and to enforce the provisions of this act. The department shall undertake the activities described in this subsection in one or more of the following circumstances:

(1) When the department is authorized to act under subsection (a).

(2) When the department has reason to believe that a release of a hazardous substance or a contaminant has occurred or is about to occur.

(3) When the department determines that illness or disease or complaints of illness or disease may be attributable to exposure to a hazardous substance or contaminant.

(e) Notice of investigations. The department, upon undertaking any investigation, interim response or remedial response under this section, shall give prompt written notice thereof to the owner and operator of the site and to the first mortgagee holding a mortgage on the premises on which the site is located.

(f) Bidding for remedial or removal actions.

(1) The department may prequalify bidders for remedial or removal actions taken under subsection (d). The department may reject the bid of a prospective bidder who has not been prequalified.

(2) To prequalify bidders, the department shall, as contained in regulations to be proposed by the department and promulgated by the Environmental Quality Board, apply a uniform system of rating bidders. In order to obtain information for rating, the department may require from prospective bidders answers to questions, including, but not limited to, questions about the bidder's financial ability; the bidder's experience in removal and remedial action involving hazardous substances; the bidder's past safety record; and the bidder's past performance on Federal, State or local government projects. The department may also require prospective bidders to submit financial statements.

(3) The department shall utilize the business financial data and information submitted by a bidder under this section only for the purposes of prequalifying bidders and shall not otherwise disclose this data or information.

(g) Emergency response authority. In addition to the powers and duties set forth in this act, when the Governor determines that there is an imminent and substantial endangerment to the public health and welfare or the environment because of an actual or threatened release of a nonhazardous substance and that the person who owns or operates has failed to take appropriate emergency response, the Governor may order or undertake the necessary and appropriate emergency interim response. No

more than $2,500,000 from the fund may be expended annually by the Governor for this purpose, except when the General Assembly, by concurrent resolution, deems appropriate.

Section 502. Priorities.

(a) List.

(1) The department shall publish in the Pennsylvania Bulletin a priority list of sites with releases or threatened releases for the purpose of taking remedial response. The department shall allow a 30-day public comment period subsequent to publication. In compiling the priority list, the department shall utilize the Uncontrolled Hazardous Waste Site Ranking System (40 CFR Part. 300, App. A) established under the Federal Superfund Act which provides that sites shall be ranked according to the relative risk or danger to public health and welfare or the environment, taking into account, to the extent possible, the population at risk, the hazardous potential of the hazardous substances or contaminants at the sites, the potential for contamination of drinking water supplies, the potential for direct human contact, and the potential for destruction of sensitive ecosystems. The department shall also consider the maximum usage of available Federal funds for sites which qualify for the National Priority List and the administrative, enforcement and financial capabilities of the department. Remedial responses may be on-going at more than one site at any given time, regardless of the site's ranked position on the list.

(2) Any modification by the department in the Uncontrolled Hazardous Waste Site Ranking System shall be made only by regulation and shall be based upon the relative risk or danger to the public health and welfare or the environment, taking into account, to the extent possible, the population at risk, the hazardous potential of the hazardous substances or contaminants at the sites, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, the maximum usage of available Federal funds for sites which qualify for the National Priority List and the administrative, enforcement and financial capabilities of the department.

(b) Status. The placement or removal of a site with a release or threatened release upon the priority list shall not be deemed to be a final action subject to review under Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure) or the act of July 13, 1988 (P.L. 530, No. 94), known as the Environmental Hearing Board Act, nor shall it confer a right or duty upon the department or any person, nor shall the placement of the site upon the priority list preclude any responsible person from undertaking a voluntary cleanup pursuant to this act.

(c) Listing. One hundred twenty days prior to the placement of a site upon the priority list, the department shall notify the known responsible persons of the proposed listing. The site shall not be placed upon the list if a responsible person enters into a settlement with the department which provides for the abatement of the release or threatened release.

(d) Removal from list. Once a site has been placed upon the list, it shall be removed upon the determination by the department that the responsible person has complied with the terms of the settlement and has initiated a cleanup .

(e) National Priority List.

(1) No site which has been placed upon the National Priority List established pursuant to the Federal

Superfund Act shall be included on the priority list of sites published by the department.

(2) The department may take a remedial response action on a site listed upon the National Priority List provided that:

(i) the department has an agreement with the Federal Government which assures that the site qualifies for response action funding under section 104(c) of the Federal Superfund Act; or

(ii) the department has attempted, but failed to secure an agreement with the Federal Government pursuant to section 104(c) of the Federal Superfund Act. the Federal Government has failed to act within a reasonable period of time to perform a remedial response action and the Federal Government does not have an agreement with a responsible person to initiate such action. The total State funding contribution in excess of the federally mandated State minimum under section 104(c) of the Federal Superfund Act for remedial response actions undertaken pursuant to this subparagraph shall not exceed $6,000,000 annually.

(3) Except as provided in paragraph (2), nothing in this section shall abrogate, limit or alter the powers and duties accorded to the Commonwealth under the Federal Superfund Act.

(f) Rights preserved. Nothing in this act shall be interpreted to deprive any interested or aggrieved person of his inherent right to bring an action in mandamus to correct department actions under the standards currently recognized in Pennsylvania equity practice.

Section 503. Information gathering and access.

(a) Authority. The authority of this section shall be exercised when there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or contaminant. The authority of this section shall be exercised for the purposes of determining the need for response, choosing or taking a response action under this act or otherwise enforcing the provisions of this act.

(b) Information.

(1) The department shall have access to information relevant to any of

the following:

(i) The identification, nature and quantity of materials which have been or are generated, treated, stored or disposed of at a site or other place or property or transported to a site or other place or property.

(ii) The nature or extent of a release or threatened release of a hazardous substance or contaminant at or from a site or other place or property.

(iii) Information relating to the ability of a person to pay for or to perform a response action.

(2) A person who has or may have information under paragraph (1) shall, upon reasonable notice, either:

(i) grant the department access at all reasonable times to a site or other place or property to inspect

and copy all documents or records relating to the matter; or

(ii) copy and furnish to the department all the documents or records.

(c) Right of entry. The department may enter at reasonable times a site or other place or property in one or more of the following circumstances:

(1) A hazardous substance or contaminant may be or has been generated at, stored at, treated at, disposed of at or transported from the place.

(2) A hazardous substance or contaminant has been or is being or threatens to be released.

(3) Entry is needed to determine the need for response to a hazardous substance or contaminant or the appropriate response or to effectuate a response action under this act.

(4) A release of a hazardous substance or contaminant has occurred on a nearby property, and entry is required to determine the extent of the release.

(5) There is a container or impoundment which is typical of those used to contain or impound hazardous substances and entry is needed to determine the existence of a hazardous substance.

(d) Inspection.

(1) The department may inspect and obtain samples from a site or other place or property referred to in subsection (c) or from a location of a suspected hazardous substance or contaminant. The department's right of inspection shall include the sampling of solids, liquids and gases; excavations for soil sampling; drilling and maintenance of wells to monitor groundwater; and the installation and maintenance of other equipment to monitor the nature or extent of a release of a suspected hazardous substance or contaminant. The department may inspect and obtain samples of containers or labeling for suspected hazardous substances or contaminants. Each inspection shall be completed with reasonable promptness.

(2) When the department obtains samples, before leaving the premises, it shall give to the owner, operator, tenant or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, when requested, a portion of the sample. A copy of the results of an analysis made of the samples shall be furnished promptly to the owner, operator, tenant or other person in charge when the person can be located.

(e) Duty to cooperate with response action.

(1) The following persons shall allow the department access or right of entry and inspection as may be reasonably necessary to determine the nature and extent of a release of a hazardous substance or contaminant:

(i) A person who owns or occupies land on which there is a release or threat of a release of a hazardous substance or contaminant.

(ii) A person who owns or occupies land which is near the site of a release or threatened release.

(iii) A person who owns or occupies land on which there is a container or impoundment typical of those used to contain or impound hazardous substances.

(iv) A person who is a responsible person under section 701.

(2) The following persons shall allow the department access or right of entry and inspection as may be reasonably necessary to perform a response under section 501:

(i) A person who owns or occupies land on which there is a release or a threat of release of a hazardous substance or contaminant.

(ii) A person who owns or occupies land which may be affected by the release of a hazardous substance or contaminant.

(iii) A person who is a responsible person under section 701.

(f) Remedies.

(1) In addition to any other remedy provided by this act, the department may enforce the provisions of this section by issuing orders requiring access to information, requiring entry onto property and restraining interference with any response action. An order issued under this section may be appealed to the board under the act of July 13, 1988 (P.L. 530, No. 94), known as the Environmental Hearing Board Act.

(2) The department may immediately apply to a court of competent jurisdiction to enforce its order, unless the board has issued a supersedeas. The court shall immediately enforce the department's order upon finding all of the following:

(i) The order is authorized by this act.

(ii) There has not been full compliance with the order.

(3) In lieu of issuing an order under paragraph (1), the department may apply immediately to a court of competent jurisdiction for the same relief.

(4) When the board reviews an order issued under paragraph (1), or when a court reviews the department's request for immediate relief under paragraph (3), the board shall uphold the department's order and the court shall grant the requested relief where all of the following are established:

(i) The department has reasonable basis to believe that there may be a release or a threat of a release of a hazardous substance or contaminant.

(ii) The order or relief requested is reasonably related to determining the need for a response, to choosing or taking any response or to otherwise enforcing the provisions of this act.

(5) Except as provided in this subsection, there shall be no administrative or judicial review of action by the department or its agents to obtain access to information, to obtain entry onto property or to perform work on the property in connection with a response action. Neither the board nor any court

may restrain action of the department under this section unless all of the following apply:

(i) The person seeking to restrain the department has given the department a 30-day written notice of his intent to do so.

(ii) The department has failed to issue an order within the 30-day period.

(6) The minimum civil penalty assessed under section 1104 for a violation of an order issued under this section shall be $5,000 for each day the order is violated.

(g) Other remedies. Nothing in this subsection shall preclude the department from securing access or obtaining information in any other lawful manner.

(h) Public records.

(1) Except as provided in this subsection, records, reports or other information obtained under this act shall be available to the public for inspection or copying during regular business hours. The department may, upon request, designate records, reports or information as confidential when the person providing the information demonstrates all of the following:

(i) The information contains the trade secrets, processes, operations, style of work or apparatus of a person or is otherwise confidential business information, including information obtained under subsection (b)(l)(iii)-

(i) The information does not relate to health or safety effects of a hazardous substance or contaminant.

(2) When submitting information to the department 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.

(i) Use of force. When a person refuses to allow the department to have access to information or entry onto property under this section, the department shall not use force to obtain the information or entry unless one of the following applies:

(1) The department has obtained a search warrant or initiated an action under subsection (f).

(2) Immediate action is needed to protect the public health or safety or the environment.

Section 504. Cleanup standards.

(a) General rule. Final remedial responses under this act shall meet all standards, requirements, criteria or limitations which are legally applicable or relevant and appropriate under the circumstances presented by the release or threatened release of the hazardous substance or contaminant and shall be cost effective. Cleanup standards promulgated under this act shall be consistent with State standards permitted under section 121(d) of the Federal Superfund Act.

NOTE: Sections 504(b), 504(c), and 504(d) of HSCA were repealed by the Land Recycling Act Section 908(a).

(b) Interim cleanup standards. Until final cleanup standards have been promulgated, State cleanup standards shall be those cleanup standards applicable under section 121 of the Federal Superfund Act.

(c) Rulemaking. The department shall propose and the Environmental Quality Board shall promulgate the standards, requirements, criteria or limitations that are generally applicable to remedial responses to releases of hazardous substances or contaminants by regulation.

(d) Special standards. The department may add, without rulemaking under subsection (c), special standards, more stringent than the general cleanup standards, on a case-by-case basis if the department can show that any of the following apply based on the administrative record:

(1) The circumstances at the site are such that the applicable general standards, as applied, would not provide the degree of protection to public health or the environment intended by the general standards.

(2) The degree of additional environmental protection provided by the special standard is significant in relation to the cost of implementing it.

(e) Modification. The department may waive or modify otherwise applicable requirements if any of the following apply:

(1) Compliance with a requirement at a site will result in greater risk to the public health and safety of the environment than alternative options.

(2) Compliance with a requirement at a site is technically infeasible from an engineering perspective.

(3) The remedial actions selected will attain a standard of performance that is equivalent to that required under the otherwise applicable requirement through use of another method or approach.

(4) The remedial action selected will not provide for cost-effective response.

(f) Fund money. In addition to the provisions of subsection (e), if the response action is to be done using only fund money, the department may waive or modify requirements that might otherwise be applicable to a response at the site undertaken by a responsible person if the department determines the waiver or modification to be in the public interest.

(g) Permits. No State or local permits shall be required for a response action conducted entirely on the site if prior written approval is obtained from the department.

(h) Review. Any action taken by the department under subsection (d) or (e) shall be subject to judicial or administrative review only as provided in section 508.

Section 505. Development and implementation of response actions.

(a) Basis. The selection of a remedial response shall be based upon the administrative record developed under section 506.

(b) Interim response. An interim response may be taken before the development of an administrative record when, upon the basis of the information available to the department at the time of the interim

response, there is a reasonable basis to believe that prompt action is required to protect the public health or safety or the environment. When the department takes an interim response before the development of an administrative record, it shall provide the notice required by section 506(b) within 30 days of initiating the response action. In addition to the information required by section 506(b), the notice shall describe the actions which have already been taken and any additional actions to be taken prior to the close of the public comment period under section 506(c).

(c) Implementation of action. After the selection of an interim response or a remedial response, the department may implement all or any part of the selected action by doing any of the following:

(1) In the case of a release or threatened release of a hazardous substance, the department may:

(i) Issue an order to a responsible person. This subparagraph does not prohibit action under subparagraph (ii).

(ii) Take the action itself. This subparagraph does not prohibit action under subparagraph (i).

(2) In the case of a release or substantial threat of a release of a contaminant, which presents a substantial danger to the public health or safety or the environment, the department may:

(i) Issue an order to a responsible person. This subparagraph does not prohibit action under subparagraph (ii).

(ii) Take the action itself. This subparagraph does not prohibit action under subparagraph (i).

(d) Orders. Orders issued under this section include, but are not limited to:

(1) Orders requiring a responsible person to take a response action.

(2) Orders restraining a person from interfering with a response action.

(3) Orders modifying a response action, including response actions which had been previously approved by the department.

(e) Judicial action. The department may file an action to enforce an order issued under this section in Commonwealth Court or in any other court of competent jurisdiction. The department may include in the same action a civil penalty assessment under section 1104. When the department files such an action, its order shall be enforced and its civil penalty assessment shall be upheld unless the person subject to the order or the civil penalty can demonstrate that the department acted arbitrarily and capriciously on the basis of the administrative record developed under section 506 as permitted to be supplemented under section 508.

(1) When the department issues an order under this section, a person subject to the order may seek to recover from the fund the cost of complying with the order by filing an action with the board after completion of the response action. The action must be filed within 60 days after the completion of the required action. To recover costs, the person must demonstrate, by a preponderance of the evidence, all of the following:

(i) The person was not a responsible person under this act.

(ii) The costs sought to be recovered are reasonable in light of the action required by the order.

(2) A person subject to an order under this act may also recover reasonable costs for that portion of the response action ordered which the person can demonstrate to be arbitrary and capricious on the basis of the administrative record developed under section 506.

(g) Voluntary settlements. The department, in its discretion, may enter into an agreement with any person, including a person who may be liable under section 701, to perform any response action when the department determines that such action will be properly done in accordance with the department's standards and after such person has submitted a plan and obtained the department's approval of such plan. Whenever practicable and in the public interest, the department may enter into agreements under this section in order to expedite efficient remedial action and minimize litigation. The decision of the department to use or not to use the procedures of this subsection is not subject to judicial review.

(h) Mixed funding. An agreement under this section may provide that the department will pay from the fund a certain portion of the total response costs or the cost of certain response actions. The department may enter into mixed funding settlements for that portion of the response costs or damages allocable to persons against whom recovery cannot be obtained by reason of insolvency, dissolution, lack of jurisdiction by Commonwealth courts or other similar reasons. The department may also enter into mixed funding settlements when the financial resources of the known responsible persons are too small to cover the anticipated response costs, or the known, and technically viable responsible persons have collectively contributed only a small fraction of the known hazardous substances at the site.

Section 506. Administrative record.

(a) Contents. The administrative record upon which a response action is based shall consist of all of the following:

(1) The notice issued under subsection (b).

(2) Information, including, but not limited to, studies, inspection reports, sample results and permit files, which is known and reasonably available to the department and which relates to the release or threatened release and to the selection, design and adequacy of the response action.

(3) Written comments submitted during the public comment period under subsection (c).

(4) Transcripts of comments made at the public hearing held under subsection (d).

(5) The department's statement of the basis and purpose for its decision, including findings of fact, an analysis of the alternatives considered and the reasons for selecting the proposed response action, and its response to significant comments made during the public comment period.

(6) The docket maintained under subsection (f), listing the contents of the administrative record.

(b) Notice.

(1) The department shall issue a notice setting forth all of the following:

(i) A brief analysis of the response action and alternative actions that were considered.

(ii) The time and place during which the information listed on the docket maintained under subsection (f) may be inspected and copied.

(iii) A specified time and place for providing written comments on the response action.

(iv) The time and place at which a public hearing will be held to receive oral comments on the response action.

(2) The notice shall be mailed to responsible persons whose identities and addresses are known to the department. In addition, notice shall be mailed to all holders of liens of record filed against all properties subject to section 509(b). The notice shall also be published in a newspaper of general circulation in the area in which the release has occurred and in the Pennsylvania Bulletin. The failure to provide this notice does not affect a responsible person's liability under this act.

(c) Public comment.

(1) The public comment period shall extend for at least 90 days from the date that notice is published in the Pennsylvania Bulletin. During the public comment period the department shall make available for inspection during normal business hours all of the following:

(i) The department's description of the response action.

(ii) Information, including, but not limited to, studies, inspection reports, sample results and permit files, which is known and reasonably available to the department and which relates to the release or threatened release and to the selection, design and adequacy of the response action.

(iii) Written comments submitted during the public comment period.

(iv) The docket maintained under subsection (f).

(2) The public comment period shall extend at least 30 days after the public hearing to provide an opportunity for the submission of rebuttal and supplementary information.

(d) Public hearing. At least one public hearing shall be conducted near the site of the response action to allow interested persons to give oral or written comments. A transcript shall be kept of oral presentations. The hearing shall be scheduled at least 30 days after the publication of the notice in the Pennsylvania Bulletin.

(e) Decision. At the close of the public comment period, the department shall file a statement of the basis and purpose for its decision. The statement shall include findings of fact, an analysis of the alternatives considered and the reasons for selecting the proposed response action. It shall include an explanation of any major changes in the response action from that described in the notice. The department shall also file a response to each of the significant comments, criticisms and new data submitted in oral or written presentations during the public comment period.

(f) Docket. The department shall maintain a docket listing of all the items which form the

administrative record, and it shall notify a person submitting a comment that it has been entered on the docket. It shall be the responsibility of the person submitting written comments to either verify that the comments have been noted on the docket or to notify the department, before the end of the public comment period, that the docket does not note the submitted written comment.

(g) Closing. The administrative record shall be closed, once the department has filed its statement and response under subsection (e). The department's decision may not be based, in whole or in part, upon information which has not been noted on the docket as of the date the administrative record is closed. The administrative record may be reopened only for any of the following reasons:

(1) Additional information which the department determines to be of central relevance to the selected action is obtained during the implementation of the response action.

(2) A person raising an objection to the response action can demonstrate that it was impracticable to raise the objection during the public comment period or that the grounds for the objection arose after the public comment period.

(3) The department wishes to document its response costs.

(4) A case is remanded to the department under section 508.

(h) Reopening. To reopen the administrative record, the department shall provide a notice setting forth the purpose of this reopening and the time and place for submitting written comments during a 60-day public comment period. The department may hold a public hearing if a written request is received within 30 days of publication of the notice of reopening. The docket shall note additional information submitted by the department, written comments, oral comments made at the public hearing and the department's responses to the significant comments. The department's decision not to reopen the administrative record may only be reviewed as provided in section 508.

Section 507. Recovery of response costs.

(a) General rule. A responsible person under section 701 or a person who causes a release or threat of a release of a hazardous substance or causes a public nuisance under this act or causes a release or a substantial threat of release of a contaminant which presents a substantial danger to the public health or safety or the environment, or causes a release of a nonhazardous substance pursuant to section 501 (g) shall be liable for the response costs and for damages to natural resources. The department, a Commonwealth agency, or a municipality which undertakes to abate a public nuisance under this act or take a response action may recover those response costs and natural resource damages in an action in equity brought before a court of competent jurisdiction. In addition, the board is given jurisdiction over actions by the department to recover response costs and damages to natural resources.

(b) Amount. In an action to recover response costs and natural resource damages, the department shall include administrative and legal costs incurred from its initial investigation up to the time that it recovers its costs. The amount attributable to administrative and legal costs shall be 10% of the amount paid for the response action or the actual costs, whichever is greater.

(c) Punitive damages. Notwithstanding the provisions of section 709, a person who willfully fails to comply with an order of the department requiring a response action under section 505(c)(l) shall be liable for punitive damages in an amount which is at least equal to but not more than three times the

costs recoverable under this section. A party shall not be liable for punitive damages when a court reviewing the order under section 508 finds that the department's order was invalid as to that party.

(d) Effect of damages assessment. A determination or assessment of damages to natural resources for the purposes of this act, the Federal Superfund Act, or section 311 of the Federal Water Pollution Control Act (62 Stat. 1155, 33 U.S.C. §1321)made by the department or other trustee shall have the force and effect of a rebuttable presumption on behalf of the department or other trustee in an administrative or judicial proceeding under this act, the Federal Superfund Act or section 311 of the Federal Water Pollution Control Act.

(e) Civil penalty. When the department files an action to recover its response costs and natural resources damage assessment, it may also seek civil penalties under section 1104. Its right to recover response costs, natural resource damages and civil penalties shall be upheld unless the liable person can demonstrate that the department acted arbitrarily and capriciously on the basis of the administrative record developed under section 506 as permitted to be supplemented under section 508.

(f) Recycled oil.

(1) When recycled oil is not mixed with any other hazardous substance and is stored, treated, transported and otherwise managed in compliance with regulations or standards promulgated under applicable State and Federal law relating to recycled oil, then all of the following apply:

(i) No person may recover from a service station operator, under section 702(a)(2) or (3), response costs or damages resulting from a release or threatened release of recycled oil.

(ii) Section 1102 does not apply against a service station operator other than a service station operator described in section 702(a)(l).

(2) For purposes of this subsection, a service station operator may presume that a small quantity of used oil is not mixed with other hazardous substances when it has been removed from the engine of a motor vehicle or appliance by the owner of the vehicle or appliance and is presented to the operator for collection, accumulation and delivery to an oil recycling facility.

Section 508. Administrative and judicial review of response actions.

(a) General rule. Notwithstanding any other provision of law, the provisions of this section shall provide the exclusive method of challenging either the administrative record developed under section 506 or a decision of the department based upon the administrative record.

(b) Timing of review. Neither the board nor a court shall have jurisdiction to review a response action taken by the department or ordered by the department under section 505 until the department files an action to enforce the order or to collect a penalty for violation of such order or to recover its response costs or in an action for contribution under section 705. In the case of an action to enforce an order of the department, the person receiving such order shall be entitled to challenge said order within 30 days from the date the department moves to enforce its order.

(c) Grounds. A challenge to the selection and adequacy of a remedial action shall be limited to the administrative record developed under section 506. In a challenge to liability for natural resource

damages, civil penalties or the recovery of response costs, or where the assessment of civil penalties is challenged, the record shall be limited to the administrative record developed under section 506, except that it may be supplemented with additional evidence supporting or refuting the department's determination that a person is a responsible person under section 701 or the department's assessment of civil penalties. The party challenging the department's determination or assessment shall retain the burden of proving the department's determination or assessment was arbitrary and capricious.

(d) Procedural errors. Procedural errors in the development of the administrative record shall not be a basis for challenging a response action unless the errors were so serious and related to matters of such central relevance to the response action that the action would have been significantly changed had the errors not been made. The person asserting the significance of the procedural errors shall have the burden of proving that the action would have been significantly changed.

(e) Remand. When a response action is demonstrated to be arbitrary and capricious on the basis of the administrative record developed under section 506, or when a procedural error occurred in the development of the administrative record which (error) would have significantly changed the response action, the following apply:

(1) When additional information could affect the outcome of the case, the matter shall be remanded to the department for reopening the administrative record.

(2) When additional information could not affect the outcome of the case, the department's enforcement of its order or its recovery of response costs shall be limited only as to that portion of the response action found to be arbitrary and capricious or the result of a procedural error which would have significantly changed the action.

Section 509. Lien.

(a) Establishment. An award of response costs, assessment of damages to natural resources or assessment of civil penalties shall constitute a judgment against the responsible person. The judgment may be collected in any manner provided by law. The department shall send a notice of lien to the prothonotary or equivalent official of the county in which the responsible person has real or personal property, setting forth the amount of the award of costs, of the assessment of damages and of the assessment of penalties. The prothonotary or equivalent official shall promptly enter upon the civil judgment or order docket the name and address of the responsible person and the amount of the lien as set forth in the notice of lien. Upon entry by the prothonotary, the lien shall attach to the revenue and all real and personal property of the responsible person, whether or not the responsible person is insolvent.

(b) Registry,-There shall be established a central registry of all liens filed under this act in the Department of State. The Commonwealth shall file a notice of lien with the Secretary of the Commonwealth in addition to filings with a prothonotary or equivalent official.

(c) Priority. The notice of lien filed under this section affecting property of a responsible person, including property subject to response action, shall create a lien which shall have priority from the day of the filing of the notice of the lien over all subsequent claims and liens against the property, but it shall not affect any valid lien, right or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien under this subsection.

Section 510. Evaluation grant.

The department may make available a reasonable sum as a grant to the governing body of the host municipality of a site where the department is considering a remedial response. The host municipality shall use this sum solely to conduct an independent technical evaluation of the proposed remedial response. The grant shall not exceed $50,000 unless the department proposes and the Environmental Quality Board promulgates regulations establishing a schedule for grants.

Section 511. Acquisition of real property.

(a) General rule. The department may acquire, by purchase, lease, condemnation, donation or otherwise, real property or an interest in real property that the department, in its discretion, determines is needed to conduct a response action under this act. The department has no duty to acquire any interest in real property under this act.

(b) Sovereign immunity. The Commonwealth shall not be liable under this act as a result of acquiring an interest in real estate under this section, nor shall anything in this act be construed as a waiver of sovereign immunity or a waiver under 42 Pa.C.S. §8522 (relating to exceptions to sovereign immunity) .

Section 512. After closure and conveyance of property.

(a) General rule. A site at which hazardous substances remain after completion of a response action shall not be put to a use which would disturb or be inconsistent with the response action implemented. The department shall have the authority to issue an order precluding or requiring cessation of activity at a facility which the department finds would disturb or be inconsistent with the response action implemented. A person adversely affected by the order may file an appeal with the board. The department shall require the recorder of deeds to record an order under this subsection in a manner which will assure its disclosure in the ordinary course of a title search of the subject property. An order under this subsection, when recorded, shall be binding upon subsequent purchasers.

(b) Acknowledgment. The grantor, in every deed for the conveyance of property on which a hazardous substance is either presently being disposed or has ever been disposed by the grantor or to the grantor's actual knowledge, shall include in the property description section of the deed an acknowledgment of the hazardous substance disposal. To the extent the information is available, the acknowledgment shall include, but not be limited to, the surface area size and exact location of the disposed substances and a description of the types of hazardous substances contained therein. This property description shall be made a part of the deed for all future conveyances or transfers of the subject property. A description of any response undertaken with respect to the disposal of the hazardous substance as well as notice of any decision by the department to remove the site from the priority list provided for in section 502 shall also be made part of the deed.

Section 513. Contracting.

(a) Authority. The department shall have the authority to enter into a contract with any person or firm to have them provide assistance to the department for the implementation of this act.

(b) Indemnification. Any person who enters into a contract with the department to assist the

department in implementing this chapter shall not be required to indemnify the Commonwealth or Commonwealth employees against claims arising out of performance of the contract.

[Table of Contents] [Hazardous Sites Cleanup Homepage]

CHAPTER 7
LIABILITY AND SETTLEMENT PROCEDURES

Section 701. Responsible person.

(a) General rule. Except for releases of hazardous substances expressly and specifically approved under a valid Federal or State permit, a person shall be responsible for a release or threatened release of a hazardous substance from a site when any of the following apply:

(1) The person owns or operates the site:

(i) when a hazardous substance is placed or comes to be located in or on a site;

(ii) when a hazardous substance is located in or on the site, but before it is released; or

(iii) during the time of the release or threatened release.

(2) The person generates, owns or possesses a hazardous substance and arranges by contract, agreement or otherwise for the disposal, treatment or transport for disposal or treatment of the hazardous substance.

(3) The person accepts hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person from which there is a release or a threatened release of a hazardous substance which causes the incurrence of response costs.

(b) Exceptions.

(1) An owner of real property is not responsible for the release or threatened release of a hazardous substance from a site in or on the property when the owner demonstrates to the department that all of the following are true:

(i) The real property on which the site concerned is located was acquired by the owner after the disposal or placement of a hazardous substance on, in or at the site.

(ii) The owner has exercised due care with respect to the hazardous substances concerned, taking into consideration the characteristics of such hazardous substances, in light of all relevant facts and circumstances.

(iii) The owner took precautions against foreseeable acts or omissions of any third party and the consequences that could foreseeably result from such acts or omissions.

(iv) The owner obtained actual knowledge of the release or threatened release of a hazardous

substance at the site when the owner owned the real property, and the owner did not subsequently transfer ownership of the property to another person without disclosing such knowledge.

(v) The owner has not, by act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the response action relating to the site.

(vi) The owner meets one of these requirements:

(A) At the time the owner acquired the site. the owner did not know, and had no reason to know, that a hazardous substance which is the subject of the release or threatened release was disposed of on, in or at the site. For purposes of this subparagraph, the owner must have undertaken, at the time of acquisition, all appropriate inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. The department shall take into account specialized knowledge or experience on the part of the owner, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination by appropriate inspection.

(B) The owner is a government entity which acquired the site by escheat, through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or condemnation.

(C) The owner acquired the site by inheritance or bequest.

(D) The owner is a financial institution or an affiliate of a financial institution or a corporate instrumentality of the Federal Government which acquired the site by foreclosure or by acceptance of a deed in lieu of foreclosure.

(vii) The only basis of liability for the landowner is ownership of the land.

(2) Liability under subsection (a) shall not apply to an owner of real property if the real property is exclusively used as single- or multi-family housing of four units or less or for private noncommercial recreational purposes, and the owner did not place the hazardous substance on the property, or the owner did not know and had no reason to know that a hazardous substance which is the subject of the release or threatened release was disposed on, in or at the site.

(3) Liability under subsection (a) shall not apply to persons who generate household hazardous waste as defined in section 1512 of the act of July 28, 1988 (P.L.556, No.101), known as the Municipal Waste Planning, Recycling and Waste Reduction Act.

(4) Except for activities of the owner or operator unrelated to the recovery or processing of methane, subsection (a) does not apply to a person who owns or operates equipment for the recovery or processing, including recirculation of condensate, of methane unless the release or threatened release is caused by the negligent activities of the person. If the release or threatened release is caused by the negligent activities of a person who owns or operates equipment for the recovery or processing, including recirculation of condensate, of methane, the person's responsibility shall be limited to costs and damages caused by the person's negligent activities.

(5) A person who generates scrap materials that are transferred to a facility owned or operated by

another person for the purpose of reclamation or reuse of the metallic content thereof through melting, smelting or refining shall not be considered to have arranged for the disposal, treatment or transport for disposal or treatment at that facility of a hazardous substance present in the scrap materials, provided that the generator demonstrates that all of the following are true:

(i) The scrap materials consisted of:

(A) obsolete metallic items, such as automobiles or appliances;

(B) new solid metallic by-products, such as trimmings, urnings, cuttings or punchings;

(C) prepared grades of scrap metal produced in accordance with recognized industry specifications by processing obsolete items or metallic by-products through shredding, cutting, compressing or other mechanical means; or

(D) intact, nonleaking spent lead-acid storage batteries.

(ii) The generator did not introduce the hazardous substance into the scrap materials.

(iii) The generator handled and transported the scrap materials in accordance with all applicable laws and regulations.

(iv) The generator transferred the scrap materials for valuable consideration.

(v) If the generator selected the facility, the generator reasonably believed that the facility was then in substantial compliance with all applicable laws and regulations pertaining to receipt, management and reclamation or reuse of the scrap materials.

(c) Employees. When a person who is responsible for a release or threatened release under subsection (a) is an employee who is acting in the scope of employment:

(1) The employee is subject to liability under this section only when the employee's conduct with respect to the hazardous substance was negligent under circumstances in which the employee knew that the substance was hazardous and that the employee's conduct could result in serious harm.

(2) The employer shall be considered a person responsible for the release or threatened release and is subject to liability under this section regardless of the degree of care exercised by the employee.

Section 702. Scope of liability.

(a) General rule. A person who is responsible for a release or threatened release of a hazardous substance from a site as specified in section 701 is strictly liable for the following response costs and damages which result from the release or threatened release or to which the release or threatened release significantly contributes:

(1) Costs of interim response which are reasonable in light of the information available to the department at the time the interim response action was taken.

(2) Reasonable and necessary or appropriate costs of remedial response incurred by the United States,

the Commonwealth or a political subdivision.

(3) Other reasonable and necessary or appropriate costs of response incurred by any other person.

(4) Damages for injury to, destruction of or loss of natural resources within this Commonwealth or belonging to, managed by, controlled by or appertaining to the United States, the Commonwealth or a political subdivision. This paragraph includes the reasonable costs of assessing injury, destruction or loss resulting from such a release.

(5) The cost of a health assessment or health effects study.

(b) Interest.

(1) The amounts recoverable in an action under sections 507 and 1101 include interest on the amounts recoverable under subsection (a). Interest shall accrue from the later of:

(i) the date payment of a specified amount is demanded in writing; or

(ii) the date of the expenditure concerned.

(2) The rate of interest on the outstanding unpaid balance of the amounts recoverable under sections 507 and 1101 shall be 6% annually.

(c) Contractors. A person or company who has entered into a contract with the department to assist the department in implementing this act, or a response action contractor under section 119 of the Federal Superfund Act, shall not be held liable under this act for a release of a hazardous substance arising out of performance of a response action when the release is not caused by the contractor's negligence.

(d) Commonwealth employees. Persons employed by the Commonwealth shall not be held liable for a release of a hazardous substance or contaminant, or any other damages incurred, as a result of actions or omissions occurring when acting in their official capacity.

Section 703. Defenses to liability.

(a) Grounds. There shall be no liability under section 701 of this act for a person otherwise liable who can establish that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by any of the following:

(1) An act of God.

(2) An act of war.

(3) An act or omission of a third party other than an employee, agent or contractor of the responsible person or one whose act or omission occurs in connection with an agreement or contractual relationship (except where the sole contractual arrangements arise either from a published tariff and acceptance for carriage by a common carrier by rail, or an exempt circular or transportation contract in lieu of a published tariff for carriage by a common carrier by rail), if the responsible person:

(i) exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances; and

(ii) took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from those acts or omissions.

(b) Assistance. Except as provided in subsection (c), no person shall be liable under this act for cost or damages as a result of actions taken or omitted in the course of rendering care, assistance or advice in accordance with this act or at the direction of the department with respect to an incident creating a danger to public health, safety or welfare or the environment as a result of a release of a hazardous substance or contaminant or the threat thereof. This subsection does not preclude liability for costs or damages as the result of negligence on the part of the person.

(c) Government action. No State agency or political subdivision shall be liable under this act for costs or damages as a result of actions taken by the State agency or political subdivision in response to a release or threatened release of a hazardous substance generated by or from a site.

(d) Residential housing. There shall be no liability under section 701 for the owner of real property which is exclusively used or under construction as residential housing who can establish that the release or threatened release of a hazardous substance and the damages resulting therefrom were caused solely by an act or omission of a third party, other than an employee, agent or contractor of the owner or one whose act or omission occurs in connection with an agreement or contractual relationship, if the owner:

(1) at the time of acquisition, did not know and had no reason to know, that a hazardous substance which is the subject of the release or threatened release was disposed on, in or at the site. For purposes of this paragraph, the owner must have undertaken, at the time of acquisition, all appropriate inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. The department shall take into account specialized knowledge or experience on the part of the owner, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination by appropriate inspection; and

(2) after obtaining actual knowledge of the presence of a hazardous substance on, in or at the site, exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of the hazardous substance, in light of all relevant facts and circumstances and took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from those acts or omissions.

(e) Limited liability. Liability under the provisions of section 701 shall not apply to municipal waste transporters for that portion of municipal waste which is defined as household hazardous waste under section 1512 of the act of July 28, 1988 (P.L.556, No.101), known as the Municipal Waste Planning, Recycling and Waste Reduction Act, and which is collected from generators and transported to permitted municipal waste disposal facilities.

(f) Burden of proof. A person claiming a defense provided in this section has the burden to prove all elements of the defense by a preponderance of the evidence.

Section 704. Subrogation and insurance.

(a) General rule. An owner or operator of a facility or any other person who may be liable under section 701 may not avoid that liability by means of a conveyance of a right, title or interest in real property, or by an indemnification, a hold harmless agreement or a similar agreement.

(b) Construction. Nothing in this section shall be construed to do any of the following:

(1) Prohibit a party who may be liable under section 701 from entering into an agreement by which that party is insured, held harmless or indemnified for part or all of that liability.

(2) Prohibit the enforcement of an insurance, a hold harmless or an indemnification agreement.

(3) Bar a cause of action brought by a party who may be liable under section 701 or by an insurer or guarantor, whether by right of subrogation or otherwise.

Section 705. Contribution.

(a) General rule. A person may seek contribution from a responsible person under section 701, during or following a civil action under section 507 or 1101. Claims for contribution shall be brought in accordance with this section and the Pennsylvania Rules of Civil Procedure. Nothing in this section shall diminish the right of a person to bring an action for contribution in the absence of a civil action under section 507 or 1101.

(b) Allocation. In a civil action in which a liable party seeks a contribution claim, the court, or the board in an action brought under section 507 or 1101, shall enter judgment allocating liability among the liable parties. Allocation shall not affect the parties' liability to the department. The burden is on each party to show how liability should be allocated. In determining allocation under this section, the court or the board may use such equitable factors as it deems appropriate. The trier of fact shall consider the following factors:

(1) The extent to which each party's contribution to the release of a hazardous substance can be distinguished.

(2) The amount of hazardous substance involved.

(3) The degree of toxicity of the hazardous substance involved.

(4) The degree of involvement of and care exercised by each party in manufacturing, treating, transporting and disposing of the hazardous substance.

(5) The degree of cooperation by each party with Federal, State or local officials to prevent harm to the public health or the environment.

(6) Knowledge by each party of the hazardous nature of the substance.

(c) Settlements.

(1) When the department enters into an administrative or judicially approved settlement of a civil action brought under section 507 or 1101, the amount of the department's claim under that civil action shall be reduced by the amount of the consideration paid to the department or the allocated amount of the of the settling party's liability, whichever is less. A settlement shall not otherwise affect the department's claim under section 507 or 1101.

(2) A person who has resolved its liability to the department in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement unless the terms of the settlement provide otherwise. The settling party may seek contribution from a nonsettling party to recover the consideration paid in excess of its allocated share of liability as determined by the court or the board.

(3) When the department has obtained less than complete relief from a person who has resolved its liability to the department in an administrative or judicially approved settlement, the department may bring an action against a person who has not so resolved its liability. A nonsettling party may seek contribution from any other nonsettling party or any settling party as allowed under this section.

(d) Federal funds; cooperative agreements. The Commonwealth shall actively seek to obtain Federal funds to which it is entitled under the Federal Superfund Act and may take actions necessary to enter into contractual or cooperative agreements under section 104(c)(3) and (d)(l) of the Federal Superfund Act (42 U.S.C. §9604(c)(3) and (d)(a)).

Section 706. Covenants not to sue.

(a) General rule. To encourage the voluntary and timely cooperation of responsible parties in the cleanup of certain hazardous waste sites, the department may provide a responsible person with a covenant not to sue concerning liability to the Commonwealth under this act, including future liability, resulting from a release or threatened release of a hazardous substance addressed by a remedial action where:

(1) The covenant not to sue is in the public interest.

(2) The covenant not to sue would expedite response action.

(3) The responsible person is in full compliance with any consent decree under the Solid Waste Management Act or this act for response to the release or threatened release concerned.

(4) The response action has been approved by the department.

(b) Special covenants. The department may provide a person with a covenant not to sue with respect to future liability to the Commonwealth under this act for a future release or threatened release of hazardous substances from such site for the portion of remedial action which involves the treatment of hazardous substances so as to destroy, eliminate or permanently immobilize the hazardous constituents of such substances, so that, in the judgment of the department, the substances no longer present a current or currently foreseeable future significant risk to public health and welfare or the environment, no by-product of the treatment or destruction process presents any significant hazard to public health and welfare or the environment; and a person provided such covenant not to sue shall not be liable to the Commonwealth under this act with respect to such a release or threatened release at a future time.

(c) Effective date of covenants not to sue. A covenant not to sue concerning future liability to the Commonwealth shall not take effect until the department certifies that remedial action has been completed in accordance with the requirements of this act and any consent decree entered into between the department and the responsible person at the site that is the subject of such covenant.

(d) Factors. In assessing the appropriateness of a covenant not to sue under subsection (a) and any condition to be included in a covenant not to sue under subsection (a) or (b), the department shall consider whether the covenant or condition is in the public interest on the basis of such factors as the following:

(1) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the site concerned.

(2) The nature of the risks remaining at the site.

(3) The extent to which performance standards are included in the

order or decree.

(4) The extent to which the technology used in the response action is demonstrated to be effective.

(5) Whether the fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the site.

(6) Whether the remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.

(e) Satisfactory performance. Any covenant not to sue under this section shall be subject to the satisfactory performance by such party of its obligations under the agreement concerned.

(f) Additional condition for future liability.

(1) A covenant not to sue concerning future liability to the Commonwealth may include an exception to the covenant that allows the department to sue such person concerning future liability resulting from the re:ease or threatened release that is the subject of the covenant where such liability arises out of conditions which are unknown at the time the department certifies under subsection (c) that remedial action has been completed at the site concerned.

(2) The department may include any provisions allowing future enforcement action under section 501 that the department determines to be necessary and appropriate to assure compliance with the terms and conditions of the agreement containing the covenant.

Section 707. De minimis settlements.

(a) Expedited final settlement. Whenever practicable and in the public interest, the department may as promptly as possible reach a final settlement with a responsible person in an administrative or civil action if such settlement involves only a minor portion of the response costs at the site concerned and if either of the following conditions are met:

(1) Both of the following are minimal in comparison to other hazardous substances contributed at the site by all known and financially viable responsible persons:

(i) Thee amount of the hazardous substances contributed by that person to the site.

(ii) The toxic or other hazardous effects of the substances contributed by that person to the site.

(2) The responsible person:

(i) is the owner of the real property on or in which the site is located;

(ii) did not conduct or permit the generation, transportation, storage, treatment or disposal of any hazardous substance at the site; and

(iii) did not contribute to the release or threatened release of a hazardous substance at the site through any act or omission.

(3) Paragraph (2) shall not apply if the responsible person acquired the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment or disposal of any hazardous substance.

(b) Covenant not to sue. The department may provide a covenant not to sue pursuant to the provisions of section 706 with respect to future liability at the site concerned to any person who has entered into a de minimis settlement under this section.

(c) Responsibility. Any person who reaches an agreement pursuant to this section shall be responsible only for that person's proportional share of response costs and damages assessed under section 702.

Section 708. Allocation.

(a) Mediation. Whenever the department believes that more than one person may be responsible under section 701 for a release or threatened release, the department shall prepare a nonbinding preliminary allocation of proportionate responsibility among all known responsible persons. The department shall give written notice of such preliminary allocation to all known responsible persons and shall invite such persons to participate in a dispute resolution procedure selected by the department which may include mediation, arbitration, or similar procedures to determine each person's proportionate share of the response costs and the appropriate response action to be taken. Within 120 days of the notice, the department and participating persons shall reach an agreement, which may include less than all issues and shall include a schedule of payment for the proportionate share contained in the agreement. If no agreement has been reached within 120 days, the dispute resolution process shall terminate unless extended by mutual agreement of the department and the participating persons. The department's nonbinding allocation shall not be deemed to be a final action subject to review under 2 Pa.C.S. (relating to administrative law and procedure) or the act of July 13, 1988 (P.L.530, No.94), known as the Environmental Hearing Board Act, nor shall it confer a right or duty upon the department or any person.

(b) Moratorium. During the mediation process as provided for in this section, the department shall not commence an action to recover response costs from any participating person, nor issue an

enforcement order requiring a participating person to undertake response actions, nor commence any response actions at the site, other than an interim or emergency response. Nothing in this section shall be construed to limit the department's authority to conduct investigations or to undertake any actions authorized by this act against parties not participating in the mediation process. For the purpose of this subsection, "investigations" shall include those activities necessary to gather information and data to characterize the site, define the types and extent of contamination and evaluate alternatives for cleanup prior to the selection of a remediation option.

(c) Effect of dispute resolution. Any agreement reached under the dispute resolution procedures provided in subsection (a) shall become a legally binding agreement upon all parties thereto. If some or all participating parties fail to reach agreement with the department, neither the department's nonbinding preliminary allocation nor any proposed agreement, nor the fact of any person's participating in dispute resolution shall be construed as an admission of fact or law nor be admissible in any administrative or judicial proceeding. The failure to agree shall not affect the rights of any person to pursue other administrative or judicial actions, including an action to recover contribution from any other person.

(d) Limit on contribution. A person who has reached a settlement with the department pursuant to this section shall not be subject to claims for contribution regarding matters addressed in the settlement.

Section 709. Voluntary acceptance of responsibility.

Any person who voluntarily accepts responsibility under section 701 and agrees to pay his or her proportionate share, as determined under section 708, of the response costs and damages listed in section 702, as ultimately determined, plus an appropriate premium in an amount up to 50% of that person's proportionate share, but not to exceed 15% of the total costs of response and damages, shall not be subject to claims by the department, or by any other responsible person, in excess of that amount.

[Table of Contents] [Hazardous Sites Cleanup Homepage]

CHAPTER 9
FUND

Section 901. Fund.

(a) Establishment. The Hazardous Sites Cleanup Fund, as established in section 602.3 of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971, shall be a special fund administered by the department and shall not be subject to the act of July 13, 1987 (P.L. 340, No. 64), entitled "An act providing for the establishment, funding and operation of a special restricted receipt account within the General Fund to support the establishment and operation of a Statewide judicial computer system; providing for annual appropriations from the restricted funds; and providing for the payment of a portion of all fines, fees and costs collected by the judiciary into the restricted receipt account."

(b) Appropriation. Money placed in the fund is appropriated to the department for the purposes set forth in this section. The department shall annually submit to the Governor for approval estimates of

amounts to be expended under this act.

(c) Funds. Money from the following sources shall be deposited in the fund:

(1) Proceeds from hazardous waste transportation and management fees imposed by section 903, including interest and penalties.

(2) Money recovered by the Commonwealth under sections 507 and 1101.

(3) Interest attributable to investment of money deposited in the fund.

(4) Money appropriated by the General Assembly for implementation of this act.

(5) Money recovered by the Commonwealth pursuant to a cost recovery action under the Federal Superfund Act.

(6) Money received from the Federal Government under the Federal Superfund Act.

(7) All revenues collected pursuant to section 602.3 the Tax Reform Code of 1971.

(8) All fees collected under section 903.

(9) Funds available from appropriations for the same and similar purposes.

Section 902. Expenditures from fund.

(a) Purposes. The department shall expend money in the fund for purposes including, but not limited to:

(1) Preparation by the department or its agents for taking response actions, which include emergency responses, investigations, testing activities, contracting, excavation, administrative costs and enforcement efforts relating to the release or threatened release of hazardous substances or contaminants.

(2) Response actions taken or authorized by the department, including related enforcement and compliance efforts and the payment of the State share of the cost of remedial responses which may be carried out under an agreement or contract with the Federal Government pursuant to the Federal Superfund Act.

(3) Participation in response activities to the extent the department, in its discretion, finds necessary or appropriate to carry out the purposes of this act. The department may also use the fund to promote voluntary cleanups by participating in mixed funding settlements with potentially responsible persons.

(4) Emergency responses, including response to spills and other

uncontrolled releases and their cleanup.

(5) Reimbursement to a private party for expenditures made from the effective date of this act to provide alternative water supplies deemed necessary by the department to protect the public health

from contamination resulting from the release of a hazardous substance or contaminant.

(6) Replacement of public or private water supplies deemed necessary by the department to protect the public health from contamination resulting from the release of a hazardous substance or contaminant.

(7) Rehabilitation, restoration or acquisition of natural resources to remedy injuries or losses to natural resources resulting from the release of a hazardous substance or contaminant.

(8) Grants by the department to demonstrate alternatives to land disposal of hazardous waste, including reduction, separation, pretreatment, minimization, processing and resource recovery, and for education of persons involved in regulating and handling hazardous substances.

(9) Intervention and environmental mediation to facilitate cleanup of hazardous sites.

(10) State matching funds required under the Federal Superfund Act for the response at a site on the National Priority List established under the Federal Superfund Act.

(11) Studies of potential or actual human health effects from the release or potential release of hazardous substances at individual sites, including, but not limited to, studies of potential pathways of human exposure, the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected health effects associated with identified hazardous substances and available recommended exposure or tolerance limits for the hazardous substances, the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure and epidemiological and clinical studies.

(12) Grants provided to municipalities under section 510.

(13) Reimbursement of expenses under section 305(f).

(b) Grants for recycling. The department shall expend $2,000,000, or as much thereof as may be necessary, annually from the fund for the purpose of providing grants to persons who purchase or lease recycling equipment to be used exclusively within this Commonwealth. The amount of each grant shall be 25% of the installed cost of the recycling equipment. Application for a 8rant must be made to the department by April 15 of each year. The application shall include a description of each item of recycling equipment purchased or leased, the date of purchase or lease, the installed cost of the recycling equipment, a statement of where the recycling equipment is to be used and other information as the department may require. The department shall review all grant applications received to determine whether the expenditures meet the requirements of this subsection and shall advise the grant applicant of the grant amount for which said person is eligible. The grant allowed by this subsection shall apply only to recycling equipment that is installed and in operation prior to April 15, 1993. This subsection shall expire December 31, 1993.

(c) Annual report. Beginning October 1, 1989, and annually thereafter, the secretary shall transmit to the General Assembly a report concerning activities and expenditures made pursuant to this chapter for the preceding State fiscal year. Included in this report shall be information concerning all revenues and receipts deposited into the Hazardous Site Cleanup Fund, all expenditures, including, but not limited to, expenditures for personnel, operating expenses, the purchase of fixed assets, grants and subsidies, other major objects of expenditures where appropriate and information detailing the

department's efforts to obtain contributions for response actions from potentially responsible parties and a listing of sites where mixed funding as described in subsection (a)(3) was utilized for cleanup. The secretary shall also supply information on both authorized and filled complement and information concerning program activities, including, but not limited to:

(1) The number of response actions initiated and completed, and the costs incurred, in the aggregate and for each action.

(2) The number of public or private water supply replacements, and the costs incurred.

(3) Expenditures for the rehabilitation, restoration or acquisition of natural resources.

(4) Expenditures for intervention and environmental mediation.

(5) The number of Federal Superfund sites in which the Commonwealth participates in response activities, and the State matching costs incurred.

(6) The number of health effect studies undertaken, and the costs incurred.

(7) The number of grants provided to municipalities under section 510, and the amounts granted.

(8) The number of reimbursements of expenses under section 505(f), and the amounts reimbursed.

(d) Health study report. Upon completion of health effect studies performed pursuant to subsection (a)(II), copies of the findings and any recommendations of such studies shall be transmitted to the General Assembly and the governing bodies of the affected communities. Except for personal health records of individuals, such studies shall be public information, and the department shall provide copies to any person upon request.

(e) Nonliability of other funds. Whenever the department undertakes to use the fund for a response action, whether on its own initiative or pursuant to a mixed funding settlement, no such undertaking shall constitute a liability of the General Fund or of any other special funds or accounts whether administered by the department or otherwise.

Section 903. Hazardous waste transportation and management fees.

(a) Assessment. Fees shall be assessed for the transportation and management of hazardous waste in accordance with this section.

(b) Transportation fee. A transporter of hazardous waste shall be assessed a transportation fee for hazardous waste transported within this Commonwealth, whether originating in-State or out-of-State. For purposes of computing the fee, each shipment requiring the use of a hazardous waste manifest to or from a Pennsylvania hazardous waste facility or between two Pennsylvania hazardous waste facilities shall be considered a discrete transportation activity and shall be subject to the fee.

(c) Management fee.

(1) The operator of a hazardous waste management facility in Pennsylvania shall be assessed a management fee for hazardous waste stored, treated or disposed of at a facility. No management fee

shall be charged for hazardous wastes which are reused or recycled in accordance with department regulations. For purposes of this paragraph, incineration shall be considered a form of treatment rather than disposal.

(2) A generator who disposes of hazardous waste at the site at which it

was generated or at a captive disposal facility in Pennsylvania shall be assessed a fee for all hazardous waste disposed.

(3) No management fee shall be assessed for hazardous waste storage or treatment at the site at which it was generated or at a captive facility in Pennsylvania.

(4) No management fee shall be charged for waste stored prior to recycling at a legitimate commercial recycling facility.

(d) Rates. The following rates shall apply unless the secretary adjusts the fee schedule in accordance with subsection (8):

(1) Transportation of hazardous waste (except as provided in paragraph (2))- $3 per ton.

(2) Transportation of hazardous waste to or from a recycler- $1.50 per ton.

(3) Storage of hazardous waste at a commercial hazardous waste management facility - $2 per ton.

(4) Treatment or incineration of hazardous waste at a commercial hazardous waste management facility - $5 per ton.

(5) Disposal of hazardous waste at a commercial disposal facility- $12 per ton.

(6) Disposal of hazardous waste on the site at which it was generated or at a captive facility - $8 per ton.

(e) Conversion. In the event that any hazardous waste is measured in units other than tonnage, the fee shall be levied on a conversion to tonnage determined by the department.

(f) Cumulative nature.

(1) The transportation and management fees are cumulative.

(2) When several management activities occur at the same facility, the operator shall be assessed only one management fee for each quantity of waste, which shall be the highest rate of the management activities involved.

(3) However, when treatment or incineration prior to disposal results in a reduction in the tonnage of waste requiring disposal, the operator shall be assessed the disposal management fee for the waste requiring disposal after treatment or incineration and the treatment management fee for the rest of the waste which underwent treatment.

(4) For the purposes of subsection (d)(2), the term "recycler" shall mean any verified recycling process

which uses, reuses or reclaims hazardous waste or which generates hazardous waste as a by-product of the recycling process.

(g) Adjustments. The secretary may, by regulation, adjust the rates as appropriate in accordance with the following formula:

(1) The fees shall be calculated and rates adjusted to collect projected annual revenues of $5,000,000 plus the reasonably projected administrative cost of collecting the fee.

(2) Management fee rates shall encourage preferred hazardous waste management practices by establishing four fee categories with graduated fee schedules. The fee categories from lowest rate per ton to highest rate per ton shall be:

(i) Hazardous waste stored at a hazardous waste management facility.

(ii) Hazardous waste treated or incinerated at a hazardous waste management facility.

(iii) Hazardous waste disposed of at a hazardous waste disposal facility at the site where the waste was generated or at a captive disposal facility.

(iv) Hazardous waste disposed of at a commercial hazardous waste disposal facility.

(3) No fee shall be charged for hazardous wastes which are recycled or reused in accordance with the department's regulations.

(4) The department may exclude small quantity generators from the fees.

(h) Annual disposal report.

(1) By March 1, 1989, and by March 1 of each year thereafter, a person who submitted for offsite disposal or who disposed of onsite more than 500 pounds of hazardous waste in this Commonwealth during the preceding calendar year shall report to the department the total amount of hazardous waste which that person has submitted for disposal or disposed of in this Commonwealth during the preceding calendar year. This subsection does not apply to a person who is already providing this information to the department.

(2) The total amount of hazardous waste reported under this subsection shall be the total weight, measured in tons, of all components of the waste in the form in which the waste existed at the time of submission for disposal or at the time of disposal.

(3) A person who fails to file the report required by this subsection shall be liable for a civil penalty not to exceed $500 for each day the violation continues. A person who knowingly fails to file the report commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than $25,000 or to imprisonment for not more than one year, or both.

(i) Waste from cleanup. The fees assessed pursuant to this section for the transportation, management or authorized disposal of hazardous waste shall not apply to hazardous waste that is derived from the cleanup of a site pursuant to this act, the Federal Superfund Act, the Solid Waste Disposal Act (Public Law 89-272, 42 U.S.C. §6901 et seq.) or the Solid Waste Management Act.

Section 904. Loan fund.

(a) Establishment. There is established a separate account in the State Treasury to be known as the Hazardous Sites Loan Fund, which shall be a special fund administered by the Department of Commerce.

(b) Purpose. In the case of a release or threatened release of hazardous substances from a site for which the department has identified no more than two persons as potentially liable under section 702, such persons may be eligible, upon written application to the Department of Commerce, to receive long-term, low-interest loans in an amount sufficient to fund all or a portion of the response costs at the site. The Department of Commerce shall promulgate regulations establishing eligibility criteria for the loans. As part of this effort, the Department of Commerce shall include a determination of the availability of other sources of funds at reasonable rates to finance all or a portion of the response action and the need for Department of Commerce assistance to finance the response action.

(c) Funds. In addition to any funds as may be appropriated by the General Assembly, at least 2% of the funds raised annually by the assessments imposed by section 903 shall be deposited into the loan fund.

(d) Annual report. Beginning October 1, 1989, and annually thereafter, the Department of Commerce shall transmit to the General Assembly a report concerning activities and expenditures made pursuant to this section for the preceding State fiscal year. Included in this report shall be information concerning ail revenues and receipts deposited into the loan fund and all loans extended to eligible applicants.

(e) Sunset. The loan fund shall cease to exist on June 30, 1992, unless it is reestablished by action of the General Assembly. Any funds remaining in the loan fund on June 30, 1992, shall lapse to the Hazardous Sites Cleanup Fund. Money received by the Department of Commerce as repayment of outstanding loans after June 30, 1992, shall lapse to the Hazardous Sites Cleanup Fund.

[Table of Contents] [Hazardous Sites Cleanup Homepage]

CHAPTER 11
ENFORCEMENT AND REMEDIES

Section 1101. Public nuisances.

A release of a hazardous substance or a violation of any provision, regulation, order or response approved by the department under this act shall constitute a public nuisance. Any person allowing such a release or committing such a violation shall be liable for the response costs caused by the release or the violation. The board and any court of competent jurisdiction is hereby given jurisdiction over actions to recover the response costs.

Section 1102. Enforcement orders.

(a) General rule. The department shall issue orders to persons as it deems necessary to aid in the

enforcement of the provisions of this act. Orders shall include, but shall not be limited to, orders requiring response actions, studies and access and orders modifying, suspending or ceasing a response action by a responsible person even though the response may have been initially approved by the department. An order issued under this section shall take effect upon notice unless the order specifies otherwise. The power of the department to issue an order under this section is in addition to any other remedy which may be afforded to the department under this act or any other statute.

(b) Types. The department, when it deems necessary for the response to a release or for the protection of public health, safety or welfare or the environment, shall order, orally or in writing, a person to immediately initiate, continue, suspend or modify a response action; conduct investigations; or provide access to property or information. The order shall be effective upon issuance and may only be superseded by further department action or, after an appeal has been perfected, by the board after notice and hearing. The order may require whatever alternative response actions are necessary for the abatement of the release. Within two business days after the issuance of the oral order, the department shall issue a written order reciting and modifying, where appropriate, the terms and conditions contained in the oral order.

(c) Compliance. It shall be the duty of any person to proceed diligently to comply with an order issued under this section. When the person fails to proceed diligently or fails to comply with the order within the time specified, the person shall be guilty of contempt and shall be punished by the court in an appropriate manner. For this purpose, application may be made by the department to the Commonwealth Court.

(d) Appeal. An order issued under this section may be appealed to the board under the act of July 13, 1988 (P.L. 530, No. 94), known as the Environmental Hearing Board Act. An appeal to the board shall not act as a supersedeas.

Section 1103. Restraining violations.

(a) Department. In addition to any other remedy provided in this act, the department may institute a suit in equity in the name of the Commonwealth, where a violation of law or nuisance exists, for an injunction to restrain a violation of this act or the regulations, standards or orders promulgated or issued hereunder and to restrain the maintenance or threat of a public nuisance. In a proceeding under this subsection, the court shall, upon motion of the Commonwealth, issue a prohibitory or mandatory preliminary injunction when 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 the proceedings. In addition to an injunction, the court may levy civil penalties under section 1104.

(b) Local government. In addition to any other remedies provided for in this act, upon relation of a district attorney of an affected county or upon relation of the solicitor of an affected municipality, 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 regulations promulgated under it or to restrain a public nuisance or detriment to public health, safety or welfare or the environment.

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

(d) Jurisdiction. Actions instituted under this section may be filed in the appropriate court of common pleas or in the Commonwealth Court. Actions may also be filed in a Federal court or administrative tribunal having jurisdiction over the matter.

Section 1104. Civil penalties.

(a) General rule. In addition to proceeding with any other remedy available at law or in equity for a violation of a provision of this act, a regulation or order of the department or a term or condition of a response approved by the department, the department may assess a civil penalty upon a person for the violation. 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; 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; and other relevant factors.

(b) Procedure. When the department proposes to assess a civil penalty, it shall inform the person of the proposed amount of the penalty. The person charged with the penalty shall then have 30 days to pay the proposed penalty in full. When the person wishes to contest either the amount of the penalty or the fact of the violation, the person must, within the 30-day period, file an appeal of the action with the board. Failure to appeal 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 under this section is $25,000 per offense. Each violation for each separate day and each violation of a provision of this act, a regulation under this act, an order of the department or any term or condition of an approved response shall constitute a separate and distinct offense under this section.

(d) Minimum. A person who fails to comply with an order issued under section 503 shall be subject to a minimum penalty of $1,000 for each day the order is violated.

(e) Additional penalties. The Environmental Quality Board shall have the authority to establish, by regulation, specific major violations and additional mandatory minimum civil penalties.

Section 1105. Criminal penalties.

(a) Falsity.

(1) A person may not knowingly make a false statement or representation in an application, record, report, plan, proposal or other document which:

(i) relates to the actual or threatened release of a hazardous substance or to a response to the actual or threatened release of a hazardous substance; or

(ii) is filed, submitted, maintained or used for purposes of compliance with this act.

(2) A person who violates paragraph (1) commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than $1,000 and not more than $25,000 per day for each violation or to imprisonment for a period of not more than one year, or both. (b) Altering

response action. A person who, without written authorization from the department, alters or modifies a response action approved or undertaken by the department commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than $100 and not more than $1,000 for each day on which the offense occurs or, in default of payment of the fine, to imprisonment for not more than 90 days.

(c) Obstruction. A person who refuses, hinders, obstructs, delays or threatens any agent or employee of the department in the course of performance of a duty under this act, including, but not limited to, entry and inspection under any circumstances, commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than $100 and not more than $1,000 for each day on which the offense occurs or, in default of payment of the fine, to imprisonment for not more than 90 days.

(d) Intentional or negligent. A person who intentionally or negligently commits an offense under subsection (b) or (c) commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than $1,000 and not more than $25,000 for each day on which the offense occurred or to imprisonment for not more than one year, or both.

Section 1106. Search warrants.

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

(1) The search, seizure, 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 or place, has been refused possession of any book, record or physical evidence, or has been prevented from conducting tests or taking samples.

(4) The employee has reason to believe that a release or a threat of a release of a hazardous substance or contaminant exists on the property or on a nearby property and that testing and sampling are needed for determining the nature or extent of the release.

(5) The employee has reason to believe that there are containers or impoundments on the property which are typical of those used for containing or impounding hazardous substances and that testing, sampling or the review of records is necessary to determine whether hazardous substances are present.

Section 1107. Existing and cumulative rights and remedies.

Nothing in this act shall be construed as estopping the Commonwealth, a district attorney or solicitor or a municipality from proceeding in courts of law or equity to abate releases forbidden under this act, or to abate nuisances under existing law. It is declared to be the purpose of this act to provide additional and cumulative remedies to control the release of hazardous substances within this Commonwealth. Nothing contained in this act shall abridge or alter rights of action or remedies at law

or in equity. No provision of this act, the granting of approval under this act, nor an act done by virtue of this act shall be construed as estopping the Commonwealth, persons or municipalities in the exercise of their rights at law or in equity; from proceeding in courts of law or equity to suppress nuisances or to abate a pollution; or from enforcing common law or statutory rights. No courts of this Commonwealth having jurisdiction to abate public or private nuisances shall be deprived of jurisdiction in an action to abate any private or public nuisance because the nuisance constitutes pollution of air or water or soil.

Section 1108. Unlawful conduct.

It shall be unlawful for a person to do any of the following:

(1) Cause or allow a release of a hazardous substance.

(2) Alter or modify any response action which has been approved by the department unless authorized in writing by the department.

(3) Refuse, hinder, obstruct, delay or threaten an agent or employee of the department in the course of performance of a duty under this act, including, but not limited to, entry and inspection under any circumstances.

(4) Cause or assist in the violation of any provision of this act, a regulation of the department or an order of the department.

(5) Fail to make a timely payment of the hazardous waste transportation and management fee.

(6) Hinder, obstruct, prevent or interfere with host municipalities or their personnel in the performance of any duty related to the collection of the hazardous waste transportation and management fees.

(7) Cause or allow release of a contaminant in a manner that creates a public nuisance.

Section 1109. Presumption of law for civil and administrative proceedings.

It shall be presumed as a rebuttable presumption of law that a person who causes or allows the release of a hazardous substance shall be liable, without proof of fault, negligence, or causation, for all damages, contamination or pollution within 2,500 feet of the perimeter of the area where the release has occurred. This presumption may be overcome by clear and convincing evidence that the person so charged did not contribute to the damage, contamination or pollution.

Section 1110. Collection of fines and penalties.

Fines and penalties under this act shall be collectible in the manner provided by section 509. Upon collection they shall be paid into the fund.

Section 1111. Right of citizen to intervene in proceedings.

A 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 proceeding brought under this act.

Section 1112. Whistleblower provisions.

(a) Adverse action prohibited. No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation or terms, conditions, location or privileges of employment because the employee makes or is about to make a good faith report, verbally or in writing, to the employer or appropriate authority of an instance of 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.1 559, 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 1113. Notice of proposed settlement.

When a settlement is proposed in any proceeding brought under this act, notice of the proposed settlement shall be sent to all known responsible persons and published in the Pennsylvania Bulletin and in a newspaper of general circulation in the area of the release. The notice shall include the terms of the settlement and the manner of submitting written comments during a 60-day public comment period. The settlement shall become final upon the filing of the department's response to the significant written comments. The notice, the written comments and the department's response shall constitute the written record upon which the settlement will be reviewed. A person adversely affected by the settlement may file an appeal to the board. The settlement shall be upheld unless it is found to be arbitrary and capricious on the basis of the administrative record.

Section 1114. Limitation on action.

Notwithstanding the provisions of any other statute to the contrary, actions for civil or criminal penalties under this act or civil actions for releases of hazardous substances may be commenced at any time within a period of 20 years from the date the unlawful conduct or release is discovered. Actions to recover response costs may be commenced within six years of the date those costs are incurred. The initial action to recover response costs shall be controlling as to liability in all subsequent actions.

Section 1115. Citizen suits.

(a) General rule. A person who has experienced or is threatened with personal injury or property damage as a result of a release of a hazardous substance may file a civil action against any person to prevent or abate a violation of this act or of any order, regulation, standard or approval issued under this act.

(b) Jurisdiction. The courts of common pleas shall have jurisdiction over any actions authorized under this section. No action may be commenced under this section prior to 60 days after the plaintiff has given notice to the department, to the host municipality and to the alleged violator of this act, or of any regulations or orders of the department under this act; nor may such action be commenced when the department has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a state to require compliance with the statute, permit, standard, regulation, condition, requirement, prohibition or order. In any such civil action commenced by the department, any person may intervene as a plaintiff as a matter of right. The court may grant any equitable relief; may impose a civil penalty under section 1104; and may award litigation costs, including reasonable attorney and witness fees, to the prevailing or substantially prevailing party whenever the court determines such an award is appropriate.

(c) Departmental intervention. The department may intervene as a matter of right in any action authorized under this section.

[Table of Contents] [Hazardous Sites Cleanup Homepage]

CHAPTER 13
MISCELLANEOUS

Section 1301. Relation to other laws.

(a) Application. -Notwithstanding the provisions of subsection 505(c) and section 507, an identified and responsible owner or operator of a site with a release or threatened release of a hazardous substance or a contaminant shall not be subject to enforcement orders or the cost recovery provisions of this act, until the department has instituted administrative or judicia: enforcement action against the owner or operator under other applicable environmental laws and the owner or operator has failed to comply with or is financially unable to comply with such administrative or judicial enforcement action. In the event of noncompliance with such administrative or judicial enforcement action, the provisions of this act may be applied by the department unless the owner or operator has obtained a supersedeas from the board or the court conducting any such judicial enforcement action. For the purposes of this subsection, such a supersedeas shall be based on whether there is a release or threatened release at the site which constitutes a danger to the public health and safety or the environment. An appeal of the department's enforcement action shall not serve as a bar that prevents the department from applying the provisions of this act to the owner or operator in the absence of the issuance of a supersedeas.

(b) Department action. The department may not initiate enforcement orders nor apply the cost recovery provisions of this act against a responsible person for the release or threatened release of a hazardous substance or a contaminant at a site that is the subject of subsection (a), where the owner or operator of the site is financially able to comply with an administrative or judicial enforcement action instituted under subsection (a), and the owner or operator has undertaken appropriate action to abate the release or threatened release of the hazardous substance or contaminant, as required by the administrative or judicial enforcement action, or the owner or operator has obtained a supersedeas from the board or the court conducting any such judicial enforcement action. For the purposes of this subsection, such a supersedeas shall be based on whether there is a release or threatened release at the site which constitutes a danger to the public health and safety or the environment. An appeal of the department's enforcement action shall not serve as a bar that prevents the department from applying the provisions of this act to the responsible person in the absence of the issuance of a supersedeas to the owner or operator.

(c) Authority. Nothing in this section shall affect the authority of the department or the Governor to implement an interim response or an emergency response.

Section 1302. Studies.

The Department of Commerce shall within one year of the effective date of this act complete a study to investigate the use of the Pennsylvania Industrial Development Authority, the Pennsylvania Economic Revitalization Fund and other economic development grants and loans to encourage the

reuse, recycling, recovery, minimization and treatment which results in detoxification of hazardous waste.

Section 1303. Balance in fund/deposit of proceeds.

(a) Determination. By October 1, 1992, and every October 1 thereafter, the Secretary of the Budget shall determine the prior year's expenditures and encumbrances, including site-specific encumbrances where fully executed contracts are in place, for the fiscal year. By October 1, 1992, and every October 1 thereafter, the Secretary of the Budget shall also determine the available balance in the fund at the close of the previous Fiscal year.

(b) Reduction in tax. When the Secretary of the Budget finds that the available balance in the fund exceeds the prior year's expenditures and encumbrances, including site-specific encumbrances where fully executed contracts are in place by two times the total of those two, the tax imposed under section 602 of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971, shall be reduced by one-half mil, provided that no additional reduction may occur prior to an intervening increase under subsection (c).

(c) Increase in tax. When the Secretary of the Budget in any year following a year where the tax has been reduced by one-half mill finds that the available balance in the fund is less than one times the prior year's expenditures and encumbrances, including site-specific encumbrances where fully executed contracts are in place, the tax imposed under section 602 of the Tax Reform Code of 1971, shall be increased by one-half mill, provided that no additional increase may occur prior to an intervening reduction under subsection (b).

Section 1304. Repeals.

As much of subsection (a) as reads: "...through calendar year 1991 and fiscal years beginning in 1991 and at the rate of nine mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1992 and fiscal years beginning in 1992..." (2 occasions) and as much of subsections (b)(l) and (e) as reads: "...through calendar year 1991 and fiscal years beginning in 1991 and at the rate of nine mills for calendar year 1992 and fiscal years beginning in 1992..." of section 602 of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971, are repealed.

Section 1305. Effective date.

This act shall take effect in 60 days.

APPROVED-The 18th day of October, A. D. 1988.

[Table of Contents] [Hazardous Sites Cleanup Homepage]

Pennsylvania Department of Environmental Protection
Land Recycling and Cleanup Program
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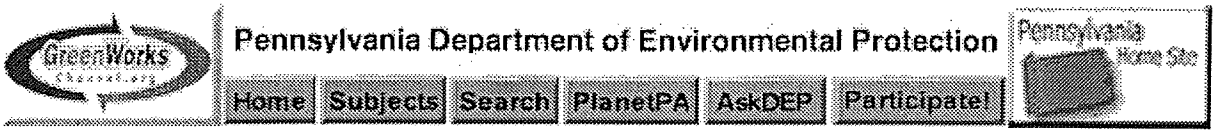

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"SOLID WASTE MANAGEMENT ACT"
Act of 1980, P.L. 380, No. 97

"SOLID WASTE MANAGEMENT ACT"
Act of 1980, P.L. 380, No. 97

AN ACT

Providing for the planning and regulation of solid waste storage, collection, transportation, processing, treatment, and disposal; requiring municipalities to submit plans for municipal waste management systems in their jurisdictions; authorizing grants to municipalities; providing regulation of the management of municipal, residual and hazardous waste; requiring permits for operating hazardous waste and solid waste storage, processing, treatment, and disposal facilities; and licenses for transportation of hazardous waste; imposing duties on persons and municipalities; granting powers to municipalities; authorizing the Environmental Quality Board and the Department of Environmental Resources to adopt rules, regulations, standards and procedures; granting powers to and imposing duties upon county health departments; providing remedies; prescribing penalties; and establishing a fund.
Compiler's Note: The act of Feb. 9, 1988, P.L.31, No.12 repealed this act insofar as inconsistent with that act.

TABLE OF CONTENTS

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

ARTICLE I
GENERAL PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the "Solid Waste Management Act."

Section 102. Legislative finding; declaration of policy.

The Legislature hereby determines, declares and finds that, since improper and inadequate solid waste practices create public health hazards, environmental pollution, and economic loss, and cause irreparable harm to the public health, safety and welfare, 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 solid waste management;

(2) encourage the development of resource recovery as a means of managing solid waste, conserving resources, and supplying energy;

(3) require permits for the operation of municipal and residual waste processing and disposal systems, licenses for the transportation of hazardous waste and permits for hazardous waste storage, treatment, and disposal;

(4) protect the public health, safety and welfare from the short and long term dangers of transportation, processing, treatment, storage, and disposal of all wastes;

(5) provide a flexible and effective means to implement and enforce the provisions of this act;

(6) establish the Pennsylvania Hazardous Waste Facilities Plan, which plan shall address the present and future needs for the treatment and disposal of hazardous waste in this Commonwealth;

(7) develop an inventory of the nature and quantity of hazardous waste generated within this Commonwealth or disposed of within this Commonwealth, wherever generated;

(8) project the nature and quantity of hazardous waste that will be generated within this Commonwealth in the next 20 years or will be disposed of within this Commonwealth, wherever generated;

(9) provide a mechanism to establish hazardous waste facility sites;

(10) implement Article I, section 27 of the Pennsylvania Constitution; and

(11) utilize, wherever feasible, the capabilities of private enterprise in accomplishing the desired objectives of an effective, comprehensive solid waste management program.

Section 103. Definitions.

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

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

"Agricultural waste." Poultry and livestock manure, or residual materials in liquid or solid form generated in the production and marketing of poultry, livestock, fur bearing animals, and their products, provided that such agricultural

waste is not hazardous. The term includes the residual materials generated in producing, harvesting, and marketing of all agronomic, horticultural, aquacultural and silvicultural crops or commodities grown on what are usually recognized and accepted as farms, forests, or other agricultural lands. The term also includes materials in liquid or solid form generated in the production and marketing of fish or fish hatcheries. (Def. amended July 11, 1990, P.L.450, No.109)

"Aquaculture." The practice of raising plants or animals, such as fish or shellfish, in manmade or natural bodies of water. (Def. added July 11, 1990, P.L.450, No.109)

"Beneficial use." Use or reuse of residual waste or residual material derived from residual waste for commercial, industrial or governmental purposes, where the use does not harm or threaten public health, safety, welfare or the environment, or the use or reuse of processed municipal waste for any purpose, where the use does not harm or threaten public health, safety, welfare or the environment. (Def. added July 11, 1989, P.L.331, No.55)

"Captive facilities." Facilities which are located upon lands owned by a generator of hazardous waste and which are operated to provide for the treatment or disposal solely of such generator's hazardous waste.

"Coal ash." Fly ash, bottom ash or boiler slag resulting from the combustion of coal, that is or has been beneficially used, reused or reclaimed for a commercial, industrial or governmental purpose. The term includes such materials that are stored, processed, transported or sold for beneficial use, reuse or reclamation. (Def. added Dec. 12, 1986, P.L.1556, No.168)

"Commercial establishment." Any establishment engaged in nonmanufacturing or nonprocessing business, including, but not limited to, stores, markets, office buildings, restaurants, shopping centers and theaters.

"Commonwealth." The Commonwealth of Pennsylvania.

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

"Disposal." The incineration, 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 the Commonwealth.

"Drill cuttings." Rock cuttings and related mineral residues created during the drilling of wells pursuant to the act of December 19, 1984 (P.L.1140, No.223), known as the "Oil and Gas Act," provided such materials are disposed of at the well site and pursuant to section 206 of the "Oil and Gas Act." (Def. added Dec. 12, 1986, P.L.1556, No.168)

"Facility." All land, structures and other appurtenances or improvements where municipal or residual waste disposal or processing is permitted or takes place, or where hazardous waste is treated, stored or disposed. (Def. added July 11, 1990, P.L.450, No.109)

"Food processing waste." Residual materials in liquid or solid form generated in the slaughtering of poultry and livestock, or in processing and converting fish, seafood, milk, meat, and eggs to food products; it also means residual materials generated in the processing, converting, or

manufacturing of fruits, vegetables, crops and other commodities into marketable food items.

"Food processing wastes used for agricultural purposes." The use of food processing wastes in normal farming operations as defined in this section.

"Hazardous waste." Any garbage, refuse, sludge from an industrial or other waste water treatment plant, sludge from a water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid or contained gaseous material resulting from municipal, commercial, industrial, institutional, mining, or agricultural operations, and from community activities, or any combination of the above, (but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under § 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880) or source, special nuclear, or by-product material as defined by the U.S. Atomic Energy Act of 1954, as amended (68 Stat. 923)), which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

(1) cause or significantly contribute to an increase in mortality or an increase in morbidity in either an individual or the total population; or

(2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

The term "hazardous waste" 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." "Hazardous waste" 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."

"Industrial establishment." Any establishment engaged in manufacturing or processing, including, but not limited to factories, foundries, mills, processing plants, refineries, mines and slaughterhouses.

"Institutional establishment." Any establishment engaged in service, including, but not limited to, hospitals, nursing homes, orphanages, schools and universities.

"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.

"Manifest system." A written record identifying the quantity, composition, origin, routing, and destination of hazardous waste from the point of generation to the point of disposal, treatment or storage.

"Mine." Any deep or surface mine, whether active, inactive or abandoned.

"Mining." The process of the extraction of minerals from the earth or from waste or stockpiles or from pits or banks.

"Municipality." A city, borough, incorporated town, township or county or any authority created by any of the foregoing.

"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 hereunder from a municipal, commercial or institutional water supply treatment plant, waste water treatment plant, or air pollution control facility.

"Normal farming operations." The customary and generally accepted activities, practices and procedures that farms adopt, use, or engage in year after year in the production and preparation for market of poultry, livestock, and their products; and in the production, harvesting and preparation for market of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities; provided that such operations are conducted in compliance with applicable laws, and provided that the use or disposal of these materials will not pollute the air, water, or other natural resources of the Commonwealth. It includes the storage and utilization of agricultural and food process wastes, screenings and sludges for animal feed, and includes the agricultural utilization of septic tank cleanings and sewage sludges which are generated off-site. It includes the management, collection, storage, transportation, use or disposal of manure, other agricultural waste and food processing waste, screenings and sludges on land where such materials will improve the condition of the soil, the growth of crops, or in the restoration of the land for the same purposes. (Def. amended July 11, 1990, P.L.450, No.109)

"Person." Any individual, partnership, corporation, association, institution, cooperative enterprise, municipal authority, Federal Government or agency, State institution and 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.

"Point sources subject to permits under § 402 of the Federal Water Pollution Control Act." Point source discharges for which valid and current permits have been issued under § 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880) to the extent that such discharges are authorized by said permits.

"Pollution." Contamination of any air, water, land or other natural resources of the Commonwealth such as will create or is likely to create a public nuisance or to render such 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.

"Processing."

(1) The term includes any of the following:

(i) Any method or technology used for the purpose of reducing the volume or bulk of municipal or residual waste or any method or technology used to convert part or all of such waste materials for off-site reuse.

(ii) Transfer facilities, composting facilities, and resource recovery facilities.

(2) The term does not include a collection or processing

center that is only for source-separated recyclable materials, including clear glass, colored glass, aluminum, steel and bimetallic cans, high-grade office paper, newsprint, corrugated paper and plastics. (Def. amended July 11, 1990, P.L.450, No.109)

"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 "residual waste" shall not include coal refuse as defined in the "Coal Refuse Disposal Control Act." "Residual waste" 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 Clean Streams Law."

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

"Solid waste." Any waste, including but not limited to, municipal, residual or hazardous wastes, including solid, liquid, semisolid or contained gaseous materials. The term does not include coal ash or drill cuttings. (Def. amended Dec. 12, 1986, P.L.1556, No.168)

"Storage." The containment of any 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 waste in excess of one year constitutes disposal. This presumption can be overcome by clear and convincing evidence to the contrary.

"Transfer facility." A facility which receives and processes or temporarily stores municipal or residual waste at a location other than the generation site, and which facilitates the transportation or transfer of municipal or residual waste to a processing or disposal facility. The term includes a facility that uses a method or technology to convert part or all of such waste materials for offsite reuse. The term does not include a collection or processing center that is only for source-separated recyclable materials, including clear glass, colored glass, aluminum, steel and bimetallic cans, high-grade office paper, newsprint, corrugated paper and plastics. (Def. added July 11, 1990, P.L.450, No.109)

"Transportation." The off-site removal of any solid waste at any time after generation.

"Treatment." Any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, suitable for recovery, suitable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of waste so as to render it neutral or nonhazardous.

Compiler's Note: The Department of Environmental Resources, referred to in the def. of "department," was abolished by Act 18 of 1995. Its functions were transferred to the Department of Environmental Protection.

Compiler's Note: The Secretary of Environmental Resources, referred to in the def. of "secretary," was abolished by Act 18 of 1995. The functions of the secretary were transferred to the Secretary of Conservation and Natural Resources and the Secretary of Environmental Protection.

Section 104. Powers and duties of the 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 solid waste management program, including resource recovery and utilization, pursuant to the provisions of this act; ((1) amended Dec. 12, 1986, P.L.1556, No.168)

(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) develop a Statewide solid waste management plan in cooperation with local governments, the Department of Community Affairs, the Department of Commerce and the State Planning Board; emphasis shall be given to area-wide planning;

(4) provide technical assistance to municipalities including the training of personnel;

(5) initiate, conduct, and support research, demonstration projects, and investigations, and coordinate all State agency research programs, pertaining to solid waste management systems;

(6) regulate the storage, collection, transportation, processing, treatment and disposal of solid waste;

(7) issue permits, licenses and orders, and specify the terms and conditions thereof, and conduct inspections and abate public nuisances to implement the purposes and provisions of this act and the rules, regulations and standards adopted pursuant to this act;

(8) require the payment of a fee according to a standard uniform schedule of permit and license fees for the processing of any permit or license application. Permit and license fees shall be in an amount sufficient to cover the aggregate cost of reviewing all applications, acting on all applications, processing all renewals, and administering all the terms and conditions of all permits and all provisions of this act relating thereto;

(9) 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 purposes and provisions of this act and the rules and regulations promulgated thereunder;

(10) institute in a court of competent jurisdiction, proceedings against any person or municipality to compel compliance with the provisions of this act, any rule or regulation issued thereunder, any order of the department, or the terms and conditions of any permit;

(11) institute prosecutions against any person or municipality under this act;

(12) 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;

(13) 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 rules or regulations which may be promulgated hereunder after consulting with the Department of Health regarding matters of public health significance;

(14) develop, prepare and submit to the Environmental Quality Board, within two years after the effective date of this act, its proposed Pennsylvania Hazardous Waste Facilities Plan;

(15) develop, prepare and publish in the Pennsylvania Bulletin six months after the effective date of this act its preliminary environmental, social and economic criteria and standards for siting hazardous waste treatment and disposal facilities;

(16) require the payment of such annual inspection fees and perform such inspections of hazardous waste treatment and disposal facilities as are provided for in the Environmental Quality Board guidelines adopted pursuant to section 105(e). This provision shall not be construed to limit or restrict the department's inspection powers as elsewhere set forth in this act; ((16) amended July 11, 1989, P.L.331, No.55)

(17) administer funds collected by the United States Government and granted to Pennsylvania for the purpose of closing, maintaining or monitoring abandoned or closed hazardous waste storage, treatment or disposal sites and for the purpose of action to abate or prevent pollution at such sites. If Congress has not authorized the collection of such funds within one year after the effective date of this act, or if the department finds that the funding program authorized is inadequate, the department shall transmit to the General Assembly within 15 months after the effective date of this act a proposal for the establishment of a fund in Pennsylvania comprised of surcharges collected from users of hazardous waste storage, treatment and disposal facilities excluding captive facilities in the Commonwealth. Such fund shall be proposed for the purpose of closing, maintaining or monitoring hazardous waste storage, treatment or disposal sites excluding captive facilities which have been abandoned or which have been closed for at least 20 years, and for the purpose of taking action to abate or prevent pollution at such closed or abandoned sites; and ((17) amended July 11, 1989, P.L.331, No.55)

(18) encourage the beneficial use or processing of municipal waste or residual waste when the department determines that such use does not harm or present a threat of harm to the health, safety or welfare of the people or environment of this Commonwealth. The department shall establish waste regulations to effectuate the beneficial use of municipal and residual waste, including regulations for the issuance of general permits for any category of beneficial use or processing of municipal waste or residual waste on a regional or Statewide basis in accordance with the regulations adopted by the Environmental Quality Board. The department may or may not require insurance under section 502(e) or bonds under section 505(a) for any general permit

or class of general permits promulgated under this paragraph. Except with the written approval of the department, no waste may be stored for longer than one year. Residual wastes being stored shall be monitored for changes in physical and chemical properties, including leachability, pursuant to applicable regulations, by the person or municipality beneficially using or processing such waste. The department may require the submission of periodic analyses or other information to insure that the quality of residual waste to be beneficially used or processed does not change. A municipality or person beneficially using or processing the residual waste shall immediately notify the department, upon forms provided by department, of any change in the physical or chemical properties of the residual waste, including leachability; and the department shall conduct an investigation and order necessary corrective action. Upon receipt of a signed, written complaint of any person whose health, safety or welfare may be adversely affected by a physical or chemical change in the properties of residual waste to be beneficially used or processed, including leachability, the department shall determine the validity of the complaint and take appropriate action. ((18) added July 11, 1989, P.L.331, No.55)

Compiler's Note: The Department of Commerce, referred to in par. (3), was renamed the Department of Community and Economic Development by Act 58 of 1996. The Department of Community Affairs, referred to in par. (3), was abolished by Act 58 of 1996 and its functions were transferred to the Department of Community and Economic Development.

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resouces as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those forth in section 104.

Section 105. Powers and duties of the Environmental Quality Board.

(a) The Environmental Quality Board shall have the power and its duty shall be to adopt the rules, regulations, criteria and standards of the department to accomplish the purposes and to carry out the provisions of this act, including but not limited to the establishment of rules and regulations relating to the protection of safety, health, welfare and property of the public and the air, water and other natural resources of the Commonwealth. ((a) amended Dec. 12, 1986, P.L.1556, No.168)

(b) The Environmental Quality Board shall, by regulation, set the term of expiration of permits and licenses appropriate to the category of the permit or license.

(c) The Environmental Quality Board shall have the power and its duty shall be to adopt rules and regulations and standards to provide for the coordination of administration and enforcement of this act between the Department of Environmental Resources and county health departments where they exist.

(d) The Environmental Quality Board shall have the power and its duty shall be to adopt a Pennsylvania Hazardous Waste

Facilities Plan.

(e) The Environmental Quality Board shall have the power and its duty shall be to adopt guidelines which shall:

(1) Provide for the necessary inspection of hazardous waste treatment and disposal facilities considering the degree of hazard and the quantity of wastes handled.

(2) Establish an inspection fee based on the frequency of inspection provided for in paragraph (1).

(3) Encourage cooperative agreements between local communities and the hazardous waste facility operators to minimize local concerns regarding the operation of the facility.

(f) In addition to exercising its powers and duties under section 1920-A of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," the Environmental Quality Board shall have the power and its duty shall be to assist in the implementation of the Pennsylvania Hazardous Waste Facilities Plan through the issuance of certificates of public necessity for the establishment of hazardous waste treatment or disposal facilities. Any person prior to applying for a certificate of necessity shall have obtained all permits from the department of the Federal agency authorized to issue such permits in the Commonwealth and shall have implemented all impact assessments and public participation programs. In issuing certificates of public necessity the Environmental Quality Board shall:

(1) Prescribe the form and content of applications for a certificate of public necessity to operate a hazardous waste treatment or disposal facility.

(2) Require the payment of a fee for the processing of any application for a certificate of public necessity. Fees shall be in an amount sufficient to cover the aggregate cost of reviewing the application and acting on it.

(3) Issue such certificates of public necessity for the operation of hazardous waste treatment and disposal facilities as are warranted by:

(i) the extent to which the facility is in conformance with the Pennsylvania Hazardous Waste Facilities Plan;

(ii) the impact of the proposed facility on adjacent populated areas and areas through which wastes are transported to such facility;

(iii) the impact on the borough, township, town or city in which the facility is to be located in terms of health, safety, cost and consistency with local planning; and

(iv) the extent to which the proposed facility has been the subject of a public participation program in which citizens have had a meaningful opportunity to participate in evaluation of alternate sites or technologies, development of siting criteria, socioeconomic assessment, and all other phases of the site selection process.

(4) Provide the public with opportunities to comment upon the application for certificate of public necessity and consider the comments submitted.

(5) Accept applications for certificates of public necessity only from persons or municipalities which have obtained the necessary solid waste treatment or disposal

permits from the department or from the Federal agency authorized to issue such permits in the Commonwealth.

(g) In carrying out the powers and duties set forth in this subsection, the board may consult with any person and hold any hearings which it deems necessary and proper to enable it to render a decision to issue or deny the certificate of public necessity and in any such hearing the board shall be represented by a minimum of three members.

(h) Issuance of a certificate of public necessity under this section shall suspend and supersede any and all local laws which would preclude or prohibit the establishment of a hazardous waste treatment or disposal facility at said site, including zoning ordinances. The suspension and supersession is explicitly extended to any person to whom such certificates issued for the purpose of hazardous waste treatment or disposal, and to the successors and assigns of such person.

(i) During all deliberations of the board a representative of the county and township, borough or municipality affected will be invited to participate.

(j) Regulations promulgated under this section concerning the generation, transportation, storage, treatment and disposal of hazardous wastes may, to the extent consistent with Federal regulations promulgated under the Resource Conservation and Recovery Act, establish classes of hazardous wastes taking into account the relative availability to the environment of the hazardous constituents in waste materials and the degree of hazard thereby presented.

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 105.

Section 106. Powers and duties of county health departments; limitation.

(a) The county health department where it exists of each of the counties of the Commonwealth may elect to administer and enforce any of the provisions of this act together with the department in accordance with the established policies, procedures, guidelines, standards and rules and regulations of the department. Where this program activity exceeds the minimum program requirements adopted by the Advisory Health Board under the provisions of the act of August 24, 1951 (P.L.1304, No.315), known as the "Local Health Administration Law," such activity may be funded through contractual agreements with the department. The department is authorized to provide funds to county health departments from funds appropriated for this purpose by the General Assembly.

(b) Notwithstanding the grant of powers in subsection (a), in any case where administration and enforcement of this act by a county health department shall conflict with administration and enforcement by the Department of Environmental Resources, administration and enforcement by the Department of Environmental Resources shall take precedence over administration and enforcement by a county health department.

Compiler's Note: The Department of Environmental Resources, referred to in subsec. (b), was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Section 107. Legislative oversight. (107 repealed June 25, 1982, P.L.633, No.181)

Section 108. Powers and duties of the Environmental Hearing Board.

In addition to exercising its powers and duties to hold hearings and issue adjudications or any order, permit, license or decision of the department according to the provisions of "The Administrative Code of 1929" and the Administrative Agency Law, the Environmental Hearing Board shall have the power and its duty shall be to hold, if requested to do so by any party to a duly perfected appeal of an oral order under section 602(d), to hold a hearing on any duly filed petition for supersedeas of such order within six business days of the receipt of such request by the board.

ARTICLE II
MUNICIPAL WASTE

Section 201. Submission of plans; permits.

(a) No person or municipality shall store, collect, transport, process, or dispose of municipal waste within this Commonwealth unless such storage, collection, transportation, processing or disposal is authorized by the rules and regulations of the department and no person or municipality shall own or operate a municipal waste processing or disposal facility unless such person or municipality has first obtained a permit for such facility from the department.

(b) Each municipality with a population density of 300 or more inhabitants per square mile and each municipality with a population density of less than 300 wherein the department has identified a waste problem or a potential waste problem shall submit to the department an officially adopted plan for a municipal waste management system or systems serving the areas within its jurisdiction within two years of the effective date of this section, and shall, from time to time, submit such revisions of said plan as it deems necessary or as the department may require. Nothing in this subsection shall prohibit such a municipality from requesting the county in which it is located, and the county or an agency it designates from agreeing, to perform this function in its behalf. Whenever a county prepares and adopts such a solid waste management plan and revisions thereto, it shall provide for the participation and review of all affected municipalities. Whenever a city, borough, incorporated town or township prepares its own solid waste management plan or revisions thereto, it shall provide for review by the county prior to adoption. ((b) repealed in part July 28, 1988, P.L.556, No.101)

(c) When more than one municipality has authority over an existing or proposed municipal waste management system or systems or any part thereof, the required plan or any revisions thereof shall be submitted jointly by the municipalities concerned or by an authority or county or by one or more of the municipalities with the concurrence of the affected municipalities.

(d) Every plan, and any revision thereof, shall delineate areas where municipal waste management systems are in existence and areas where the municipal waste management systems are planned to be available within a ten-year period.

(e) Every plan shall:

(1) Provide for the orderly extension of municipal waste management systems in a manner consistent with the needs and plans of the whole area, and in a manner which will not create a risk of pollution of the water, air, land or other natural resources of the Commonwealth, nor constitute a public nuisance, and shall otherwise provide for the safe and sanitary disposal of municipal waste.

(2) Take into consideration all aspects of planning, zoning, population estimates, engineering and economics so as to delineate with precision those portions of the area which may reasonably be expected to be served by a municipal waste management system within ten years of the submission of the plan, as well as those areas where it is not reasonably foreseeable that a municipal waste management system will be needed within ten years of the submission of the plan.

(3) Take into consideration any existing State plan affecting the development, use and protection of air, water, land or other natural resources.

(4) Set forth a time schedule and proposed methods for financing the development, construction and operation of the planned municipal waste management systems, together with the estimated cost thereof.

(5) Include a provision for periodic revision of the plan.

(6) Include such other information as the department shall require.

(f) ((f) repealed July 28, 1988, P.L.556, No.101)
(g) ((g) repealed July 28, 1988, P.L.556, No.101)
(h) ((h) repealed July 28, 1988, P.L.556, No.101)
(i) ((i) repealed July 28, 1988, P.L.556, No.101)
(j) ((j) repealed July 28, 1988, P.L.556, No.101)
(k) ((k) repealed July 28, 1988, P.L.556, No.101)
(l) ((l) repealed July 28, 1988, P.L.556, No.101)

Compiler's Note: Section 1903(b) of the act of July 28, 1988, P.L.556, No.101 contained the following clause:

(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.

Section 202. Powers and duties of municipalities. (202 repealed July 28, 1988, P.L.556, No.101)

Section 203. Grants authorized. (203 repealed by July 28, 1988, P.L.556, No.101)

ARTICLE III
RESIDUAL WASTE

Section 301. Management of residual waste.

No person or municipality shall store, transport, process, or dispose of residual waste within this Commonwealth unless such storage, or transportation, is consistent with or such processing or disposal is authorized by the rules and regulations of the department and no person or municipality

shall own or operate a residual waste processing or disposal facility unless such person or municipality has first obtained a permit for such facility from the department.

Section 302. Disposal, processing and storage of residual waste.

(a) It shall be unlawful for any person or municipality to dispose, process, store, or permit the disposal, processing or storage of any residual waste in a manner which is contrary to the rules and regulations of the department or to any permit or to the terms or conditions of any permit or any order issued by the department.

(b) It shall be unlawful for any person or municipality who stores, processes, or disposes of residual waste to fail to:

(1) Use such methods and facilities as are necessary to control leachate, runoff, discharges and emissions from residual waste in accordance with department regulations.

(2) Use such methods and facilities as are necessary to prevent the harmful or hazardous mixing of wastes.

(3) Design, construct, operate and maintain facilities and areas in a manner which shall not adversely effect or endanger public health, safety and welfare or the environment or cause a public nuisance.

Section 303. Transportation of residual waste.

(a) It shall be unlawful for any person or municipality to transport or permit the transportation of residual waste:

(1) to any processing or disposal facility within the Commonwealth unless such facility holds a permit issued by the department to accept such waste; or

(2) in a manner which is contrary to the rules and regulations of the department or any permit or the conditions of any permit or any order issued by the department.

(b) It shall be unlawful for any person or municipality who transports residual waste to fail to:

(1) use such methods, equipment and facilities as are necessary to transport residual waste in a manner which shall not adversely affect or endanger the environment or the public health, welfare and safety; and

(2) take immediate steps to contain and clean up spills or accidental discharges of such waste, and notify the department, pursuant to department regulations, of all spills or accidental discharges which occur on public highways or public areas or which may enter the waters of the Commonwealth as defined by the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," or any other spill which is governed by any notification requirements of the department.

ARTICLE IV
HAZARDOUS WASTE

Section 401. Management of hazardous waste.

(a) No person or municipality shall store, transport, treat, or dispose of hazardous waste within this Commonwealth unless such storage, transportation, treatment, or disposal is authorized by the rules and regulations of the department; no person or municipality shall own or operate a hazardous waste storage, treatment or disposal facility unless such person or municipality has first obtained a permit for the storage, treatment and disposal of hazardous waste from the department; and, no person or municipality shall transport hazardous waste

within the Commonwealth unless such person or municipality has first obtained a license for the transportation of hazardous waste from the department.

(b) The storage, transportation, treatment, and disposal of hazardous waste are hereby declared to be activities, which subject the person carrying on those activities to liability for harm although he has exercised utmost care to prevent harm, regardless whether such activities were conducted prior to the enactment hereof.

Section 402. Listing of hazardous waste.

The Environmental Quality Board shall establish rules and regulations identifying the characteristics of hazardous wastes and listing particular hazardous wastes which shall be subject to the provisions of this act. The list promulgated shall in no event prevent the department from regulating other wastes, which, although not listed, the department has determined to be hazardous; the Department of Environmental Resources may regulate such hazardous wastes when the department has determined such waste poses a substantial present or potential hazard to the human health or the environment by any means including, but not limited to, issuance of orders and the imposition of terms and conditions of permits. The board shall identify the characteristics of hazardous wastes and list particular hazardous wastes within 30 days after the effective date of this section, which initial list shall not be subject to section 107 of this act but shall be promulgated in accordance with section 204(3) (relating to omission of notice of proposed rule making) of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 402.

Section 403. Generation, transportation, storage, treatment and disposal of hazardous waste.

(a) It shall be unlawful for any person or municipality who generates, transports or stores hazardous waste to transfer such waste unless such person or municipality complies with the rules and regulations of the department and the terms or conditions of any applicable permit or license and any applicable order issued by the department.

(b) It shall be unlawful for any person or municipality who generates, transports, stores, treats or disposes of hazardous waste to fail to:

(1) Maintain such records as are necessary to accurately identify the quantities of hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, the method of transportation and the disposition of such wastes; and where applicable, the source and delivery points of such hazardous waste.

(2) Label any containers used for the storage, transportation or disposal of such hazardous waste so as to

identify accurately such waste.

(3) Use containers appropriate for such hazardous waste and for the activity undertaken.

(4) Furnish information on the general chemical composition of such hazardous waste to persons transporting, treating, storing or disposing of such wastes.

(5) Use a manifest system as required by the department to assure that all such hazardous waste generated is designated for treatment, storage or disposal in such treatment, storage or disposal facilities (other than facilities on the premises where the waste is generated, where the use of a manifest system is not necessary) approved by the department, as provided in this article.

(6) Transport hazardous waste for treatment, storage or disposal to such treatment, storage or disposal facilities which the shipper has designated on the manifest form as a facility permitted to receive such waste or as a facility not within the Commonwealth.

(7) Submit reports to the department at such times as the department deems necessary, listing out:

(i) the quantities of hazardous waste generated during a particular time period; and

(ii) the method of disposal of all hazardous waste.

(8) Carry out transportation activities in compliance with the rules and regulations of the department and the Pennsylvania Department of Transportation.

(9) Treat, store and dispose of all such waste in accordance with the rules and regulations of the department and permits, permit conditions and orders of the department.

(10) Develop and implement contingency plans for effective action to minimize and abate hazards from any treatment, storage, transportation or disposal of any hazardous waste.

(11) Maintain such operation, train personnel, and assure financial responsibility for such storage, treatment or disposal operations to prevent adverse effects to the public health, safety and welfare and to the environment and to prevent public nuisances.

(12) Immediately notify the department and the affected municipality or municipalities of any spill or accidental discharge of such waste in accordance with a contingency plan approved by the department and take immediate steps to contain and clean up the spill or discharge.

(c) After January 1, 1981 any producer of any hazardous waste or any producer having a by-product of production which is a hazardous waste may be required by the department to submit to the department for its approval a plan relating to the disposal of such hazardous waste at either an on-site disposal area or an off-site disposal area before transferring, treating or disposing of this waste.

Section 404. Transition scheme.

(a) Any person or municipality who:

(1) owns or operates a hazardous waste storage or treatment facility required to have a permit under this act, which facility is in existence on the effective date of this act;

(2) has complied with the requirements of section 501(c);

(3) has made an application for a permit under this act;

and

(4) operates and continues to operate in such a manner as will not cause, or create a risk of, a health hazard, a public nuisance, or an adverse effect upon the environment;

shall be treated as having been issued such permit until such time as a final departmental action on such application is made. In no instance shall such person or municipality continue to store or treat hazardous wastes without obtaining a permit from the department within two years after the date of enactment hereof.

(b) Any person or municipality who:

(1) as of the effective date of this act transports hazardous waste within the Commonwealth and is required to have a license under this act;

(2) has complied with the requirements of section 501(c);

(3) has made an application for a license under this act; and

(4) transports and continues to transport in such a manner as will not cause, or create a risk of, a health hazard, a public nuisance, or an adverse effect upon the environment;

shall be treated as having been issued such license until such time as a final departmental action on such application is made. In no instance shall such person or municipality continue to transport hazardous waste without obtaining a license from the department within two years after the date of enactment.

Section 405. Conveyance of disposal site property.

After the effective date of this act, the grantor in every deed for the conveyance of property on which hazardous waste is presently being disposed, or has ever been disposed by the grantor or to the grantor's actual knowledge shall include in the property description section of such deed an acknowledgement of such hazardous waste disposal; such acknowledgement to include to the extent such information is available, but not be limited to, the surface area size and exact location of the disposed waste and a description of the types of hazardous wastes contained therein. Such amended property description shall be made a part of the deed for all future conveyances or transfers of the subject property: Provided, however, That the warranty in such deed shall not be applicable to the surface area size and exact location of the disposed waste and a description of the types of hazardous wastes contained therein.

ARTICLE V
APPLICATIONS AND PERMITS

Section 501. Permits and licenses required; transition scheme; reporting requirements.

(a) It shall be unlawful for any person or municipality to use, or continue to use, their land or the land of any other person or municipality as a solid waste processing, storage, treatment or disposal area without first obtaining a permit from the department as required by this act: Provided, however, That this section shall not apply to the short-term storage of by-products which are utilized in the processing or manufacturing of other products, to the extent that such by-products are not hazardous, and do not create a public nuisance or adversely affect the air, water and other natural resources of the

Commonwealth: And provided further, however, That the provisions of this section shall not apply to agricultural waste produced in the course of normal farming operations nor the use of food processing wastes in the course of normal farming operations provided that such wastes are not classified by the board as hazardous.

(b) It shall be unlawful for any person or municipality to transport hazardous waste within the Commonwealth unless such person or municipality has first obtained a license from the department to conduct such transportation activities.

(c) Not later than 90 days after promulgation or revision of regulations under section 402 identifying by its characteristics or listing any substance as hazardous waste, any person or municipality generating or transporting such substance or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the department a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person or municipality. Not more than one such notification shall be required to be filed with respect to the same substance. No identified or listed hazardous waste may be transported, treated, processed, stored or disposed of unless notification has been given as required under this subsection.

Section 502. Permit and license application requirements.

(a) Application for any permit or license shall be in writing, shall be made on forms provided by the department and shall be accompanied by such plans, designs and relevant data as the department may require. Such plans, designs and data shall be prepared by a registered professional engineer.

(b) The application for a permit to operate a hazardous waste storage, treatment or disposal facility shall also be accompanied by a form, prepared and furnished by the department, containing the written consent of the landowner to entry upon any land to be affected by the proposed facility by the Commonwealth and by any of its authorized agents prior to and during operation of the facility and for 20 years after closure of the facility, for the purpose of inspection and for the purpose of any such pollution abatement or pollution prevention activities as the department deems necessary. Such forms shall be deemed to be recordable documents and prior to the initiation of operations under the permit, such forms shall be recorded and entered into the deed book (d.b.v.) indexing system at the office of the recorder of deeds in the counties in which the area to be affected under the permit is situated.

(c) All records, reports, or information contained in the hazardous waste storage, treatment or disposal facility permit application submitted to the department under this section shall be available to the public; except that the department shall consider a record, report or information or particular portion thereof, confidential in the administration of this act if the applicant can show cause that the records, reports or information, or a particular portion thereof (but not emission or discharge data or information concerning solid waste which is potentially toxic in the environment), if made public, would divulge production or sales figures or methods, processes or production unique to such applicant or would otherwise tend to affect adversely the competitive position of such applicant by revealing trade secrets. Nothing herein shall be construed to prevent disclosure of such report, record or information to the

Federal Government or other State agencies as may be necessary for purposes of administration of any Federal or State law.

(d) The application for a permit shall set forth the manner in which the operator plans to comply with the requirements of the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," 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," as applicable. No approval shall be granted unless the plan provides for compliance with the statutes hereinabove enumerated, and failure to comply with the statutes hereinabove enumerated during construction and operation or thereafter shall render the operator liable to the sanctions and penalties provided in this act for violations of this act and to the sanctions and penalties provided in the statutes hereinabove enumerated for violations of such statutes. Such failure to comply shall be cause for revocation of any approval or permit issued by the department to the operator. Compliance with the provisions of this subsection and with the provisions of this act and the provisions of the statutes hereinabove enumerated shall not relieve the operator of the responsibility for complying with the provisions of all other applicable statutes, including, but not limited to the act of July 17, 1961 (P.L.659, No.339), known as the "Pennsylvania Bituminous Coal Mine Act," the act of November 10, 1965 (P.L.721, No.346), known as the "Pennsylvania Anthracite Coal Mine Act," and the act of July 9, 1976 (P.L.931, No.178), entitled "An act providing emergency medical personnel; employment of emergency medical personnel and emergency communications in coal mines."

(e) The application for a permit shall certify that the operator has in force, or will, prior to the initiation of operations under the permit have in force, an ordinary public liability insurance policy in an amount to be prescribed by rules and regulations promulgated hereunder.

(f) The department may require such other information, and impose such other terms and conditions, as it deems necessary or proper to achieve the goals and purposes of this act.

(g) The department, upon receipt of an application for a permit, shall give written notice to each and every municipality in which the proposed hazardous waste facility will be located.

Section 503. Granting, denying, renewing, modifying, revoking and suspending permits and licenses.

(a) Upon approval of the application, the department shall issue a permit for the operation of a solid waste storage, treatment, processing or disposal facility or area or a license for the transportation of hazardous wastes, as set forth in the application and further conditioned by the department.

(b) No permit shall be issued unless and until all applicable bonds have been posted with the department.

(c) In carrying out the provisions of this act, the department may deny, suspend, modify, or revoke any permit or license if it finds that the applicant, permittee or licensee has failed or continues to fail to comply with any provision of this 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," or any other state or Federal statute relating to environmental protection or to the protection of the public health, safety and welfare; or any rule or regulation of the department; or any order of the department; or any condition of any permit or license issued by the department; or if the department finds that the applicant, permittee or licensee has shown a lack of ability or intention to comply with any provision of this act or any of the acts referred to in this subsection or any rule or regulation of the department or order of the department, or any condition of any permit or license issued by the department as indicated by past or continuing violations. In the case of a corporate applicant, permittee or licensee, the department may deny the issuance of a license or permit if it finds that a principal of the corporation was a principal of another corporation which committed past violations of this act.

(d) Any person or municipality which has engaged in unlawful conduct as defined in this act, or whose partner, associate, officer, parent corporation, subsidiary corporation, contractor, subcontractor or agent has engaged in such unlawful conduct, shall be denied any permit or license required by this act unless the permit or license application demonstrates to the satisfaction of the department that the unlawful conduct has been corrected. Independent contractors and agents who are to operate under any permit shall be subject to the provisions of this act. Such independent contractors, agents and the permittee shall be jointly and severally liable, without regard to fault, for violations of this act which occur during the contractor's or agent's involvement in the course of operations.

(e) Any permit or license granted by the department, as provided in this act, shall be revocable or subject to modification or suspension at any time the department determines that the solid waste storage, treatment, processing or disposal facility or area or transportation of solid waste:

(1) is, or has been, conducted in violation of this act or the rules, regulations, adopted pursuant to the act;

(2) is creating a public nuisance;

(3) is creating a potential hazard to the public health, safety and welfare;

(4) adversely affects the environment;

(5) is being operated in violation of any terms or conditions of the permit; or

(6) was operated pursuant to a permit or license that was not granted in accordance with law.

Section 504. Approval by governing body.

Applications for a permit shall be reviewed by the appropriate county, county planning agency or county health department where they exist and the host municipality, and they may recommend to the department conditions upon, revisions to, or disapproval of the permit only if specific cause is identified. In such case the department shall be required to publish in the Pennsylvania Bulletin its justification for overriding the county's recommendations. If the department does not receive comments within 60 days, the county shall be deemed to have waived its right to review.

Section 505. Bonds.

(a) With the exception of municipalities operating landfills solely for municipal waste not classified hazardous, prior to the commencement of operations, the operator of a municipal or

residual waste processing or disposal facility or of a hazardous waste storage, treatment or disposal facility for which a permit is required by this section shall file with the department a bond for the land affected by such facility on a form prescribed and furnished by the department. Such bond shall be payable to the Commonwealth and conditioned so that the operator shall comply with the requirements of this act, the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," 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." The department may require additional bond amounts for the permitted areas should such an increase be determined by the department to be necessary to meet the requirements of this act. The amount of the bond required shall be in an amount determined by the secretary based upon the total estimated cost to the Commonwealth of completing final closure according to the permit granted to such facility and such measures as are necessary to prevent adverse effects upon the environment; such measures include but are not limited to satisfactory monitoring, post-closure care, and remedial measures. The bond amount shall reflect the additional cost to the Commonwealth which may be entailed by being required to bring personnel and equipment to the site. All permits shall be bonded for at least $10,000. Liability under such bond shall be for the duration of the operation, and for a period of up to ten full years after final closure of the permit site. Such bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth and approved by the secretary: Provided, however, That the operator may elect to deposit cash, certificates of deposit, automatically renewable irrevocable letters of credit which are terminable only upon 90 days written notice to the operator and the department, or negotiable bonds of the United States Government or the Commonwealth of Pennsylvania, the Pennsylvania Turnpike Commission, the General State Authority, the State Public School Building Authority, or any municipality within the Commonwealth, with the department in lieu of a corporate surety. The cash amount of such deposit, irrevocable letters of credit or market value of such securities shall be equal at least to the sum of the bond. The secretary shall, upon receipt of any such deposit of cash or negotiable bonds, immediately place the same with the State Treasurer, whose duty it shall be to receive and hold the same in the name of the Commonwealth, in trust, for the purposes for which such deposit is made. The State Treasurer shall at all times be responsible for the custody and safekeeping of such deposits. The operator making the deposit shall be entitled from time to time to demand and receive from the State Treasurer, on the written order of the secretary, the whole or any portion of any collateral so deposited, upon depositing with him, in lieu thereof, other collateral of the classes herein specified having a market value at least equal to the sum of the bond, also to demand, receive and recover the interest and income from said negotiable bonds as the same becomes due and payable: Provided, however, That where negotiable bonds, deposited as aforesaid, mature or are called, the State Treasurer, at the request of the permittee, shall convert such negotiable bonds into such other negotiable

bonds of the classes herein specified as may be designated by the permittee: And provided further, That where notice of intent to terminate a letter of credit is given, the department shall, after 30 days written notice to the operator and in the absence of a replacement of such letter of credit within such 30-day period by the operator with other acceptable bond guarantees provided herein, draw upon and convert such letter of credit into cash and hold it as a collateral bond guarantee.

(b) In the case of applications for permits where the department determines that the operations are reasonably anticipated to continue for a period of at least ten years from the date of application, the operator may elect to deposit collateral and file a collateral bond as provided in subsection (a) according to the following phase deposit schedule. The operator shall, prior to commencing operations, deposit $10,000 or 25% of the amount of the bond determined under subsection (a), whichever is greater. The operator shall, thereafter, annually deposit 10% of the remaining bond amount for a period of ten years. Interest accumulated by such collateral shall become a part of the bond. The department may require additional bonding at any time to meet the intent of subsection (a). The collateral shall be deposited in trust, with the State Treasurer as provided in subsection (a) or with a bank, selected by the department, which shall act as trustee for the benefit of the Commonwealth, according to rules and regulations promulgated hereunder, to guarantee the operator's compliance with this act and the statutes enumerated in subsection (a). The operator shall be required to pay all costs of the trust. The collateral deposit, or part thereof, shall be released of liability and returned to the operator, together with a proportional share of accumulated interest, upon the conditions of and pursuant to the schedule and criteria for release provided in this act.

(c) The operator shall, prior to commencing operations on any additional land exceeding the estimate made in the application for a permit, file an additional application and bond. Upon receipt of such additional application and related documents and information as would have been required for the additional land had it been included in the original application for a permit and should all the requirements of this act be met as were necessary to secure the permit, the secretary shall promptly issue an amended permit covering the additional acreage covered by such application, and shall determine the additional bond requirement therefor.

(d) If the operator abandons the operation of a municipal or residual waste processing or disposal facility or a hazardous waste storage, treatment or disposal facility for which a permit is required by this section or if the permittee fails or refuses to comply with the requirements of this act in any respect for which liability has been charged on the bond, the secretary shall declare the bond forfeited and shall certify the same to the Department of Justice which shall proceed to enforce and collect the amount of liability forfeited thereon, and where the operation has deposited cash or securities as collateral in lieu of a corporate surety, the secretary shall declare said collateral forfeited and shall direct the State Treasurer to pay said funds into the Waste Abatement Fund. Should any corporate surety fail to promptly pay, in full, forfeited bond, it shall be disqualified from writing any further surety bonds under this act.

(e) Prior to the issuance of any license for the transportation of hazardous waste, the applicant for a license shall file with the department a collateral bond on a form prescribed and furnished by the department. Such bond shall be payable to the Commonwealth and conditioned upon compliance by the licensee with every requirement of this act, rule and regulation of the department, order of the department and term and condition of the license. The amount of the bond required shall be in an amount determined by the secretary, but in an amount no less than $10,000. The department may require additional bond amounts if the department determines such additional amounts are necessary to guarantee compliance with this act. The licensee may elect to deposit cash or automatically renewable irrevocable letters of credit which are terminable only upon 90 days written notice to the operator and the department, or negotiable bonds of the United States Government or the Commonwealth of Pennsylvania, the Pennsylvania Turnpike Commission, the General State Authority, the State Public School Building Authority, or any municipality within the Commonwealth. No corporate surety bond is authorized by this subsection. The cash amount of such deposit, irrevocable letters of credit, or market value of such securities shall be equal at least to the sum of the bond. The secretary shall, upon receipt of any such deposit of cash or negotiable bonds, immediately place the same with the State Treasurer, whose duty it shall be to receive and hold the same in the name of the Commonwealth, in trust, for the purposes for which such deposit is made. The State Treasurer shall at all times be responsible for the custody and safekeeping of such deposits. The licensee making the deposit shall be entitled from time to time to demand and receive from the State Treasurer, on the written order of the secretary, the whole or any portion of any collateral so deposited, upon depositing with him, in lieu thereof, other collateral of the classes herein specified having a market value at least equal to the sum of the bond, also to demand, receive and recover the interest and income from said negotiable bonds as the same becomes due and payable: Provided, however, That where negotiable bonds, deposited as aforesaid, mature or are called, the State Treasurer, at the request of the licensee, shall convert such negotiable bonds into such other negotiable bonds of the classes herein specified as may be designated by the licensee: And provided further, That where notice of intent to terminate a letter of credit is given, the department shall, after 30 days written notice to the licensee and in the absence of a replacement of such letter of credit within such 30-day period by the licensee with other acceptable bond guarantees provided herein, draw upon and convert such letter of credit into cash and hold it as a collateral bond guarantee. Liability under such bond shall be for the duration of the license and for a period of one year after the expiration of the license.

(f) Notwithstanding any other provisions of this act, when an application for the land application of sewage sludge is made by a municipality or a municipal authority, the filing of a bond with the department shall not be required as a condition for issuance of a permit to the municipality or municipal authority for the application of the sewage sludge for land reclamation or agricultural utilization purposes. ((f) added July 11, 1990, P.L.450, No.109)

Section 506. Financial responsibility.

The Environmental Quality Board shall adopt such additional regulations to provide for proof of financial responsibility of owners or operators of hazardous waste storage, treatment, and disposal facilities, as necessary or desirable for closure of the facility, post-closure monitoring and maintenance, sudden and accidental occurrences, and nonsudden and accidental occurrences, and to comply with section 3004 of the Resource Conservation and Recovery Act of 1976 42 U.S.C. § 6924.

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 506.

Section 507. Siting of hazardous waste treatment and disposal facilities.

(a) The Department of Environmental Resources shall have the power and authority to develop, prepare and modify the Pennsylvania Hazardous Waste Facilities Plan. The plan shall include:

(1) Criteria and standards for siting hazardous waste treatment and disposal facilities.

(2) An inventory and evaluation of the sources of hazardous waste concentration within the Commonwealth including types and quantities of hazardous waste.

(3) An inventory and evaluation of current hazardous waste practices within the Commonwealth including existing hazardous waste treatment and disposal facilities.

(4) A determination of future hazardous waste facility needs based on an evaluation of existing treatment and disposal facilities including their location, capacities and capabilities, and the existing and projected generation of hazardous waste within the Commonwealth and including where the department within its discretion finds such information to be available, the projected generation outside the Commonwealth of hazardous wastes expected to be transported into the Commonwealth for storage, treatment or disposal.

(5) An analysis of methods, incentives or technologies for source reduction, detoxification, reuse and recovery of hazardous waste and a strategy for implementing such methods, incentives and technologies.

(6) Identification of such hazardous waste treatment and disposal facilities and their locations (in addition to existing facilities) as are necessary to provide for the proper management of hazardous waste generated within this Commonwealth.

(b) In preparation of the plan the department shall consult with affected persons, municipalities and State agencies. Within 60 days after the effective date of this act the secretary shall appoint the Pennsylvania Hazardous Waste Facilities Planning Advisory Committee. The department shall insure that the advisory body consist of substantially equivalent proportions of the following four groups: private citizens, representatives of public interest groups, public officials and citizens or representatives of organizations with substantial economic

interest in the plan. It shall specifically include but not be limited to a representative of a waste treatment operator, a waste generator, local governments, environmentalists, and academic scientist.

(c) The committee may recommend to the department the adoption of such rules and regulations, standards, criteria and procedures as it deems necessary and advisable for the preparation, development, adoption and implementation of the Pennsylvania Hazardous Waste Facilities Plan.

(d) A vacancy occurring on the committee shall be filled in the same manner as the original appointment and the secretary or his representative shall serve as chairperson of the committee.

(e) The committee shall establish operating procedures and may solicit the advice of municipalities or other persons.

(f) The committee shall disband after adoption of the plan by the Environmental Quality Board unless the committee is reconstituted as a provision of the plan.

(g) Not later than two years after the date of enactment of this act, the Environmental Quality Board shall adopt the Pennsylvania Hazardous Waste Facilities Plan and the department shall review and amend said plan as necessary but in no event less than every five years following adoption.

Compiler's Note: The Department of Environmental Resources, referred to in subsec. (a), was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Section 508. Coal combustion ash and boiler slag.

(a) Beneficial use, reuse or reclamation of coal ash shall include, but not be limited to, the following if they comply with subsections (b), (c) and (d):

(1) The uses which are the subject of Federal Procurement Guidelines issued by the Environmental Protection Agency under section 6002 of the Solid Waste Disposal Act (Public Law 89-272, 42 U.S.C. § 6962).

(2) The extraction or recovery of materials and compounds contained within coal ash.

(3) Those uses in which the physical or chemical characteristics are altered prior to use or during placement.

(4) The use of bottom ash as an anti-skid material.

(5) The use as a raw material for another product.

(6) The use for mine subsidence, mine fire control and mine sealing.

(7) The use as structural fill, soil substitutes or soil additives.

(b) The department may, in its discretion, establish siting criteria and design and operating standards governing the storage of coal ash prior to beneficial use, reuse or reclamation.

(c) The department may, in its discretion, establish siting criteria and design and operating standards governing the use of coal ash as structural fill, soil substitutes and soil additives. A person using coal ash for such purposes shall notify the department prior to such use.

(d) The department may, in its discretion, certify coal ash that is used as structural fill, soil substitutes and soil additives.

(1) Certification shall issue after the department has

considered the following data:

(i) The facility from which the coal ash is originating.

(ii) The combustion and operating characteristics of the facility.

(iii) The physical and chemical properties of the coal ash, including leachability.

(2) Generators of certified coal ash shall notify the department whenever the data referred to in paragraph (1) are or have been significantly altered. At such time, recertification will be required.

(508 added Dec. 12, 1986, P.L.1556, No.168)

ARTICLE VI
ENFORCEMENT AND REMEDIES

Section 601. Public nuisances.

Any violation of any provision of this act, any rule or regulation of the department, any order of the department, or any term or condition of any permit, shall constitute a public nuisance. Any person or municipality committing such a violation shall be liable for the costs of abatement of any pollution and any public nuisance caused by such violation. The Environmental Hearing Board and any court of competent jurisdiction is hereby given jurisdiction over actions to recover the costs of such abatement.

Section 602. Enforcement orders.

(a) The department may issue orders to such persons and municipalities 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 modifying, suspending or revoking permits and orders requiring persons and municipalities to cease unlawful activities or operations of a solid waste facility which in the course of its operation is in violation of any provision of this act, any rule or regulation of the department or any terms and conditions of a permit issued under this act. An 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) If the department finds that the storage, collection, transportation, processing, treatment, beneficial use or disposal of solid waste is causing pollution of the air, water, land or other natural resources of the Commonwealth or is creating a public nuisance, the department may order the person or the municipality to alter its storage, collection, transportation, processing, treatment, beneficial use or disposal systems to provide such storage, collection, transportation, processing, treatment, beneficial use or disposal systems as will prevent pollution and public nuisances. Such order shall specify the length of time after receipt of the order within which the facility or area shall be repaired, altered, constructed or reconstructed. ((b) amended July 11, 1989, P.L.331, No.55)

(c) Any person or municipality ordered by the department to repair, alter, construct, or reconstruct a solid waste facility or area shall take such steps for the repair, alteration,

construction, or reconstruction of the facility or area as may be necessary for the storage, processing, treatment, beneficial use and disposal of its solid waste in compliance with this act and the rules and regulations of the department, and standards and orders of the department. ((c) amended July 11, 1989, P.L.331, No.55)

(d) The Department of Environmental Resources shall have the power to order, orally or in writing, any person or municipality to immediately suspend or modify hazardous waste treatment or disposal activities when he determines that continued operation will jeopardize public health, safety or welfare. Said order shall be effective upon issuance and may only be superseded by further department action or, after an appeal has been perfected, by the Environmental Hearing Board after notice and hearing. Furthermore, said order may require remedial actions to be taken in order to prevent harm to public health, safety or welfare. Within two business days after the issuance of such oral order, the department shall issue a written order reciting and modifying, where appropriate, the terms and conditions contained in the oral order.

Section 603. Duty to comply with orders of the department.

It shall be the duty of any person and municipality to proceed diligently to comply with any order issued pursuant to section 602. If such person or municipality fails to proceed diligently, or fails to comply with the order within such time, if any, as may be specified, such person or municipality 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 Court.

(603 repealed insofar as inconsistent Oct. 15, 1980, P.L.950, No.164 and repealed in part Dec. 20, 1982, P.L.1409, No.326)

Section 604. Restraining violations.

(a) 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 a violation of law or nuisance exists for an injunction to restrain a violation of this act or the rules, regulations, standards or orders adopted or issued thereunder and to restrain the maintenance 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. In addition to an injunction, the court in such equity proceedings, may levy civil penalties as specified in section 605. ((a) repealed in part Dec. 20, 1982, P.L.1409, No.326)

(b) 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 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 rules and regulations promulgated hereunder, or to restrain any public nuisance or detriment to health.

(c) 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) ((d) repealed Dec. 20, 1982, P.L.1409, No.326)

(604 repealed insofar as inconsistent Oct. 15, 1980, P.L.950, No.164)

Section 605. Civil penalties.

In addition to proceeding under any other remedy available at law or in equity for a violation of any provision of this act, any rule or regulation of the department or order of the department or any term or condition of any permit issued by the department, 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, damage to air, water, land or other natural resources of the Commonwealth or their uses, cost of restoration and abatement, savings resulting to the person in consequence of such violation, and other relevant factors. If the violation leads to the issuance of a cessation order or occurs after the release of security for performance, a civil penalty shall be assessed. When the department proposes to assess a civil penalty, it shall inform the person or municipality of the proposed amount of said penalty. The person charged with the penalty shall then have 30 days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, the person shall within such 30 day period file an appeal of such action with the Environmental Hearing Board. Failure to appeal within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty. The maximum civil penalty which may be assessed pursuant to this section is $25,000 per offense. Each violation for each separate day and each violation of any provision of this act, any rule or regulation under this act, any order of the department, or any term or condition of a permit shall constitute a separate and distinct offense under this section. A generator of hazardous waste who has complied with section 403 and has designated on the manifest a facility permitted to treat or dispose of his wastes shall not be held liable for civil penalties with respect to such wastes by other persons after:

(1) the wastes have been transported in compliance with all applicable provisions of this act and regulations promulgated and licenses issued thereunder; and

(2) such wastes have been accepted by a disposal or treatment facility permitted to receive such wastes and designated on the manifest.

Section 606. Criminal penalties.

(a) Any person, other than a municipal official exercising his official duties, or any municipality who violates any provision of this act, the rules and regulations of the department, or any order of the department, or any term or condition of any permit upon conviction thereof in a summary proceeding, shall 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) Any person other than a municipal official exercising his official duties who violates any provision of this act, any rule or regulation of the department, any order of the department, or any term or condition of any permit, shall be guilty of a misdemeanor of the third degree and, upon conviction, shall be sentenced to pay a fine of not less than

$1,000 but not more than $25,000 per day for each violation or to imprisonment for a period of not more than one year, or both.

(c) 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 rule or regulation of the department, any order of the department, or any term or condition of any permit shall be guilty of a misdemeanor of the second degree and, upon conviction, shall be sentenced to pay a fine of not less than $2,500 nor more than $50,000 for each violation or to imprisonment for a period of not more than two years, or both.

(d) Any person or municipality that knowingly:

(1) transports any hazardous waste to a facility which does not have a permit under this act to accept such waste for storage, treatment or disposal; or

(2) makes any false statement or representation in any application label, manifest, record, report, permit or other document relating to hazardous waste generation, storage, transportation, treatment or disposal, which is filed, submitted, maintained or used for purposes of compliance with this act or any municipality which knowingly stores, treats or disposes of any hazardous waste without having obtained a permit for such storage, treatment or disposal;

shall be guilty of a misdemeanor of the third degree and, upon conviction, shall be sentenced to pay a fine of not less than $1,000 but not more than $25,000 per day for each violation.

(e) Any person or municipality that within two years after a conviction of a misdemeanor for any violation of this act, commits a violation of subsection (d), shall be guilty of a misdemeanor of the second degree and upon conviction, shall be sentenced to pay a fine of not less than $2,500 nor more than $50,000 for each violation or to a term of imprisonment of not less than two years, but not more than 20 years, or both.

(f) Any person who stores, transports, treats, or disposes of hazardous waste within the Commonwealth in violation of section 401, or in violation of any order of the department shall be guilty of a felony of the second degree and, upon conviction, shall be sentenced to pay a fine of not less than $2,500 but not more than $100,000 per day for each violation or to imprisonment for not less than two years but not more than ten years, or both.

(g) Any person who intentionally, knowingly or recklessly stores, transports, treats, or disposes of hazardous waste within the Commonwealth in violation of any provision of this act, and whose acts or omissions cause pollution, a public nuisance or bodily injury to any person, shall be guilty of a felony of the first degree, and upon conviction, shall be sentenced to pay a fine of not less than $10,000 but not more than $500,000 per day for each violation or to a term of imprisonment of not less than two years, but not more than 20 years, or both.

(h) Each violation for each separate day and each violation of any provision of this act, any rule or regulation of the department, any order of the department, or term and condition of a permit shall constitute a separate and distinct offense under subsections (a), (b), (c), (d) and (e).

(i) With respect to the offenses specified in subsections (a), (b), (c) and (f), it is the legislative purpose to impose absolute liability for such offenses. However, a generator who

has complied with section 403 shall not be held criminally liable under this section if wastes have been transported in compliance with all applicable provisions of this act and the regulations promulgated and licenses issued thereunder, and provided that such wastes have been accepted by a facility designated in accordance with section 403(b)(6).

(j) With respect to the offenses specified in subsections (a), (b), (c), (d), (e), (f) and (g), it is the legislative purpose to impose liability on corporations.

Section 607. Existing rights and remedies preserved; cumulative remedies authorized.

Nothing in this act shall be construed as estopping the Commonwealth, or any district attorney or solicitor of a municipality, from proceeding 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 purposes of this act to provide additional and cumulative remedies to control the collection, storage, transportation, processing, treatment, and disposal of solid waste within the 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, nor shall any provision in this act, or the granting of any permit under this act, or any act done by virtue of this act, be construed as estopping the Commonwealth, persons or municipalities, 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 courts 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 reasons that such nuisance constitutes air or water pollution.

Section 608. Production of materials; recordkeeping requirements; rights of entry.

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 or municipality engaged in the storage, transportation, processing, treatment, beneficial use or disposal of any solid waste to establish and maintain such records and make such reports and furnish such information as the department may prescribe. ((2) amended July 11, 1989, P.L.331, No.55)

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

11, 1989, P.L.331, No.55)

Section 609. Search 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, premise, place, book, record or other physical evidence, of conducting tests, or of taking samples of any solid waste. Such warrant shall be issued upon probable cause. It shall be sufficient probable cause to show any of the following:

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

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

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

Section 610. Unlawful conduct.

It shall be unlawful for any person or municipality to:

(1) Dump or deposit, or permit the dumping or depositing, of any solid waste onto the surface of the ground or underground or into the waters of the Commonwealth, by any means, unless a permit for the dumping of such solid wastes has been obtained from the department; provided, the Environmental Quality Board may by regulation exempt certain activities associated with normal farming operations as defined by this act from such permit requirements.

(2) Construct, alter, operate or utilize a solid waste storage, treatment, processing or disposal facility without a permit from the department as required by this act or in violation of the rules or regulations adopted under this act, or orders of the department, or in violation of any term or condition of any permit issued by the department.

(3) Burn solid wastes without a permit from the department.

(4) Store, collect, transport, process, treat, beneficially use, or dispose of, or assist in the storage, collection, transportation, processing, treatment, beneficial use or disposal of, solid waste contrary to the rules or regulations adopted under this act, or orders of the department, or any term or any condition of any permit, or in any manner as to create a public nuisance or to adversely affect the public health, safety and welfare. ((4) amended July 11, 1989, P.L.331, No.55)

(5) Transport hazardous waste without first having obtained a license from the department to conduct such transport activities.

(6) Transport or permit the transportation of any solid waste to any storage, treatment, processing or disposal facility or area unless such facility or area possesses a permit issued by the department to accept such wastes, or contrary to the rules or regulations adopted under this act, or orders of the department, or in such a manner as to adversely affect or endanger the public health, safety and welfare or environment through which such transportation occurs.

(7) Refuse, hinder, obstruct, delay, or threaten any

agent or employee of the department in the course of performance of any duty under this act, including, but not limited to, entry and inspection under any circumstances.

(8) Consign, assign, sell, entrust, give or in any way transfer residual or hazardous waste which is at any time subsequently, by any such person or any other person;

(i) dumped or deposited or discharged in any manner into the surface of the earth or underground or into the waters of the Commonwealth unless a permit for the dumping or depositing or discharging of such residual or hazardous waste has first been obtained from the department; or

(ii) stored, treated, processed, disposed of or discharged by a residual or hazardous waste facility unless such facility is operated under a permit first obtained from the department.

(9) Cause or assist in the violation of any provision of this act, any rule or regulation of the department, any order of the department or any term or condition of any permit.

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 610.

Section 611. Presumption of law for civil and administrative proceedings.

It shall be presumed as a rebuttable presumption of law that a person or municipality which stores, treats, or disposes of hazardous waste shall be liable, without proof of fault, negligence, or causation, for all damages, contamination or pollution within 2,500 feet of the perimeter of the area where hazardous waste activities have been carried out. Such presumption may be overcome by clear and convincing evidence that the person or municipality so charged did not contribute to the damage, contamination, or pollution.

Section 612. Collection of fines and penalties.

All fines and penalties shall be collectible in any manner provided by law for the collection of debts. If any person liable to pay any such penalty 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 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 department 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.

Section 613. Recovery of costs of abatement.

Any person or municipality who causes a public nuisance shall be liable for the costs of abatement. The department, any Commonwealth agency, or any municipality which undertakes to

abate a public nuisance may recover the costs of abatement in an action in equity brought before any court of competent jurisdiction. In addition, the Environmental Hearing Board is hereby given jurisdiction over actions by the department to recover the costs of abatement.

Section 614. Forfeiture of contraband.

Any vehicle, equipment, or conveyance used for the transportation or disposal of hazardous waste in the commission of an offense under section 606 shall be deemed contraband and shall be seized 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 the provisions of this section.

Section 615. 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 604 or 605.

Section 616. Notice of proposed settlement.

If a settlement is proposed in any action brought pursuant to section 604 or 605, the terms of such settlement shall be published in a newspaper of general circulation in the area where the violations are alleged to have occurred at least 30 days prior to the time when such settlement is to take effect. The publication shall contain a solicitation for public comments concerning such settlement which shall be directed to the government agency bringing the action.

Section 617. Limitation on action.

The provisions of any other statute to the contrary not withstanding, actions for civil or criminal penalties under this act may be commenced at any time within a period of 20 years from the date the offense is discovered.

ARTICLE VII
SOLID WASTE ABATEMENT FUND

Section 701. Solid Waste Abatement Fund.

(a) All fines, penalties and bond forfeitures collected under the provisions of this act shall be paid into the Treasury of the Commonwealth into a special fund to be known as the "Solid Waste Abatement Fund" hereby established. The Solid Waste Abatement Fund shall be administered by the department for abatement or elimination of present or potential hazards to human health or to the environment from the improper treatment, transportation, storage, processing, or disposal of solid wastes, and for the enforcement of this act.

(b) All such moneys placed in the Solid Waste Abatement Fund under the provisions of this section are hereby made available immediately, and are hereby specifically appropriated to the department for the purposes specified in this section.

(c) Estimates of the amounts to be expended under this act shall be submitted to the Governor for his approval or disapproval.

ARTICLE VIII
LEASING REAL ESTATE

Section 801. No prohibition against leasing real estate.

Nothing in this act shall be construed to prevent the

Commonwealth from leasing such real estate owned by the Commonwealth as is not being used in connection with the work of any department, board or commission thereof for a period of not more than 50 years to individuals, firms, corporations or the United States Government pursuant to section 2402(i) of "The Administrative Code of 1929," for the purpose of operating hazardous waste storage, treatment or disposal facilities.

ARTICLE IX
LIBERAL CONSTRUCTION

Section 901. Construction of act.

The terms and provisions of this act are to be liberally construed, so as to best achieve and effectuate the goals and purposes hereof.

ARTICLE X
REPEALER; EFFECTIVE DATE

Section 1001. Repeal.

The act of July 31, 1968 (P.L.788, No.241), known as the "Pennsylvania Solid Waste Management Act," is repealed: Provided, however, That all permits and orders issued, municipal solid waste management plans approved, and regulations promulgated under such act shall remain in full force and effect unless and until modified, amended, suspended or revoked.

Section 1002. Severability.

If any provision of this act or the application thereof is held invalid, such invalidity shall not effect other provisions or applications of this act which can be given effect without the invalid provisions or application and to this end the provisions of this act are declared to be severable.

Section 1003. Effective date.

Section 402 of this act shall take effect immediately; the remainder of this act shall take effect in 60 days.

APPENDIX

Supplementary Provisions of Amendatory Statutes

1990, JULY 11, P.L.450, NO.109

Section 3. Notwithstanding any other law or regulation to the contrary, a county or municipality which as of April 9, 1990, has a permit issued prior to April 9, 1988, for a currently existing municipal waste landfill lined with materials that are no more permeable than 1 X 10 (to the minus 5 exponent) cm/sec., and by April 9, 1990, has an administratively complete application covering the construction of new facilities, including municipal waste transfer facilities, under review by the Department of Environmental Resources, can accept municipal waste for disposal in the existing landfill until the new site or municipal waste transfer facility is permitted and complete, or September 30, 1991, whichever occurs first, unless the county

or municipality receives a final denial of its permit. The new site shall comply with 25 Pa. Code Chs. 271 (relating to municipal waste management - general provisions) and 273 (relating to municipal waste landfills).

Compiler's Note: Act 109 amended sections 103 and 505 of Act 97 1980.

"THE CLEAN STREAMS LAW"
Act of 1937, P.L. 1987, No. 394

"THE CLEAN STREAMS LAW"
Act of 1937, P.L. 1987, No. 394

AN ACT

To preserve and improve the purity of the waters of the Commonwealth for the protection of public health, animal and aquatic life, and for industrial consumption, and recreation; empowering and directing the creation of indebtedness or the issuing of non-debt revenue bonds by political subdivisions to provide works to abate pollution; providing protection of water supply and water quality; providing for the jurisdiction of courts in the enforcement thereof; providing additional remedies for abating pollution of waters; imposing certain penalties; repealing certain acts; regulating discharges of sewage and industrial wastes; regulating the operation of mines and regulating the impact of mining upon water quality, supply and quantity; placing responsibilities upon landowners and land occupiers and to maintain primary jurisdiction over surface coal mining in Pennsylvania. (Tit. amended Oct. 10, 1980, P.L.894, No.157)

ARTICLE I
GENERAL PROVISIONS AND PUBLIC POLICY

Section 1. Definitions.--Be it enacted, &c., That the following words or phrases, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section.

"Department" means the Department of Environmental Resources, the Environmental Quality Board or the Environmental Hearing Board carrying out the provisions of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

"Establishment" shall be construed to include any industrial establishment, mill, factory, tannery, paper or pulp mill, garage, oil refinery, oil well, boat, vessel, mine, coal colliery, breaker, coal processing operations, dredging operations, except where the dredger holds an unexpired and valid permit issued by the Pennsylvania Water and Power Resources Board prior to the effective date of this act, quarry, and each and every other industry or plant or works.

"Industrial waste" shall be construed to mean any liquid, gaseous, radioactive, solid or other substance, not sewage, resulting from any manufacturing or industry, or from any establishment, as herein defined, and mine drainage, refuse, silt, coal mine solids, rock, debris, dirt and clay from coal mines, coal collieries, breakers or other coal processing operations. "Industrial waste" shall include all such substances whether or not generally characterized as waste.

"Institution" shall include healing, preventive, mental, health, educational, correctional and penal institutions, almshouses, and county and city homes operated by the State, or any political subdivision thereof, and whose sewage is not admitted to a public sewer system.

"Mine" shall be construed to mean any coal mine, clay mine or other facility from which minerals are extracted from the earth including coal refuse disposal areas and coal collieries, coal breakers and other coal processing operations.

"Municipality" shall be construed to include any county, city, borough, town, township, school district, institution, or any authority created by any one or more of the foregoing.

"Person" shall be construed to include any natural person, partnership, association or corporation or any agency, instrumentality or entity of Federal or State Government. Whenever used in any clause prescribing and imposing a penalty, or imposing a fine or imprisonment, or both, the term "person" shall not exclude the members of an association and the directors, officers or agents of a corporation.

"Pollution" shall be construed to mean contamination of any waters of the Commonwealth such as will create or is likely to create a nuisance or to render such waters 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 aquatic life, including but not limited to such contamination by alteration of the physical, chemical or biological properties of such waters, or change in temperature, taste, color or odor thereof, or the discharge of any liquid, gaseous, radioactive, solid or other substances into such waters. The department shall determine when a discharge constitutes pollution, as herein defined, and shall establish standards whereby and wherefrom it can be ascertained and determined whether any such discharge does or does not constitute pollution as herein defined.

"Sewage" shall be construed to include any substance that contains any of the waste products or excrementitious or other discharge from the bodies of human beings or animals.

"Sewer extension" shall be construed to include new pipelines or conduits and all other appurtenant constructions, devices and facilities except pumping stations and force mains added to an existing sewer system for the purpose of conveying sewage from individual structures or properties to the existing system. (Def. added July 7, 1989, P.L.237, No.40)

"Waters of the Commonwealth" shall be construed to include any and all rivers, streams, creeks, rivulets, impoundments, ditches, water courses, storm sewers, lakes, dammed water, ponds, springs and all other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth. (1 amended Oct. 10, 1980, P.L.894, No.157)

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 1.

Section 2. Interpretation of Act.--A. The provisions of this act are severable, and if any of its provisions shall be held unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this act. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional provisions not been included herein.

B. Section headings shall not be taken to govern or limit the scope of the sections of this act. The singular shall include the plural, and the masculine shall include the feminine and neuter.

Section 3. Discharge of Sewage and Industrial Wastes Not a Natural Use.--The discharge of sewage or industrial waste or any substance into the waters of this Commonwealth, which causes or contributes to pollution as herein defined or creates a danger of such pollution is hereby declared not to be a reasonable or natural use of such waters, to be against public policy and to be a public nuisance.

(3 amended July 31, 1970, P.L.653, No.222)

Section 4. Declaration of Policy.--

(1) Clean, unpolluted streams are absolutely essential if Pennsylvania is to attract new manufacturing industries and to develop Pennsylvania's full share of the tourist industry;

(2) Clean, unpolluted water is absolutely essential if Pennsylvanians are to have adequate out of door recreational facilities in the decades ahead;

(3) It is the objective of the Clean Streams Law not only to prevent further pollution of the waters of the Commonwealth, but also to reclaim and restore to a clean, unpolluted condition every stream in Pennsylvania that is presently polluted;

(4) The prevention and elimination of water pollution is recognized as being directly related to the economic future of the Commonwealth; and

(5) The achievement of the objective herein set forth requires a comprehensive program of watershed management and control.

(4 amended July 31, 1970, P.L.653, No.222)

Section 5. Powers and Duties.--(a) The department, in adopting rules and regulations, in establishing policy and priorities, in issuing orders or permits, and in taking any other action pursuant to this act, shall, in the exercise of sound judgment and discretion, and for the purpose of implementing the declaration of policy set forth in section 4 of this act, consider, where applicable, the following:

(1) Water quality management and pollution control in the watershed as a whole;

(2) The present and possible future uses of particular waters;

(3) The feasibility of combined or joint treatment facilities;

(4) The state of scientific and technological knowledge;

(5) The immediate and long-range economic impact upon the Commonwealth and its citizens.

(b) The department shall have the power and its duty shall be to:

(1) Formulate, adopt, promulgate and repeal such rules and regulations and issue such orders as are necessary to implement the provisions of this act.

(2) Establish policies for effective water quality control and water quality management in the Commonwealth of Pennsylvania and coordinate and be responsible for the development and implementation of comprehensive public water supply, waste management and other water quality plans.

(3) Review all Commonwealth research programs pertaining to public water supply, water quality control and water quality management: Provided, however, That this section shall not be

construed to limit the authority of each department to conduct research programs and operations as authorized by law.

(4) Report from time to time to the Legislature and to the Governor on the Commonwealth's public water supply and water quality control program.

(5) Review and take appropriate action on all permit applications submitted pursuant to the provisions of this act and to issue, modify, suspend, limit, renew or revoke permits pursuant to this act and to the rules and regulations of the department. In all cases involving surface coal mining operations as they are defined in section 3 of the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," following the department's decision whether to approve or deny a renewal, the burden shall be on the opponent of the department's decision.

(6) Receive and act upon complaints.

(7) Issue such orders as may be necessary to implement the provisions of this act or the rules and regulations of the department.

(8) Make such inspections of public or private property as are necessary to determine compliance with the provisions of this act, and the rules, regulations, orders or permits issued hereunder.

(5 amended Oct. 10, 1980, P.L.894, No.157)

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 5.

Section 6. Application and Permit Fees.--The department is hereby authorized to charge and collect from persons and municipalities in accordance with its rules and regulations reasonable filing fees for applications filed and for permits issued.

(6 amended Oct. 10, 1980, P.L.894, No.157)

Section 7. Administrative Procedure and Judicial Review.--(a) Any person or municipality having an interest which is or may be adversely affected by any action of the department under this act shall have the right to appeal such action to the Environmental Hearing Board.

(b) The department may adopt rules and regulations establishing the procedure for, and limiting the time of, the taking of such appeals.

(c) The Environmental Hearing Board shall be subject to the provisions of Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(7 amended Oct. 10, 1980, P.L.894, No.157)

Section 8. Clean Water Fund.--(a) All fines collected under the penal provisions of this act, all civil penalties collected under section 605 of this act, all permit fees except those imposed pursuant to sections 202, 203 and 207 and all bond forfeitures and costs recovered under section 315 shall be paid into the Treasury of the Commonwealth in a special fund known as "The Clean Water Fund," which shall be administered by the

department for use in the elimination of pollution.

(b) The department may, pursuant to the rules and regulations adopted by the Environmental Quality Board, in the case of a discharge, except those discharges which are in any way connected with or relate to coal mining, which is authorized only if pursuant to a permit issued by the department, accept payments which would be paid into The Clean Water Fund in lieu of requiring the permittee to construct or operate a treatment facility. Such rules and regulations allowing such payments shall include the following:

(1) That the department finds that the use of the funds so received would provide greater benefit to citizens of the Commonwealth and would more appropriately conform to the declarations of policy of this act than would the construction and operation of a treatment facility.

(2) That in determining the amounts of such payments, the department shall consider the cost of construction and operation of a treatment facility, the quantity and quality of the discharge, the effect of the discharge on waters of the Commonwealth, the period of time for which the discharge will continue and other relevant factors.

(3) That the permit authorizing the discharge be subject to such conditions as the department might impose, including conditions relating to procedures for the effective cessation of any pollutional discharge upon closing of the operation.

(4) That allowing the discharge will not adversely affect any treatment program which is being conducted or is contemplated in the watershed in which the discharge is located.

(5) That any such payments accepted in lieu of requiring the permittee to construct or operate a treatment facility shall be used for abatement programs or the construction of consolidated treatment facilities which would be more effective than a larger number of smaller programs or facilities, and further, that such funds shall be used only for such projects, including gathering and collection systems, on the watershed or on the body of water into which such permittee is discharging.

(8 amended Oct. 10, 1980, P.L.894, No.157)

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 8.

Compiler's Note: Section 12 of Act 173 of 1992 provided that section 8 is repealed insofar as it is inconsistent with that act.

ARTICLE II
SEWAGE POLLUTION

Section 201. Prohibition Against Discharge of Sewage.--No person or municipality shall place or permit to be placed, or discharge or permit to flow, or continue to discharge or permit to flow, into any of the waters of the Commonwealth any sewage, except as hereinafter provided in this act.

Section 202. Sewage Discharges.--No municipality or person shall discharge or permit the discharge of sewage in any manner, directly or indirectly, into the waters of this Commonwealth unless such discharge is authorized by the rules and regulations of the department or such person or municipality has first obtained a permit from the department. Such permit before being operative shall be recorded in the office of the recorder of deeds for the county wherein the outlet of said sewer system is located and in case the municipality or person fails or neglects to record such permit, the department shall cause a copy thereof to be so recorded, and shall collect the cost of recording from the municipality or person. No such permit shall be construed to permit any act otherwise forbidden by any decree, order, sentence or judgment of any court, or by the ordinances of any municipality, or by the rules and regulations of any water company supplying water to the public, or by laws relative to navigation. For the purposes of this section, a discharge of sewage into the waters of the Commonwealth shall include a discharge of sewage by a person or municipality into a sewer system or other facility owned, operated or maintained by another person or municipality and which then flows into the waters of the Commonwealth. A discharge of sewage without a permit or contrary to the terms and conditions of a permit or contrary to the rules and regulations of the department is hereby declared to be a nuisance.

(202 amended Oct. 10, 1980, P.L.894, No.157)

Section 203. Municipal Sewage.--(a) Whether or not a municipality is required by other provisions of this act to have a permit for the discharge of sewage, if the department finds that the acquisition, construction, repair, alteration, completion, extension or operation of a sewer system or treatment facility is necessary to properly provide for the prevention of pollution or prevention of a public health nuisance, the department may order such municipality to acquire, construct, repair, alter, complete, extend, or operate a sewer system and/or treatment facility. Such order shall specify the length of time, after receipt of the order, within which such action shall be taken.

(b) The department may from time to time order a municipality to file a report with the department pertaining to sewer systems or treatment facilities owned, operated, or maintained by such municipality or pertaining to the effect upon the waters of the Commonwealth of any sewage discharges originating from sources within the municipality. The report shall contain such plans, facts, and information which the department may require to enable it to determine whether existing sewer systems and treatment facilities are adequate to meet the present and future needs or whether the acquisition, construction, repair, alteration, completion, extension, or operation of a sewer system or treatment facility should be required to meet the objectives of this act. Whether or not such reports are required or received by the department, the department may issue appropriate orders to municipalities where such orders are found to be necessary to assure that there will be adequate sewer systems and treatment facilities to meet present and future needs or otherwise to meet the objectives of this act. Such orders may include, but shall not be limited to, orders requiring municipalities to undertake studies, to prepare and submit plans, to acquire, construct, repair, alter,

complete, extend, or operate a sewer system or treatment facility, or to negotiate with other municipalities for combined or joint sewer systems or treatment facilities. Such orders may prohibit sewer system extensions, additional connections, or any other action that would result in an increase in the sewage that would be discharged into an existing sewer system or treatment facility.

(203 amended July 31, 1970, P.L.653, No.222)

Section 204. Penalty.--(204 repealed July 31, 1970, P.L.653, No.222)

Section 205. Reports of Existing Municipal Sewers.--(205 repealed July 31, 1970, P.L.653, No.222)

Section 206. Applications for Permits for the Discharge of Sewage.--(206 repealed July 31, 1970, P.L.653, No.222)

Section 207. Approval of Plans, Designs, and Relevant Data by the Department.--(a) All plans, designs, and relevant data for the construction of any new sewer system, or for the extension of any existing sewer system, except as provided in section (b), by a person or municipality, or for the erection, construction, and location of any treatment works or intercepting sewers by a person or municipality, shall be submitted to the department for its approval before the same are constructed or erected or acquired. Any such construction or erection which has not been approved by the department by written permit, or any treatment works not operated or maintained in accordance with the rules and regulations of the department, is hereby also declared to be a nuisance and abatable as herein provided.

(b) Except as specifically provided by the rules and regulations of the department, plans, designs and relevant data for the construction of a sewer extension to collect no more than the volume of sewage from two hundred fifty single-family dwelling units or their equivalent by a person or municipality shall not require a permit from the department if such sewer extension is located, constructed, connected and maintained in accordance with the rules and regulations of the department and is consistent with the approved official plan, required by section 5 of the act of January 24, 1966 (1965 P.L.1535, No.537), known as the "Pennsylvania Sewage Facilities Act," for the municipality in which the sewer extension is to be located, constructed, connected or maintained. However, all such sewer extensions remain subject to any conditions imposed by the department, the municipality or any municipal authority whose interest may be affected by the sewer extension. Any such sewer extension which is located, constructed, connected or maintained contrary to the rules and regulations of the department, contrary to the terms and conditions of a permit, inconsistent with the approved official plan for the municipality or contrary to any conditions imposed by the department, municipality or municipal authority is also hereby declared to be a nuisance and abatable as provided herein.

(207 amended July 7, 1989, P.L.237, No.40)

Section 208. Revocation or Modification of Permits.--(208 repealed July 31, 1970, P.L.653, No.222)

Section 209. Prohibition Against Discharge of Sewage, Et Cetera, after Revocation of Permit.--On the expiration of the period of time prescribed, after the service of a notice of revocation, modification or change of any such permit from the department, the discharge of sewage into any waters of the

Commonwealth or treated sewage from treatment works shall cease and terminate, and the prohibition of this act against such discharge or treatment shall be in full force as though no permit had been granted, but a new permit may thereafter again be granted, as hereinbefore provided. A continuation of the discharge of sewage or the treatment of sewage after revocation, or in violation of any modification and change of any such permit, is hereby also declared to be a nuisance, and shall be punishable and abatable as herein provided.

(209 amended Oct. 10, 1980, P.L.894, No.157)

Section 210. Duties of Municipalities.--It shall be the duty of the corporate authorities of a municipality upon whom an order is issued pursuant to section 203 of this act to proceed diligently in compliance with such order. If the corporate authorities fail to proceed diligently, or if the municipality fails to comply with the order within the specified time, the corporate authorities 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 Attorney General to the Commonwealth Court or to the court of common pleas of the county wherein the municipality is situated, which courts are hereby given jurisdiction.

(210 amended Oct. 10, 1980, P.L.894, No.157)

Section 211. Revenue Bonds.--For the purpose of financing the cost and expense, or its share of the cost and expense, of constructing or acquiring or extending any sewer, sewer system or sewage treatment works, either singly or jointly with other municipalities, a municipality may issue non-debt revenue bonds secured solely by a pledge, in whole or in part, of the annual rentals or charges imposed for the use of such sewer, sewer system or sewage treatment works. Said bonds shall not pledge the credit, nor create any debt, nor be a charge against the general revenues, nor be a lien against any property of the municipality, but shall be a lien upon and payable solely from the annual rentals or charges for the use of the sewer, sewer system or sewage treatment works.

Section 212. Issuance and Sale of Revenue Bonds; Maturity; Interest.--When a municipality shall issue any non-debt revenue bonds, the corporate authorities thereof shall sell the same to the highest bidder after public notice by advertisement once a week for three weeks, in at least one newspaper of general circulation, published in the municipality or the county in which the municipality is situate. Where bonds shall be advertised for sale as herein provided, and no bids shall have been received, then it shall be lawful for such municipality to sell the same at private sale for not less than par and accrued interest.

All such bonds shall be payable in not more than thirty years from the date of their issue, shall be issued in series payable in equal annual installments, and shall bear interest at a rate not exceeding six per centum per annum.

Section 213. Other Methods of Financing Preserved.--Anything in this act to the contrary notwithstanding, any municipality shall have power to issue bonds, revenue certificates or other obligations to finance, in whole or in part, the carrying out of any order or direction of the department without regard to the restrictions, limitations or provisions of this act relating to the issuance of bonds, revenue certificates or other obligations: Provided, That such bonds, revenue certificates or

other obligations are issued by the municipality in accordance with the provisions of any other law. This act shall be construed to provide an alternative method for the issuance of bonds, revenue certificates or other obligations by a municipality, and not an exclusive method therefor.

(213 amended Oct. 10, 1980, P.L.894, No.157)

ARTICLE III
INDUSTRIAL WASTES

Section 301. Prohibition Against Discharge of Industrial Wastes.--No person or municipality shall place or permit to be placed, or discharged or permit to flow, or continue to discharge or permit to flow, into any of the waters of the Commonwealth any industrial wastes, except as hereinafter provided in this act.

(301 amended July 31, 1970, P.L.653, No.222)

Section 302. Existing Industrial Waste Discharges.--(302 repealed July 31, 1970, P.L.653, No.222)

Section 303. Information as to Kind and Character of Discharge.--Every person who, on the effective date of this act, shall be discharging or permitting to be discharged or has an establishment temporarily closed which, in the future, may discharge or permit to be discharged, any industrial waste into the waters of the Commonwealth, shall file with the department within ninety days after the effective date of this act, on forms prepared and supplied by the department, such information, under oath, as the department may require with regard to such industrial waste, including the kind, characteristics, and rate of flow thereof, and concerning the treatment works, if any, either in operation or in contemplation. It shall be the duty of such persons to apply to the department for the forms necessary to comply with this provision. The falsity of any of the information thus supplied is hereby declared to be perjury and punishable as such.

(303 amended Oct. 10, 1980, P.L.894, No.157)

Section 304. Water Surveys.--The department shall have power to make a complete survey of the waters of the Commonwealth in order to ascertain the extent of pollution in each of said waters, and the remedies to be employed to purify said waters. It shall have power to adopt, prescribe, and enforce such rules and regulations, not inconsistent with this act, as may be deemed necessary for the protection of the purity of the waters of the Commonwealth, or parts thereof, and to purify those now polluted, and to assure the proper and practical operation and maintenance of treatment works approved by it. A violation of which rules and regulations, after notice, shall also constitute a nuisance under this act.

(304 amended Oct. 10, 1980, P.L.894, No.157)

Section 305. Investigations and Research.--In addition to any powers now possessed, the department shall investigate and ascertain, as far as practicable, all facts in relation to the pollution of the waters of the Commonwealth by industrial waste. Its agents may enter upon lands, buildings, and premises as may be necessary for its investigations. It shall conduct scientific experiments and researches under its personal supervision or in colleges and universities for the purpose of ascertaining reasonable and practical means for the treatment of industrial waste, so that when the same has been treated the effluent

thereof, when discharged into the waters of the Commonwealth, shall not be injurious to the public health or to animal or aquatic life, or prevent the use of the water for domestic, industrial or recreational purposes.

(305 amended Oct. 10, 1980, P.L.894, No.157)

Section 306. Protection of Clean Waters.--(306 repealed July 31, 1970, P.L.653, No.222)

Section 307. Industrial Waste Discharges.--(a) No person or municipality shall discharge or permit the discharge of industrial wastes in any manner, directly or indirectly, into any of the waters of the Commonwealth unless such discharge is authorized by the rules and regulations of the department or such person or municipality has first obtained a permit from the department. For the purposes of this section, a discharge of industrial wastes into the waters of the Commonwealth shall include a discharge of industrial wastes by a person or municipality into a sewer system or other facility owned, operated or maintained by another person or municipality and which then flows into the waters of the Commonwealth.

(b) Public notice of every application for a permit or bond release under this section shall be given by notice published in a newspaper of general circulation, published in the locality where the permit is applied for, once a week for four weeks. The department shall prescribe such requirements regarding public notice and public hearings on permit applications and bond releases as it deems appropriate. For the purpose of these public hearings, the department shall have the authority and is hereby empowered to administer oaths, subpoena witnesses, or written or printed materials, compel the attendance of witnesses, or production of witnesses, or production of materials, and take evidence including but not limited to inspections of the area proposed to be affected and other operations carried on by the applicant in the general vicinity. Any person having an interest which is or may be adversely affected by any action of the department under this section may proceed to lodge an appeal with the Environmental Hearing Board in the manner provided by law, and from the adjudication of said board such person may further appeal as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure). The Environmental Hearing Board, upon the request of any party, may in its discretion order the payment of costs and attorney's fees it determines to have been reasonably incurred by such party in proceedings pursuant to this act. In all cases involving surface coal mining as it is defined in section 3 of the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," any person having an interest which is or may be adversely affected shall have the right to file written objections to the proposed permit application or bond release within thirty days after the last publication of the above notice. Such objections shall immediately be transmitted to the applicant by the department. If written objections are filed and an informal conference requested, the department shall then hold an informal conference in the locality of the surface mining operation. If an informal conference has been held, the department shall issue and furnish the applicant for a permit or bond release and persons who are parties to the administrative proceedings with the written finding of the department granting or denying the permit or bond release in whole or in part and

stating the reasons therefor, within sixty days of said hearings. If there has been no informal conference, the department shall notify the applicant for a permit or bond release of its decision within sixty days of the date of filing the application. The applicant, operator, or any person having an interest which is or may be adversely affected by an action of the department to grant or deny a permit or to release or deny release of a bond and who participated in the informal hearing held pursuant to this subsection or filed written objections, may proceed to lodge an appeal with the Environmental Hearing Board in the manner provided by law and from the adjudication of said board such person may further appeal as provided by Title 2 of the Pennsylvania Consolidated Statutes.

(c) A discharge of industrial wastes without a permit or contrary to the terms and conditions of a permit or contrary to the rules and regulations of the department is hereby declared to be a nuisance.

(307 amended Oct. 10, 1980, P.L.894, No.157)

Section 308. Approval of Plans, Designs, and Relevant Data by the Department.--All plans, designs, and relevant data for the erection and construction of treatment works by any person or municipality for the treatment of industrial wastes shall be submitted to the department for its approval before the works are constructed or erected. Any such construction or erection which has not been approved by the department by written permit, or any treatment works not maintained or operated in accordance with the rules and regulations of the department, is hereby declared to be a nuisance.

(308 amended Oct. 10, 1980, P.L.894, No.157)

Section 309. Penalties.--(309 repealed July 31, 1970, P.L.653, No.222)

Section 310. Acid Mine Drainage.--(310 repealed Aug. 23, 1965, P.L.372, No.194)

Section 311. Authorizing the Sanitary Water Board to Acquire Easements and Right of Ways by Purchase or Condemnation, or Otherwise.--(311 repealed Aug. 23, 1965, P.L.372, No.194)

Section 312. Condemnation Proceedings.--(312 repealed Aug. 23, 1965, P.L.372, No.194)

Section 313. Approval of Plans of Drainage.--(313 repealed Aug. 23, 1965, P.L.372, No.194)

Section 314. Authorizing Certain Corporations to Acquire Interests in Land by Eminent Domain.--Whenever the department shall direct any corporation to cease discharging industrial waste into any waters of the Commonwealth, pursuant to the public policy set forth in this act, and such directive would materially affect the operations of that corporation's business, then such corporation if not otherwise vested with the right of eminent domain may make application to the department for an order, finding that the use by the applicant of a specified interest in a specifically described piece of land is necessary in connection with the elimination, reduction or control of the pollution of any of the waters of this Commonwealth. For the purposes of this act, such corporations are vested with the right of eminent domain which shall be exercised only upon authorization of the department, in which event they shall proceed in the manner and form set forth in the "Eminent Domain Code," act of June 22, 1964 (Sp.Sess., P.L.84, No.6), as amended: Provided, That no property devoted to a public use or

owned by a public utility or used as a place of public worship or used for burial purposes shall be taken under the right of eminent domain: And provided further, That where any existing public street or road is vacated by any municipality in order to facilitate any undertaking in connection with land acquired under the right of eminent domain as provided for above, the corporation acquiring such land shall reimburse all public utilities, municipalities and municipality authorities for the costs of relocating and reconstructing their facilities necessitated by the closing of any such street or road.

In the event the application by the corporation to the department is denied, then the corporation so applying may appeal to the court of common pleas in the county where the specified land in which the specified interest is sought to be obtained by eminent domain is situated, and the court shall be empowered to review all questions of fact as well as of law.

(314 amended Oct. 10, 1980, P.L.894, No.157)

Section 315. Operation of Mines.--(a) No person or municipality shall operate a mine or allow a discharge from a mine into the waters of the Commonwealth unless such operation or discharge is authorized by the rules and regulations of the department or such person or municipality has first obtained a permit from the department. Operation of the mine shall include preparatory work in connection with the opening or reopening of a mine, refuse disposal, backfilling, sealing, and other closing procedures, and any other work done on land or water in connection with the mine. A discharge from a mine shall include a discharge which occurs after mining operations have ceased, provided that the mining operations were conducted subsequent to January 1, 1966, under circumstances requiring a permit from the Sanitary Water Board under the provisions of section 315 (b) of this act as it existed under the amendatory act of August 23, 1965 (P.L.372, No.194). The operation of any mine or the allowing of any discharge without a permit or contrary to the terms or conditions of a permit or contrary to the rules and regulations of the department, is hereby declared to be a nuisance. Whenever a permit is requested to be issued pursuant to this subsection, and such permit is requested for permission to operate any mining operations, the city, borough, incorporated town or township in which the operation is to be conducted shall be notified by registered mail of the request, at least ten days before the issuance of the permit or before a hearing on the issuance, whichever is first.

(b) The department may require an applicant for a permit to operate a mine, or a permittee holding a permit to operate a mine under the provisions of this section, to post a bond or bonds on forms prescribed and furnished by the department in favor of the Commonwealth of Pennsylvania and with good and sufficient collateral, irrevocable bank letters of credit or corporate surety guarantees acceptable to the department to insure that there will be compliance with the law, the rules and regulations of the department, and the provisions and conditions of such permit including but not limited to conditions pertaining to restoration measures or other provisions insuring that there will be no polluting discharge after mining operations have ceased. The department shall establish the amount of the bond required for each operation based on the cost to the Commonwealth of taking corrective measures in cases of the operator's failure to comply, or in such other amount and

form as may be established by the department pursuant to regulations for an alternate coal bonding program which shall achieve the objectives and purposes of the bonding program. The department may, from time to time, increase or decrease such amount: Provided, however, That no bond shall be filed for less than ten thousand dollars ($10,000) for the entire permit area. The department shall also establish the duration of the bond required for each operation and at the minimum liability under each bond shall continue until such time as the department determines that there is no further significant risk of a pollutional discharge. The bond shall be conditioned upon the operator's faithful performance of the requirements of this act, the act of November 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and Encroachments Act," the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," the act of January 8, 1960 (1959 P.L.2119, No.787), known as the "Air Pollution Control Act," the act of September 24, 1968 (P.L.1040, No.318), known as the "Coal Refuse Disposal Control Act," and where applicable of the act of July 31, 1968 (P.L.788, No.241), known as the "Pennsylvania Solid Waste Management Act" or the act of July 7, 1980 (No.97), known as the "Solid Waste Management Act": Provided, however, That an operator posting a bond sufficient to comply with this section of the act shall not be required to post a separate bond for the permitted area under each of the acts hereinabove enumerated: And provided further, That the foregoing proviso shall not prohibit the department from requiring additional bond amounts for the permitted area should such an increase be determined by the department to be necessary to meet the requirements of this act. Where the minerals are to be removed by the underground mining method, and the mining operations are reasonably anticipated to continue for a period of at least ten years from the date of application, the operator may elect to deposit collateral and file a collateral bond as provided in this subsection according to the following phased deposit schedule. The operator shall, prior to commencing mining operations, deposit ten thousand dollars ($10,000) or twenty-five per cent of the amount of bond determined under this subsection, whichever is greater. The operator shall, thereafter, annually deposit ten per cent of the remaining bond amount for a period of ten years. Interest accumulated by such collateral shall become part of the bond. The department may require additional bonding at any time to meet the intent of this subsection. The collateral shall be deposited, in trust, with the State Treasurer as provided in this subsection, or with a bank, selected by the department, which shall act as trustee for the benefit of the Commonwealth, according to rules and regulations promulgated hereunder, to guarantee the operator's compliance with this act and the acts hereinabove enumerated. The operator shall be required to pay all costs of the trust. The collateral deposit, or part thereof, shall be released of liability and returned to the operator, together with a proportional share of accumulated interest, upon the conditions of and pursuant to the schedule and criteria for release provided for in rules and regulations promulgated hereunder. Upon the completion of any mining operation and prior to the release by the department of any portion of the bond liability, the operator shall remove and clean up all temporary materials, property, debris or junk which were used in or resulted from his mining operations. The failure

to post a bond required by the department shall be sufficient cause for withholding a permit or for the suspension or revocation of an existing permit. If the operator fails or refuses to comply with the requirements of the act in any respect for which liability has been charged on the bond, the Secretary of the Department of Environmental Resources shall declare the bond forfeited, and shall certify the same to the Attorney General, who shall proceed to enforce and collect the amount of liability forfeited thereon, and where the operator has deposited cash or securities as collateral in lieu of a corporate surety, the secretary shall declare said collateral forfeited. If the operator is or was engaged in surface mining operations at the time of the violation, the secretary shall direct the State Treasurer to pay said funds into the Surface Mining Conservation and Reclamation Fund, or to proceed to sell said securities to the extent forfeited and pay the proceeds thereof into the Surface Mining Conservation and Reclamation Fund. If the operator is or was engaged in the operation of a deep mine at the time of the violation, the secretary shall direct the State Treasurer to pay said funds into The Clean Water Fund, or to proceed to sell said securities to the extent forfeited and pay the proceeds thereof into The Clean Water Fund. Should any corporate surety fail to promptly pay, in full, a forfeited bond, it shall be disqualified from writing any further bonds under this act. Any operator aggrieved by reason of forfeiting the bond or converting collateral, as herein provided, shall have a right to appeal such action to the Environmental Hearing Board.

The department, in its discretion, may accept a self-bond from the permittee, without separate surety, if the permittee demonstrates to the satisfaction of the department a history of financial solvency, continuous business operation and continuous efforts to achieve compliance with all United States of America and Pennsylvania environmental laws, and, meets all of the following requirements:

(1) The permittee shall be incorporated or authorized to do business in Pennsylvania and shall designate an agent in Pennsylvania to receive service of suits, claims, demands or other legal process.

(2) The permittee or if the permittee does not issue separate audited financial statements, its parent, shall provide audited financial statements for at least its most recent three fiscal years prepared by a certified public accountant in accordance with generally accepted accounting principles. Upon request of the permittee, the department shall maintain the confidentiality of such financial statements if the same are not otherwise disclosed to other government agencies or the public.

(3) During the last thirty-six calendar months, the applicant has not defaulted in the payment of any dividend or sinking fund installment or preferred stock or installment on any indebtedness for borrowed money or payment of rentals under long-term leases or any reclamation fee payment currently due under the Federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1232, for each ton of coal produced in the Commonwealth of Pennsylvania.

(4) The permittee shall have been in business and operating no less than ten years prior to filing of application unless the permittee's existence results from a reorganization, consolidation or merger involving a company with such longevity.

However, the permittee shall be deemed to have met this requirement if it is a majority-owned subsidiary of a corporation which has such a ten-year business history.

(5) The permittee shall have a net worth of at least six times the aggregate amount of all bonds applied for by the operator under this section.

(6) The permittee shall give immediate notice to the department of any significant change in managing control of the company.

(7) A corporate officer of the permittee shall certify to the department that forfeiture of the aggregate amounts of self-bonds furnished for all operations hereunder would not materially affect the permittee's ability to remain in business or endanger its cash flow to the extent it could not meet its current obligations.

(8) The permittee may be required by the department to pledge real and personal property to guarantee the permittee's self-bond. The department is authorized to acquire and dispose of such property in the event of a default to the bond obligation and may use the moneys in The Clean Water Fund to administer this provision.

(9) The permittee may be required to provide third party guarantees or indemnifications of its self-bond obligations.

(10) The permittee shall provide such other information regarding its financial solvency, continuous business operation and compliance with environmental laws as the department shall require.

(11) An applicant shall certify to the department its present intention to maintain its present corporate status for a period in excess of five years.

(12) A permittee shall annually update the certifications required hereunder and provide audited financial statements for each fiscal year during which it furnishes self-bonds.

(13) The permittee shall pay an annual fee in the amount determined by the department of the cost to review and verify the permittee's application for self-bonding and annual submissions thereafter.

(c) The application for a permit to operate a mine shall include a determination of the probable hydrologic consequences of the operation, both on and off the site of the operation, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the site of the operations and surrounding areas so that an assessment can be made by the department of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability: Provided, however, That this determination shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate Federal or State agency: And provided further, That the permit shall not be approved until such information is available and is incorporated into the application.

(d) The operator of a mine shall restore the recharge capacity of the area of the operation to approximate pre-mining conditions.

(e) The application shall also demonstrate that the proposed operation will be conducted so as to maximize the utilization

and conservation of the solid fuel resource being recovered so that reaffecting the land in the future can be minimized: Provided, however, That such resource utilization and conservation shall not excuse the operator from complying in full with all environmental protection and health and safety standards.

(f) The application shall also set forth the manner in which the operator plans to comply with the requirements of the act of November 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and Encroachments Act," the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," the act of January 8, 1960 (1959 P.L.2119, No.787), known as the "Air Pollution Control Act," the act of September 24, 1968 (P.L.1040, No.318), known as the "Coal Refuse Disposal Control Act," and where applicable of the act of July 31, 1968 (P.L.788, No.241), known as the "Pennsylvania Solid Waste Management Act" or the act of July 7, 1980 (No.97), known as the "Solid Waste Management Act." No approval shall be granted unless the plan provides for compliance with the statutes hereinabove enumerated, and failure to comply with the statutes hereinabove enumerated during mining or thereafter shall render the operator liable to the sanctions and penalties provided in this act for violations of this act and to the sanctions and penalties provided in the statutes hereinabove enumerated for violations of such statutes. Such failure to comply shall be cause for revocation of any approval or permit issued by the department to the operator: Provided, however, That a violation of the statutes hereinabove enumerated shall not be deemed a violation of this statute unless this statute's provisions are violated, but shall only be cause for revocation of the operator's permit: And provided further, That nothing in this subsection shall be read to limit the department's authority to regulate activities in a coordinated manner. Compliance with the provisions of this subsection and with the provisions of this act and the provisions of the statutes hereinabove enumerated shall not relieve the operator of the responsibility of complying with the provisions of all other applicable statutes, including but not limited to the act of July 17, 1961 (P.L.659, No.339), known as the "Pennsylvania Bituminous Coal Mine Act," the act of November 10, 1965 (P.L.721, No.346), known as the "Pennsylvania Anthracite Coal Mine Act," and the act of July 9, 1976 (P.L.931, No.178), entitled "An act providing for emergency medical personnel; employment of emergency medical personnel and emergency communications in coal mines."

(g) The application for a permit shall include, upon a form prepared and furnished by the department, the written consent of the landowner to entry upon any land to be affected by the operation of the operator and by the Commonwealth and by any of its authorized agents prior to the initiation of mining operations, during mining operations, and for a period of five years after the operation is completed or abandoned for the purpose of reclamation, planting and inspection or for the construction of any such pollution abatement facilities as may be deemed necessary by the department for the prevention of pollution from mine drainage. Such forms shall be deemed to be recordable documents, and prior to the initiation of mining operations under the permit, such forms shall be recorded at the office of the recorder of deeds in the county or counties in

which the area to be affected under the permit is situate.

(h) Pursuant to the procedures set forth in subsection (b), the department shall designate an area as unsuitable for all or certain types of surface mining operations, as such operations are defined in section 3 of the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," if the department determines that reclamation pursuant to the requirements of this act is not technologically and economically feasible.

(i) Pursuant to the procedures set forth in subsection (m), the department may designate an area as unsuitable for certain types of mining operations if such operations will:

(1) be incompatible with existing State or local land use plans or programs;

(2) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific and esthetic values and natural systems;

(3) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or

(4) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

(j) The department shall forthwith develop a process to meet the requirements of this act. This process shall include:

(1) review by the department of coal mining lands;

(2) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the State to support and permit reclamation of mining operations;

(3) a method or methods for implementing land use planning decisions concerning mining operations; and

(4) proper notice, opportunities for public participation, including a public hearing prior to making any designation or redesignation, pursuant to this section.

(k) Determinations of the unsuitability of land for mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the Federal, State and local levels.

(l) The requirements of this section shall not apply to lands on which mining operations are being conducted on August 3, 1977, or under a permit issued pursuant to this act, or where substantial legal and financial commitments as they are defined under § 522 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.), in such operation were in existence prior to January 4, 1977.

(m) Any person having an interest which is or may be adversely affected shall have the right to petition the department to have an area designated as unsuitable for mining operations, or to have such a designation terminated. Pursuant to the procedure set forth in this section, the department may initiate proceedings seeking to have an area designated as unsuitable for mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten months after receipt of the petition the department shall hold a public hearing in the locality of the

affected area, after appropriate notice and publication of the date, time and location of such hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this section, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty days after such hearing, the department shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefor. In the event that all the petitioners stipulate agreement prior to the requested hearing, and withdraw their request, such hearing need not be held.

(n) Prior to designating any land areas as unsuitable for mining operations, the department shall prepare a detailed statement on:

(1) the potential coal resources of the area;

(2) the demand for coal resources; and

(3) the impact of such designation on the environment, the economy and the supply of coal.

(o) Subject to valid existing rights as they are defined under § 522 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.), no mining operations except those which exist on August 3, 1977, shall be permitted:

(1) on any lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act and National Recreation Areas designated by Act of Congress;

(2) on any Federal lands within the boundaries of any National forest: Provided, however, That surface mining operations may be permitted on such lands if the Department of Interior and the department find that there are no significant recreational, timber, economic or other values which may be incompatible with such surface mining operations and surface operations and the impacts are incident to an underground coal mine;

(3) which will adversely affect any publicly owned park or places included in the National Register of Historic Sites unless approved jointly by the department and the Federal, State or local agency with jurisdiction over the park or the historic site;

(4) within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the department may permit such roads to be relocated or the area affected to lie within one hundred feet of such road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected; or

(5) within three hundred feet from any occupied dwelling, unless waived by the owner thereof, nor within three hundred feet of any public building, school, church, community, institutional building, or public park, nor within one hundred feet of a cemetery, nor within one hundred feet of the bank of a stream.

(315 amended Oct. 10, 1980, P.L.894, No.157)

Compiler's Note: The Department of Environmental Resources, referred to in subsec. (b), was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Section 316. Responsibilities of Landowners and Land Occupiers.

Whenever the department finds that pollution or a danger of pollution is resulting from a condition which exists on land in the Commonwealth the department may order the landowner or occupier to correct the condition in a manner satisfactory to the department or it may order such owner or occupier to allow a mine operator or other person or agency of the Commonwealth access to the land to take such action. For the purpose of this section, "landowner" includes any person holding title to or having a proprietary interest in either surface or subsurface rights.

For the purpose of collecting or recovering the expense involved in correcting the condition, the department may assess the amount due in the same manner as civil penalties are assessed under the provisions of section 605 of this act: Provided, however, That if the department finds that the condition causing pollution or a danger of pollution resulted from mining operations conducted prior to January 1, 1966, or, if subsequent to January 1, 1966, under circumstances which did not require a permit from the Sanitary Water Board under the provisions of section 315 (b) of this act as it existed under the amendatory act of August 23, 1965 (P.L.372, No.194), then the amount assessed shall be limited to the increase in the value of the property as a result of the correction of the condition.

If the department finds that the pollution or danger of pollution results from an act of God in the form of sediment from land for which a complete conservation plan has been developed by the local soil and water conservation district and the Soil Conservation Service, U.S.D.A. and the plan has been fully implemented and maintained, the landowner shall be excluded from the penalties of this act.

(316 amended Oct. 10, 1980, P.L.894, No.157)

Section 317. Penalties.--(317 repealed July 31, 1970, P.L.653, No.222)

ARTICLE IV
OTHER POLLUTIONS AND POTENTIAL POLLUTION
(Hdg. amended July 31, 1970, P.L.653, No.222)

Section 401. Prohibition Against Other Pollutions.--It shall be unlawful for any person or municipality to put or place into any of the waters of the Commonwealth, or allow or permit to be discharged from property owned or occupied by such person or municipality into any of the waters of the Commonwealth, any substance of any kind or character resulting in pollution as herein defined. Any such discharge is hereby declared to be a nuisance.

(401 amended July 31, 1970, P.L.653, No.222)

Section 402. Potential Pollution.--(a) Whenever the department finds that any activity, not otherwise requiring a

permit under this act, including but not limited to the impounding, handling, storage, transportation, processing or disposing of materials or substances, creates a danger of pollution of the waters of the Commonwealth or that regulation of the activity is necessary to avoid such pollution, the department may, by rule or regulation, require that such activity be conducted only pursuant to a permit issued by the department or may otherwise establish the conditions under which such activity shall be conducted, or the department may issue an order to a person or municipality regulating a particular activity. Rules and regulations adopted by the department pursuant to this section shall give the persons or municipalities affected a reasonable period of time to apply for and obtain any permits required by such rules and regulations.

(b) Whenever a permit is required by rules and regulations issued pursuant to this section, it shall be unlawful for a person or municipality to conduct the activity regulated except pursuant to a permit issued by the department. Conducting such activity without a permit, or contrary to the terms or conditions of a permit or conducting an activity contrary to the rules and regulations of the department or conducting an activity contrary to an order issued by the department, is hereby declared to be a nuisance.

(402 amended Oct. 10, 1980, P.L.894, No.157)

Section 403. Powers of Board.--(403 repealed July 31, 1970, P.L.653, No.222)

ARTICLE V
DOMESTIC WATER SUPPLIES

Section 501. Protection of Domestic Water Supplies.--In addition to the powers and authority hereinbefore granted, power and authority is hereby conferred upon the department, after due notice and public hearing, to make, adopt, promulgate, and enforce reasonable orders and regulations for the protection of any source of water for present or future supply to the public, and prohibiting the pollution of any such source of water rendering the same inimical or injurious to the public health or objectionable for public water supply purposes.

(501 amended Oct. 10, 1980, P.L.894, No.157)

Section 502. Penalty.--(502 repealed Oct. 10, 1980, P.L.894, No.157)

Section 503. Public Nuisances.--A violation of the orders and regulations adopted by the department, pursuant to section five hundred and one of this act, shall constitute a nuisance, and whenever such a pollution shall be maintained or continued contrary to such orders and regulations, the same may be abatable in the manner provided by this act.

(503 amended Oct. 10, 1980, P.L.894, No.157)

ARTICLE VI
PROCEDURE AND ENFORCEMENT
(Hdg. amended July 31, 1970, P.L.653, No.222)

Section 601. Abatement of Nuisances; Restraining Violations.--(a) Any activity or condition declared by this act to be a nuisance or which is otherwise in violation of this act, shall be abatable in the manner provided by law or equity for

the abatement of public nuisances. In addition, suits to abate such nuisances or suits to restrain or prevent any violation of this act may be instituted in equity or at law in the name of the Commonwealth upon relation of the Attorney General, or upon relation of any district attorney of any county, or upon relation of the solicitor of any municipality affected, after notice has first been served upon the Attorney General of the intention of the district attorney or solicitor to so proceed. Such proceedings may be prosecuted in the Commonwealth Court, or in the court of common pleas of the county where the activity has taken place, the condition exists, or the public is affected, and to that end jurisdiction is hereby conferred in law and equity upon such courts: Provided, however, That no action shall be brought by such district attorney or solicitor against any municipality discharging sewage under a permit of the department heretofore issued or hereafter issued under this act: And provided further, That, except in cases of emergency where, in the opinion of the court, the exigencies of the cases require immediate abatement of said nuisances, the court may, in its decree, fix a reasonable time during which the person or municipality responsible for the nuisances may make provision for the abatement of the same.

(b) In cases where the circumstances require it or the public health is endangered, a mandatory preliminary injunction or special injunction may be issued upon the terms prescribed by the court, notice of the application therefor having been given to the defendant in accordance with the rules of equity practice, and in any such case the Attorney General, the district attorney or the solicitor of any municipality shall not be required to give bond.

(c) Except as provided in subsection (e), any person having an interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this act or any rule, regulation, order or permit issued pursuant to this act against the department where there is alleged a failure of the department to perform any act which is not discretionary with the department or against any other person alleged to be in violation of any provision of this act or any rule, regulation, order or permit issued pursuant to this act. Any other provision of law to the contrary notwithstanding, the courts of common pleas shall have jurisdiction of such actions, and venue in such actions shall be as set forth in the Rules of Civil Procedure concerning actions in assumpsit.

(d) Whenever any person presents information to the department which gives the department reason to believe that any person is in violation of any requirement of this act or any condition of any permit issued hereunder or of the acts enumerated in subsection 315(h) or any condition or any permit issued thereunder, the department shall immediately order inspection of the operation at which the alleged violation is occurring, and the department shall notify the person presenting such information and such person shall be allowed to accompany the inspector during the inspection.

(e) No action pursuant to this section may be commenced prior to sixty days after the plaintiff has given notice in writing of the violation to the department and to any alleged violator, nor may such action be commenced if the department has commenced and is diligently prosecuting a civil action in a court of the United States or a state to require compliance with

this act or any rule, regulation, order or permit issued pursuant to this act, but in any such action in a court of the United States or of the Commonwealth any person may intervene as a matter of right.

(f) The provisions of subsection (b) to the contrary notwithstanding, any action pursuant to this section may be initiated immediately upon written notification to the department in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(g) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accord with the Rules of Civil Procedure.

(601 amended Oct. 10, 1980, P.L.894, No.157)

Section 602. Penalties.--(a) Any person or municipality who violates any provision of this act, any rule or regulation of the department, any order of the department, or any condition of any permit issued pursuant to this act is guilty of a summary offense and, upon conviction, such person or municipality shall be subject to a fine of not less than one hundred dollars ($100) nor more than ten thousand dollars ($10,000) for each separate offense, and, in default of the payment of such fine, a person shall be imprisoned for a period of ninety days.

(b) Any person or municipality who wilfully or negligently violates any provision of this act, any rule or regulation of the department, any order of the department, or any condition of any permit issued pursuant to the act is guilty of a misdemeanor of the third degree and, upon conviction, shall be subject to a fine of not less than two thousand five hundred dollars ($2,500) nor more than twenty-five thousand dollars ($25,000) for each separate offense or to imprisonment in the county jail for a period of not more than one year, or both.

(c) Any person or municipality who, after a conviction of a misdemeanor for any violation within two years as above provided, wilfully or negligently violates any provision of this act, any rule or regulation of the department, any order of the department, or any condition of any permit issued pursuant to this act is guilty of a misdemeanor of the second degree and, upon conviction, shall be subject to a fine of not less than two thousand five hundred dollars ($2,500) nor more than fifty thousand dollars ($50,000) for each separate offense or to imprisonment for a period of not more than two years, or both.

(d) Each day of continued violation of any provision of this act, any rule or regulation of the department, any order of the department, or any condition of any permit issued pursuant to this act shall constitute a separate offense.

(e) The maximum fines specified under this section are established pursuant to requirements set forth by the United States Environmental Protection Agency in accordance with the "Federal Water Pollution Control Act" (33 U.S.C. § 1251 et seq.) and in accordance with the "Surface Mining Control and Reclamation Act of 1977" (30 U.S.C. § 1201 et seq.).

(602 amended Oct. 10, 1980, P.L.894, No.157)

Section 603. Summary Proceedings.--All summary proceedings

under the provisions of this act may be brought before any district justice of the county where the offense occurred or the unlawful discharge of sewage, industrial waste or pollution was maintained, or in the county where the public is affected, and to that end jurisdiction is hereby conferred upon said district justices, subject to appeal by either party in the manner provided by law. In the case of any appeal from any such conviction in the manner provided by law for appeals from summary conviction, it shall be the duty of the district attorney of the county to represent the interests of the Commonwealth.

(603 amended Oct. 10, 1980, P.L.894, No.157)

Section 604. Complaints; Investigations.--Upon complaint made in writing by any responsible person to the department, it shall be the duty of the department through its agents to investigate any alleged source of pollution of the waters of the Commonwealth, and to institute appropriate proceedings under the provisions of this act to discontinue any such pollution if the offense complained of constitutes a violation of the provisions of this act.

(604 amended Oct. 10, 1980, P.L.894, No.157)

Section 605. Civil Penalties Generally.--(a) In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this act, rule, regulation, order of the department, or a condition of any permit issued pursuant to this act, the department, after hearing, may assess a civil penalty upon a person or municipality for such violation. Such a penalty may be assessed whether or not the violation was wilful. The civil penalty so assessed shall not exceed ten thousand dollars ($10,000) per day for each violation. In determining the amount of the civil penalty the department shall consider the wilfullness of the violation, damage or injury to the waters of the Commonwealth or their uses, cost of restoration, and other relevant factors. It shall be payable to the Commonwealth of Pennsylvania and shall be collectible in any manner provided at law for the collection of debts. If any person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall constitute a judgment in favor of the Commonwealth upon the property of such person from the date it has been entered and docketed of record by the prothonotary of the county where such is situated. The department 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 them 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) Civil penalties for violations of this act which are in any way connected with or relate to mining and violations of any rule, regulation, order of the department or condition of any permit issued pursuant to this act which are in any way connected with or related to mining, shall be assessed in the following manner and subject to the following requirements:

(1) The department may make an initial assessment of a civil penalty upon a person or municipality for such violation, whether or not the violation was wilful, by informing the person or municipality in writing within a period of time to be prescribed by rules and regulations of the amount of the penalty

initially assessed. The person or municipality charged with the violation shall then have thirty days to pay the proposed penalty in full, or if the person or municipality wishes to contest either the amount or the fact of the violation, to forward the proposed amount 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 proposed penalty, such bond shall be executed by a surety licensed to do business in the Commonwealth and be satisfactory to the department, and thereafter to file an appeal to the Environmental Hearing Board within the same thirty-day period. The initial assessment shall become final if the amount or the appeal bond is not forwarded to the department or if no appeal if filed with the Environmental Hearing Board within thirty days of the written notice to the person or municipality of the initial assessment and thereafter the person or municipality charged with the violation and suffering the assessment shall be considered to have waived all legal rights to contest the fact of the violation or the amount of the penalty.

(2) If the violation leads to the issuance of a cessation order, a civil penalty shall be assessed.

(3) If the violation involves the failure to correct, within the period prescribed for its correction, a violation for which a cessation order, other abatement order or notice of violation has been issued, a civil penalty of not less than seven hundred fifty dollars ($750) shall be assessed for each day the violation continues beyond the period prescribed for its correction: Provided, however, That correction of a violation within the period prescribed for its correction shall not preclude assessment of a penalty for the violation.

(4) If through administrative or judicial review of the penalty assessed, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the department shall within thirty days of such determination remit the appropriate amount to the person or municipality, with any interest accumulated by the escrow deposit.

(c) 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.

(605 amended Oct. 10, 1980, P.L.894, No.157)

Section 606. Proceedings Where Waters Polluted from Many Sources.--Nothing contained in the laws of the Commonwealth shall estop the department from proceeding under the provisions of this act against any particular municipality or person discharging sewage or industrial waste or other noxious or deleterious substance into the waters of the Commonwealth even though said waters are, at the time, polluted from other sources.

(606 amended Oct. 10, 1980, P.L.894, No.157)

Section 607. Public Records; Evidence.--All papers, records, and documents of the department, and applications for permits pending before the department, shall be public records open to inspection during business hours: Provided, however, That information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental content which is potentially toxic in the environment) shall be kept confidential and not made a matter of public record. Copies of all such public

records and the rules and regulations of the department shall be received in evidence in all courts and elsewhere, subject to the rules of law concerning evidence.

(607 amended Oct. 10, 1980, P.L.894, No.157)

Section 608. Existing Rules, Regulations, and Orders.--All rules and regulations heretofore adopted by the Sanitary Water Board and all orders made and actions taken by the Sanitary Water Board or the Secretary of Health under the provisions of law repealed by this act, shall continue in force with the same effect as if such laws had not been repealed, subject, however, to modification, change or annulment, as may be deemed necessary by the department, in order to comply with the provisions of this act.

(608 amended Oct. 10, 1980, P.L.894, No.157)

Section 609. Withholding of Permit.--The department shall not issue any permit required by this act or renew or amend any permit if it finds, after investigation and an opportunity for informal hearing that:

(1) the applicant has failed and continues to fail to comply with any provisions of law which are in any way connected with or related to the regulation of mining or of any relevant rule, regulation, permit or order of the department, or of any of the acts repealed or amended hereby; or

(2) the applicant has shown a lack of ability or intention to comply with such laws as indicated by past or continuing violations. Any person, partnership, association or corporation which has engaged in unlawful conduct as defined in section 611 or which has a partner, associate, officer, parent corporation, subsidiary corporation, contractor or subcontractor which has engaged in such unlawful conduct shall be denied any permit required by this act unless the permit application demonstrates that the unlawful conduct is being corrected to the satisfaction of the department. Persons other than the applicant, including independent subcontractors, who are proposed to operate under the permit shall be listed in the application and those persons shall be subject to approval by the department prior to their engaging in surface mining operations and such persons shall be jointly and severally liable with the permittee for violations of this act with which permittee is charged and in which such persons participate.

(609 amended Oct. 10, 1980, P.L.894, No.157)

Section 610. Enforcement Orders.--The department may issue such orders as are necessary to aid in the enforcement of the provisions of this act. Such orders shall include, but shall not be limited to, orders modifying, suspending or revoking permits and orders requiring persons or municipalities to cease operations of an establishment which, in the course of its operation, has a discharge which is in violation of any provision of this act. Such an order may be issued if the department finds that a condition existing in or on the operation involved is causing or is creating a danger of pollution of the waters of the Commonwealth, or if it finds that the permittee, or any person or municipality is in violation of any relevant provision of this act, or of any relevant rule, regulation or order of the board or relevant order of the department: Provided, however, That an order affecting an operation not directly related to the condition or violation in question, may be issued only if the department finds that the other enforcement procedures, penalties and remedies available

under this act would probably not be adequate to effect prompt or effective correction of the condition or violation. The department may, in its order, require compliance with such conditions as are necessary to prevent or abate pollution or effect the purposes of this act. An order issued under this section shall take effect upon notice, unless the order specifies otherwise. An appeal to the Environmental Hearing Board of the department's order shall not act as a supersedeas: Provided, however, That, upon application and for cause shown, the Environmental Hearing Board may issue such a supersedeas. The right of the department to issue an order under this section is in addition to any penalty which may be imposed pursuant to this act. The failure to comply with any such order is hereby declared to be a nuisance.

(610 amended Oct. 10, 1980, P.L.894, No.157)

Section 611. Unlawful Conduct.--It shall be unlawful to fail to comply with any rule or regulation of the department or to fail to comply with any order or permit or license of the department, to violate any of the provisions of this act or rules and regulations adopted hereunder, or any order or permit or license of the department, to cause air or water pollution, or to hinder, obstruct, prevent or interfere with the department or its personnel in the performance of any duty hereunder or to violate the provisions of 18 Pa.C.S. section 4903 (relating to false swearing) or 4904 (relating to unsworn falsification to authorities). Any person or municipality engaging in such conduct shall be subject to the provisions of sections 601, 602 and 605.

(611 added Oct. 10, 1980, P.L.894, No.157)

Section 612. Legislative Oversight.--In order to maintain primary jurisdiction over surface coal mining in Pennsylvania pursuant to the Surface Mining and Control Reclamation Act of 1977, Public Law 95-87, the Environmental Quality Board shall have the authority to adopt initial regulations on an emergency basis in accordance with section 204(3) (relating to omission of notice of proposed rule making) of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law. Provided, however, within thirty days after the Secretary of the United States Department of Interior grants such primary jurisdiction to Pennsylvania, the Environmental Quality Board shall repropose the regulations adopted on an emergency basis, shall submit the regulations to the Senate Environmental Resources and House Mines and Energy Management Committees of the General Assembly for their review and comments, and shall schedule public hearings within ninety days after such grant of primary jurisdiction for the purpose of hearing public comment on any appropriate revisions.

At least thirty days prior to consideration by the Environmental Quality Board of any revised regulations or any new regulations under this act other than those initial regulations promulgated on an emergency basis, the department shall submit such regulation to the Senate Environmental Resources and House Mines and Energy Management Committees of the General Assembly for their review and comment.

(612 added Oct. 10, 1980, P.L.894, No.157)

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental

Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 612.

ARTICLE VII
SCOPE AND PURPOSE

Section 701. Existing Rights and Remedies Preserved.--The collection of any penalty under the provisions of this act shall not be construed as estopping the Commonwealth, or any district attorney or solicitor of a municipality, from proceeding in courts of law or equity to abate pollutions 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 abate the pollution of the waters of this Commonwealth, and nothing in this act contained 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, nor shall any provision in this act, or the granting of any permit under this act, or any act done by virtue of this act, be construed as estopping the Commonwealth, persons or municipalities, 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 enforce common law or statutory rights.

Section 702. Fences along Streams.--No administrative agency of the Commonwealth or any political subdivision thereof shall require any person to erect a fence along a stream in a pasture or other field used for grazing of farm livestock for the purpose of keeping farm livestock out of the stream.

(702 added Oct. 16, 1980, P.L.894, No.169)

ARTICLE VIII
REPEALER

Section 801. Repeal.--The following acts and parts of acts of Assembly are hereby repealed:

Sections four, five, six, seven, eight, nine, ten, and eleven of an act, approved the twenty-second day of April, one thousand nine hundred and five (Pamphlet Laws, two hundred sixty), entitled "An act to preserve the purity of the waters of the State for the protection of the public health."

The act approved the fourteenth day of June, one thousand nine hundred and twenty-three (Pamphlet Laws, seven hundred ninety-three), entitled "An act to preserve the purity of the sources of public water supplies hereafter approved; authorizing the Advisory Board of the Department of Health to make orders and regulations therefor, and the Commissioner of Health to enforce the same; providing penalties for violation thereof, and for abatement of nuisances by injunction."

All other acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

ARTICLE IX
SHORT TITLE

(Hdg. added Aug. 23, 1965, P.L.372, No.194)

Section 901. Short Title.--This act shall be known and may be cited as "The Clean Streams Law."
(901 added Aug. 23, 1965, P.L.372, No.194)

ARTICLE X
SEVERABILITY CLAUSE
(Hdg. added Aug. 23, 1965, P.L.372, No.194)

Section 1001. Severability Clause.--The provisions of this act shall be severable. If any provision of this act is found by a court of record to be unconstitutional and void, the remaining provisions of the act shall, nevertheless, remain valid unless the court finds the valid provisions of the act are so essentially and inseparably connected with, and so depend upon, the void provision, that it cannot be presumed the legislature would have enacted the remaining valid provisions without the void ones; or unless the court finds the remaining valid provisions standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.
(1001 added Aug. 23, 1965, P.L.372, No.194)

APPENDIX

Supplementary Provisions of Amendatory Statutes

1980, OCTOBER 10, P.L.894, NO.157

Section 5. To the full extent provided by section 529 of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), the surface mining of anthracite shall continue to be governed by the Pennsylvania law in effect on August 3, 1977.
Compiler's Note: Act 157 amended the title and sections 1, 5, 6, 7, 8, 202, 207, 209, 210, 213, 303, 304, 305, 307, 308, 314, 315, 316 and 402, repealed section 502 and added or amended sections 503, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611 and 612 of Act 394.
Section 6. In order to maintain primary jurisdiction over coal mining in Pennsylvania, it is hereby declared that for a period of two years from the effective date of this act the department shall not enforce any provision of this act which was enacted by these amendments solely to secure for Pennsylvania primary jurisdiction to enforce Public Law 95-87, the Federal Surface Mining Control and Reclamation Act of 1977, if the corresponding provision of that act is declared unconstitutional or otherwise invalid due to a final judgment by a Federal court of competent jurisdiction and not under appeal or is otherwise repealed or invalidated by final action of the Congress of the United States. If any such provision of Public Law 95-87 is declared unconstitutional or invalid, the corresponding provision of this act enacted by these amendments solely to secure for Pennsylvania primary jurisdiction to enforce the Federal Surface Mining Control and Reclamation Act of 1977,

Public Law 95-87 shall be invalid and the secretary shall enforce this act as though the law in effect prior to these amendments remained in full force and effect.

It is hereby determined that it is in the public interest for Pennsylvania to secure primary jurisdiction over the enforcement and administration of Public Law 95-87, the Federal Surface Mining Control and Reclamation Act of 1977, and that the General Assembly should amend this act in order to obtain approval of the Pennsylvania program by the United States Department of the Interior. It is the intent of this act to preserve existing Pennsylvania law to the maximum extent possible.

No. 1986-168

AN ACT

HB 2274

Amending the act of July 7, 1980 (P.L.380, No.97), entitled "An act providing for the planning and regulation of solid waste storage, collection, transportation, processing, treatment, and disposal; requiring municipalities to submit plans for municipal waste management systems in their jurisdictions; authorizing grants to municipalities; providing regulation of the management of municipal, residual and hazardous waste; requiring permits for operating hazardous waste and solid waste storage, processing, treatment, and disposal facilities; and licenses for transportation of hazardous waste; imposing duties on persons and municipalities; granting powers to municipalities; authorizing the Environmental Quality Board and the Department of Environmental Resources to adopt rules, regulations, standards and procedures; granting powers to and imposing duties upon county health departments; providing remedies; prescribing penalties; and establishing a fund," adding definitions; further providing for the definition of "solid waste"; further providing for powers and duties of the department and of the Environmental Quality Board; and providing for certain handling of coal ash.

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

Section 1. The definition of "solid waste" in section 103 of the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, is amended and the section is amended by adding definitions to read:

Section 103. Definitions.

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

* * *

"Coal ash." Fly ash, bottom ash or boiler slag resulting from the combustion of coal, that is or has been beneficially used, reused or reclaimed for a commercial, industrial or governmental purpose. The term includes such materials that are stored, processed, transported or sold for beneficial use, reuse or reclamation.

* * *

"Drill cuttings." Rock cuttings and related mineral residues created during the drilling of wells pursuant to the act of December 19, 1984 (P.L.1140, No.223), known as the "Oil and Gas Act," provided such materials are disposed of at the well site and pursuant to section 206 of the "Oil and Gas Act."

* * *

'Solid waste." Any waste, including but not limited to, municipal, residual or hazardous wastes, including solid, liquid, semisolid or contained gaseous materials. ***The term does not include coal ash or drill cuttings.***

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Section 2. Sections 104(1) and 105(a) of the act are amended to read:

Section 104. Powers and duties of the 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 solid waste management program, ***including resource recovery and utilization,*** pursuant to the provisions of this act;

* * *

Section 105. Powers and duties of the Environmental Quality Board.

(a) The Environmental Quality Board shall have the power and its duty shall be to adopt the rules **[and regulations]**, ***regulations, criteria and standards*** of the department to accomplish the purposes and to carry out the provisions of this act, including but not limited to the establishment of rules and regulations relating to the protection of safety, health, welfare and property of the public and the air, water and other natural resources of the Commonwealth.

* * *

Section 3. The act is amended by adding a section to read:

Section 508. Coal combustion ash and boiler slag.

(a) Beneficial use, reuse or reclamation of coal ash shall include, but not be limited to, the following if they comply with subsections (b), (c) and (d):

(1) The uses which are the subject of Federal Procurement Guidelines issued by the Environmental Protection Agency under section 6002 of the Solid Waste Disposal Act (Public Law 89-272, 42 U.S.C. § 6962).

(2) The extraction or recovery of materials and compounds contained within coal ash.

(3) Those uses in which the physical or chemical characteristics are altered prior to use or during placement.

(4) The use of bottom ash as an anti-skid material.

(5) The use as a raw material for another product.

(6) The use for mine subsidence, mine fire control and mine sealing.

(7) The use as structural fill, soil substitutes or soil additives.

(b) The department may, in its discretion, establish siting criteria and design and operating standards governing the storage of coal ash prior to beneficial use, reuse or reclamation.

(c) The department may, in its discretion, establish siting criteria and design and operating standards governing the use of coal ash as structural fill, soil substitutes and soil additives. A person using coal ash for such purposes shall notify the department prior to such use.

(d) The department may, in its discretion, certify coal ash that is used as structural fill, soil substitutes and soil additives.

(1) Certification shall issue after the department has considered the following data:

(i) The facility from which the coal ash is originating.

(ii) The combustion and operating characteristics of the facility.

(iii) The physical and chemical properties of the coal ash, including leachability.

(2) Generators of certified coal ash shall notify the department whenever the data referred to in paragraph (1) are or have been significantly altered. At such time, recertification will be required.

Section 4. This act shall take effect in 60 days.

APPROVED—The 12th day of December, A. D. 1986.

DICK THORNBURGH

HB 284

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Municipal Waste Planning, Recycling & Waste Reduction Act
Act of 1988, P.L. 556, No. 101

AN ACT

Providing for planning for the processing and disposal of municipal waste; requiring counties to submit plans for municipal waste management systems within their boundaries; authorizing grants to counties and municipalities for planning, resource recovery and recycling; 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.

TABLE OF CONTENTS

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 t 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 Unite 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 ... 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 b 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 estimate 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 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 provisions 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 t 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 submitte[illegible]y 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 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 municipal 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 a violation, the department will provide a written explanation to the host municipality of its decision not 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 contaminati

(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 supp quirement.--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 w 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 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 municipality 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, 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 a 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 transportation 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 a 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 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 by-products 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 prog 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 effective 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 maintenance 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 proceeding 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 the 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 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.