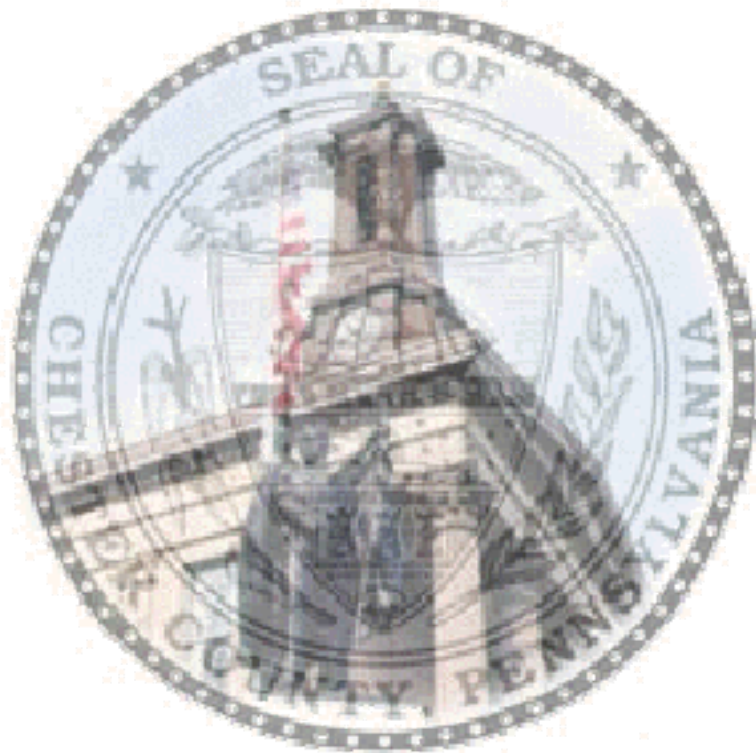


**CHESTER COUNTY**  
**MUNICIPAL WASTE MANAGEMENT**  
**PLAN REVISION**  
**CHESTER COUNTY, PENNSYLVANIA**



**August 2009**

# **CHESTER COUNTY**

## **MUNICIPAL WASTE MANAGEMENT PLAN REVISION**

### **CHESTER COUNTY, PENNSYLVANIA**

Prepared for  
COUNTY OF CHESTER  
The Chester County Health Department  
Bureau of Environmental Health Protection

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Appendix E: Chester County Disposal Capacity Agreement

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**1.0 MUNICIPAL WASTE MANAGEMENT PLANNING BACKGROUND**

Chester County prepared its first MSW Management Plan in June of 1972. The 1972 Plan was approved by 72 of the 73 municipalities in the County. During the mid-1980's, after the implementation of the Pennsylvania Solid Waste Management Act (Act 97), the County prepared and adopted a Plan in compliance with the requirements set forth in Act 97. This plan was approved by 68 of the County's municipalities, and the Pennsylvania Department of Environmental Protection (DEP) granted the County final plan approval in March 1988 (1988 Plan). Act 101 was passed soon after this plan was approved. As provided under Act 101 the 1988 Plan was "grandfathered" under Act 101. The County was not required to develop an entirely new plan, but was required to update the 1988 Plan to address any issues set forth in Act 101 that were not addressed by the plan prepared under Act 97. That plan update was finalized in September of 1990 and is referred to as the 1990 Plan. All of these documents are part of the Chester County Municipal Waste Management Plan and have been approved by DEP.

This plan revision will be referred to as the 2009 Plan Revision.

**1.1 Capacity Assurance**

In 2001 the Pennsylvania Department of Environmental Protection notified the County that a ten (10) year Plan Revision needed to be prepared to comply with Act 101. The County elected to issue a Request for Proposal (RFP) in April 2002 to secure adequate disposal capacity for the Plan Revision's 10-year time frame. A second RFP was issued in October 2003. As a result of this procurement process, the County selected the Lanchester Landfill and the SECCRA Landfill to continue as the primary disposal facilities designated in the County Plan. The County has also added nine landfills and one waste-to-energy facility, as designated facilities in the 2007 Plan Revision. No shortage of municipal waste capacity exists for Chester County. The 2009 Plan Revision was not prepared to address a capacity shortfall.

**2.0 INTRODUCTION AND PUBLIC PARTICIPATION**

**2.1 Purpose**

The County of Chester has developed this Municipal Waste Management Plan Revision (2009 Plan Revision) in order to continue to direct municipal waste to two solid waste facilities listed in the Solid Waste Management Plan. This revision clearly states the County’s intention to utilize the powers authorized under the Pennsylvania Solid Waste Management Act and subsequent amendments to direct municipal waste to designated sites. The regulations found in 25 Pa. Code 272, describe the process by which each County will develop a Solid Waste Advisory Committee, the content of the Plan Revision, and the public participation requirements prior to adoption of the 2009 Plan Revision.

**2.2 Background**

The Chester County Municipal Waste Management Plan Revision adopted in March 2007 (hereafter “2007 Plan Revision”) was a comprehensive revision of the Chester County Solid Waste Plan. One of the key requirements of the 2007 Plan Revision was to provide disposal capacity planning for a 10 year period. The 2007 Plan Revision was approved by the County Commissioners in March 2007 and was later approved by the Pennsylvania Department of Environmental Protection.

Prior to adoption of the 2007 Plan Revision, DEP advised counties that administration fees and licensing programs conflict with the Pennsylvania hauler registration program authorized under Act 90 which was passed in 2002. In 2007 the County solid waste hauler licensing program was discontinued. It was also noted early in 2007 that a New York State flow control case had been accepted by the US Supreme Court. A decision by the US Supreme Court was expected later in 2007, but would not be decided until after the Commissioners’ approval of the 2007 Plan Revision in March 2007. It was decided not to delay final approval of the 2007 Plan Revision and to reserve the option to review new legal precedent or court decisions regarding flow control at a future time.

On April 30, 2007 the United States Supreme Court issued a ruling in United Haulers Association, Inc., et al., vs. Oneida-Herkimer Solid Waste Management Authority, et al., 550 U.S. 330, 127 S. Ct. 1768, 167 L. Ed. 2d 655 (2007) that affirmed the United States Court of Appeals for the Second Circuit decision to allow a distinction between laws that benefit public, as opposed to private solid waste facilities. Chief Justice Roberts delivered the opinion of the Court (except as to Part II-D) and found that:

In this case, we face flow control ordinances quite similar to the one invalidated in *Carbone*. The only salient difference is that the laws at issue here require haulers to bring waste to facilities owned and operated by a state-created public benefit corporation. We find this difference constitutionally significant. Disposing of trash has been a traditional government responsibility for years, and laws that favor the government in such areas-but treat every private business, whether in-state or out-of-state, exactly the same-do not discriminate against interstate commerce for purposes of the Commerce Clause. *Id.* at 1790.

This decision is widely understood to mean that a public solid waste system that treats every private hauler, whether in-state or out-of-state equally, and directs solid waste to a public solid waste facility does not discriminate against interstate commerce for purposes of the Commerce Clause. Following the Supreme Court's ruling, the Pennsylvania Department of Environmental Protection on November 8, 2008 issued an interim final guidance document for counties to use when considering the use of flow control. This guidance document is provided as Appendix A.

### **2.3 Solid Waste Advisory Committee**

Chester County convened its Solid Waste Advisory Committee (SWAC) as outlined in Section 503(a) of Act 101 on May 15, 2009. The following is a list of SWAC members that served during preparation of the Plan Revision:

**CHESTER COUNTY  
SOLID WASTE ADVISORY COMMITTEE**

Margaret Rivello	Chester County Health Department
Nancy Fromnick	Chester County Recycling Coordinator
Mary Alice Reisse	Pennsylvania Department of Environmental Protection
Robert Watts	Executive Director, Chester County Solid Waste Authority
William G. Stullken	Manager, Southeastern Chester County Refuse Authority
Carrie J. Conwell	Chester County Planning Commission
Robert G. Struble, Jr.	Executive Director, Brandywine Valley Association
Don Wilkinson	City of Coatesville
Greg Prowant	Caln Township Board of Commissioners
Terry Woodman	Manager, East Whiteland Township
Kevin Hennesey	North Coventry Township
Jack Hines	West Bradford Township or
John Haiko	West Bradford Township
Brian Watson	Phoenixville Borough
Robin Marcello	Penn Township
Paul Bickhart	Recycling Express, Incorporated
Anthony Blosenski	A.J. Blosenski, Inc.
Charles Blosenski	Charles Blosenski Disposal
Tim O'Donnell	Republic Services, Inc.
Mark Harlacker	Interstate Waste Services
Vince Carosella	Armstrong & Carosella, PC

The members of this Committee represent diverse interests, including all classes of municipalities, private industry, waste haulers, disposal facilities, recycling centers, and public interest groups.

The committee meetings were moderated by Margaret Rivello of the Chester County Health Department.

## **2.4 Municipal Input**

Act 101 requires counties to provide written notice to municipalities when the Plan Revision Process has begun. Chester County provided this notice to its municipalities on January 30, 2009. Municipalities have the opportunity to provide comment on the 2009 Plan Revision and then vote on 2009 Plan Revision that is part of the substantial Plan Revision process.



**2.5 Public Participation in Previous Plans**

Chester County prepared its first MSW Management Plan in June of 1972. The Plan was approved by 72 of the 73 municipalities in the County, and was therefore adopted by the County. In 1987, the County adopted a Revised Plan, prepared to comply with the requirements set forth in Act 97. This 1987 Plan included public participation and comments, and was approved by 68 municipalities. The DEP granted the County final approval in March 1988. Under Act 101 (passed in 1988), this 1987 Plan was “grand fathered”, but was required to be updated to address any issues set forth in Act 101 that were not addressed by the 1987 Plan. Many SWAC meetings and public participation meetings were held as part of the development of the 1990 update to the 1987 Plan. Seven (7) SWAC meetings were held on the 2007 Plan Revision.

**2.6 Benefits of Plan Revision**

The Plan Revision is expected to provide the following public benefits:

- Provide Chester County residents and businesses with low municipal waste disposal cost;
- Reduce vehicle miles through greater use of in-county disposal facilities;
- Reduce the release of carbon emissions through reduced vehicle miles; and
- Provide for a cost effective solid waste management and disposal system.

**3.0 MUNICIPAL WASTE TO DESIGNATED SITES**

**3.1 Designated Sites**

Chester County has listed two landfills as Primary Disposal Facilities in the 2007 Plan Revision: the Lanchester Landfill located in Narvon, PA and the SECCRA Landfill located in London Grove, PA. These two landfills have been the two primary solid waste facilities for Chester County municipal waste for over 20 years. The RFP process the County conducted in 2002 and 2003 confirmed that these two facilities are/were the most cost effective options for municipal waste generated in Chester County. The current County Plan relies on the same two primary solid waste facilities.

This Plan Revision designates the Lanchester Landfill as the Designated Facility for all municipalities in the Chester County Solid Waste Authority Service Area (CCSWA) and the Southeast Chester County Refuse Authority (SECCRA) Landfill as the Designated Facility for all municipalities in the SECCRA Service Area. Table 2 lists all the municipalities in the CCSWA Service Area and Table 3 lists all the municipalities in the SECCRA Service Area. Haulers are only authorized to deliver municipal waste to By-Pass Facilities listed in Table 4 if a written letter is received from the CCSWA or SECCRA authorizing the by-pass of municipal waste. Written authorization from CCSWA and SECCRA shall cover a period of time not exceeding twelve (12) months.

**3.2 Designated Site Ordinance**

Counties may adopt ordinances, resolution, regulations, and standards for the processing and disposal of municipal waste provided that it is not more stringent than, or in violation of, or inconsistent with the Solid Waste Management Act, Act 101, and the regulation promulgated pursuant thereto (Act 1988-101 Section 302 (c)). A Designated Site Ordinance will be adopted to replace the existing Flow Control Ordinance. A draft of the Designated Site Ordinance is provided in Appendix B.

### 3.3 Enforcement

It shall be unlawful for a hauler or municipal waste facility to collect, transport, process, or dispose of municipal waste generated from any source within the County in a manner inconsistent with the provisions of the Plan and the Municipal Waste Designated Site Ordinance. Chester County may take enforcement action against any hauler or facility that has collected, transported, processed or disposed of municipal waste in a manner inconsistent with the provisions of this Plan and the Municipal Designated Site Ordinance.. Such unlawful action will be considered interference with the Chester County Solid Waste Management Plan.

The Chester County Health Department will rely upon the CCSWA and SECCRA (the “Authorities”) to monitor the flow of municipal waste within the County. The Authorities will be responsible to monitor Quarterly Waste Reports prepared by DEP and available on DEP’s Website. These reports summarize waste flow information submitted by all waste transporters that deliver municipal waste to Pennsylvania waste disposal facilities. When transporters deliver Chester County generated municipal waste to a waste disposal facility not authorized by the Plan the Authority will investigate such action to determine if it is consistent with the Plan and whether such action is authorized by the Authority by the issuance of a letter to the hauler authorizing the bypass of municipal waste to a specific facility for a specific time period not to exceed twelve months. A hauler that delivers municipal waste that is inconsistent with the Plan and is not authorized by a bypass letter will be subject to an enforcement action by the Chester County Health Department. The Chester County Health Department may request that DEP certify that a Quarterly Report is admissible as evidence and can be used in a County enforcement action.<sup>1</sup>

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<sup>1</sup> Sections 6103 and 6104 of the Judicial Code, 42 Pa C.S. §§ 6103 and 6104, provide that copies of official records kept by an agency of the Commonwealth and attested to by an officer having the legal custody of the documents and certified by that officer are admissible as evidence of facts stated therein. Maggiano v. Pennsylvania State Bd. Of Vehicle Mfrs., Dealers, & Salespersons, 659 A.2d1071, 1995 Pa. Commw. LEXIS 253 (Pa. Commw. Ct. 1995).

In order for the Authorities to perform investigations on a timely basis the Chester County Health Department will require all solid waste facilities designated in the County Plan to provide municipal waste tonnage information by county of origin (referred to in this plan as “Quarterly Waste Reports”) directly to the Chester County Health Department at the same time it is submitted to the DEP. This mandatory request for municipal waste tonnage information by solid waste facility is also made on the Chester County Disposal Capacity Agreement provided in Appendix E. The DEP, Bureau of Waste Management Division of Reporting and Fee Collection collects this information on forms provided by DEP. Use of the DEP reporting form is only acceptable if it continues to provide all Chester County municipal waste delivered to Pennsylvania solid waste facilities on a quarterly basis.

DEP may take enforcement action, including notice of violations followed by orders, civil penalties, and /or suspension or revocation of operating permits. DEP has developed an enforcement program to enforce the content of county solid waste management plans on all Pennsylvania permitted municipal waste facilities. (25 Code 273.201 and 25 Code 283.201 (h)) DEP’s enforcement program is described on Page 17 of the DEP Guidance Document Number 254-2212-504 last revised on November 8, 2008 as an Interim Final Guidance Document. This Guidance Document is provided in Appendix A. Chester County and the Authorities plan to assist and cooperate with DEP to maintain a flow control system focused on monitoring municipal waste generated in Chester County and disposal at Pennsylvania municipal waste facilities.

### **3.4 Municipal Waste Projections**

Municipal waste projections have been estimated for the 10 year planning period (2010 to 2019) and allocated to the Designated Facilities based upon each Authority’s waste acceptance goals. The remaining municipal waste that cannot be handled by Lanchester and SECCRA Landfills will be by-pass waste that will be disposed of at disposal sites officially designated in the County Plan after written approval by one of the Authorities. Additional by-pass waste facilities can be

added to the Plan by following the procedures identified on page 77 of the 2007 Plan Revision and completing the Petition Form on page 79. Table 5 should not be interpreted to be committed waste flows but an estimate of waste deliveries based on goals set by each Authority. The Municipal Waste Designated Site Ordinance will authorize the flow of municipal waste to the Primary Disposal Facilities. Municipal waste that is recycled is not subject to the Municipal Waste Designated Site Ordinance. In addition, the Designated Facility reserves the right to reject waste if the Facility is not permitted by the DEP to accept such waste or if the manner of delivery endangers the health, safety, environment or well-being of the Designated Facility's employees or property. The Authorities may change their waste acceptance goals at any time. Chester County will monitor available disposal capacity at permitted solid waste disposal facilities in the County Plan by requesting annual certifications of disposal capacity.

### **3.5 Capacity Assurance**

An important purpose of the county municipal waste management plan is assuring that disposal capacity is available for waste generated within the County. Disposal Assurance Agreements were signed by the Authorities and by twelve (12) private disposal facilities in 2007. Using the same form of agreement, Chester County will ask the Primary Disposal Facilities and the By-Pass disposal facilities to sign 10 year disposal capacity agreements for 2010 to 2019. A copy of the disposal capacity agreement is provided in Appendix E.

### **3.6 Compatibility of Recycling with other Processing and Disposal Methods**

Table 1 provides a list of existing curbside, drop-off, and composting programs at the municipal level. One indicator of the municipal commitment to recycling is the number of municipalities that have adopted mandatory recycling programs even though these municipalities are not required to establish a mandatory recycling program by Act 101. Thirteen (13) municipalities have established mandatory curbside recycling programs in the County despite no requirement to do so.

**TABLE 1  
CHESTER COUNTY MUNICIPAL RECYCLING PROGRAM SUMMARY**

<b>Municipality</b>	<b>Mandated</b>	<b>Curbside</b>	<b>Drop-off</b>	<b>Composting Site</b>
Atglen Boro			X	
Avondale Boro		X	Yard Waste Only	X
Birmingham Twp.				
Caln Twp.	X	X		X
Charlestown Twp.*	X	X		
Coatesville City	X	X		
Downingtown Boro	X	X	X	X
East Bradford Twp.	X	X	X	
East Brandywine Twp.	X	X	X	
East Caln Twp.*	X	X		
East Coventry Twp.				
East Fallowfield Twp.	X	X	Yard Waste Only	
East Goshen Twp.	X	X		
East Marlborough Twp.	X	X	X**	
East Nantmeal Twp.				
East Nottingham Twp.			X**	
East Pikeland Twp.	X	X	X	X
Easttown Twp.	X	X		
East Vincent Twp.	X	X		
East Whiteland Twp.	X	X		
Elk Twp.				
Elverson Boro*	X	X	X	
Franklin Twp.			X**	
Highland Twp.				
Honey Brook Boro		X		
Honey Brook Twp.			Lanchester Landfill	Lanchester Landfill
Kennett Twp.	X	X	X**	
Kennett Square Boro	X	X	X	X
London Britain Twp.			X**	
Londonderry Twp.			X**	
London Grove Twp.	X	X	SECCRA Landfill	SECCRA Landfill
Lower Oxford Twp.			X**	
Malvern Boro *	X	X		
Modena Boro*	X	X		
New Garden Twp.	X	X		
Newlin Twp.				
New London Twp.			X**	
North Coventry Twp.	X	X	X	
Oxford Boro*	X	X	X	

TABLE 1 (continued)

Municipality	Mandated	Curbside	Drop-off	Composting Site
Parkesburg Boro*	X	X		
Penn Twp.			X**	
Pennsbury Twp.			X**	
Phoenixville Boro	X	X		X
Pocopson Twp.*	X		X**	
Sadsbury Twp.*	X			
Schuylkill Twp.	X	X	X	X
South Coatesville Boro*	X	X		X
South Coventry Twp.				
Spring City Boro		X		X
Thornbury Twp.				
Tredyffrin Twp.	X	X		X
Upper Oxford Twp.			X**	
Upper Uwchlan Twp.	X	X		
Uwchlan Twp.	X	X		
Valley Twp.	X	X	Christmas Trees Only	Christmas Trees Only
Wallace Twp.			Christmas Trees Only	Christmas Trees Only
Warwick Twp.				
West Bradford Twp.	X	X	X	
West Brandywine Twp.	X	X	X	X
West Caln Twp.	X	X	Yard Waste Only	
West Chester Boro	X	X	Yard Waste Only	X
West Fallowfield Twp.			X	
West Goshen Twp.	X	X	Eldredge Transfer St.	Eldredge Transfer St.
West Grove Boro*	X	X	X	
West Marlborough Twp.				
West Nantmeal Twp.				
West Nottingham Twp.*	X	X	X**	
West Pikeland Twp.				
West Sadsbury Twp.*	X		X	
Westtown Twp.	X	X		
West Vincent Twp.*	X	X		
West Whiteland Twp.	X	X		
Willistown Twp.	X	X		
<b>Totals</b>	<b>39</b>	<b>45</b>	<b>36</b>	<b>9</b>

\* Not mandated under Act 101 to establish recycling programs

\*\* Operated by SECCRA

Recycling figures for the last three years were reported as follows:

<b>Year</b>	<b>Recycling Quantities</b>	<b>Recycling</b>
2005	120,216	29.6 %
2006	162,445	29.9 %
2007	270,402	44 %

Recycling figures increased in 2007 substantially due to the dramatic increase in ferrous metal recycling. Approximately 164,739 tons of ferrous recycling occurred during 2007, which was substantially higher than previous figures of approximately 22,000 per year. This increase was attributed to the high price paid for ferrous during 2007 and the dramatic drop in price expected in 2008. The reporting of recycling in some sectors has been inconsistent, leading the County to assume that if complete reporting was realized each year the amount of recycling reported in Chester County would be higher.

Each Plan Revision must include an evaluation of compatibility of recycling with other processing and disposal methods. Municipal recycling programs are unaffected by the Waste Designation Ordinance proposed within this Plan Revision because recycled materials are not subject to the Waste Designation Ordinance. Single stream recycling, now available to many municipalities in the County may offer an opportunity to increase the volume of recycling. The recycling program will make every effort to improve and increase participation in the annual reporting system



**TABLE 2**  
**CHESTER COUNTY SOLID WASTE AUTHORITY (CCSWA) MUNICIPALITIES AND DISPOSAL SITES**

<b>Municipality</b>	<b>Primary Disposal Facility for Municipal Waste</b>	<b>By-Pass Primary Disposal Sites</b>
Atglen Borough	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Birmingham Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Caln Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Charlestown Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Coatesville City	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Downingtown Borough	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
East Bradford Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
East Brandywine Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
East Caln Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
East Coventry Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
East Fallowfield	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
East Goshen Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
East Nantmeal Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
East Pikeland Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Easttown Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
East Vincent Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
East Whiteland Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Elverson Borough	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Honey Brook Borough	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Honey Brook Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Malvern Borough	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Modena Borough	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
North Coventry Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>

<sup>2</sup> By-Pass Disposal must be approved in writing by CCSWA

**TABLE 2 (Continued)**  
**CHESTER COUNTY SOLID WASTE AUTHORITY (CCSWA) MUNICIPALITIES AND DISPOSAL SITES**

<b>Municipality</b>	<b>Primary Disposal Facility for Municipal Waste</b>	<b>By-Pass Primary Disposal Site</b>
Phoenixville Borough	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Sadsbury Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Schuylkill Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
South Coatesville Borough	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
South Coventry Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Spring City Borough	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Thornbury Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Tredyffrin Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Upper Uwchlan Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Uwchlan Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Valley Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Wallace Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Warwick Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
West Bradford Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
West Brandywine Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
West Caln Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
West Chester Borough	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
West Fallowfield Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
West Goshen Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
West Nantmeal Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
West Pikeland Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
West Sadsbury Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Westtown Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
West Vincent Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
West Whiteland Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>
Willistown Township	Lanchester Landfill	Must be a Disposal Facility listed in Table 4 <sup>2</sup>

**TABLE 3  
SOUTHEASTERN CHESTER COUNTY REFUSE AUTHORITY (SECCRA) MUNICIPALITIES  
AND DISPOSAL SITES**

<b>Municipality</b>	<b>Primary Disposal Facility for Municipal Waste</b>	<b>By-Pass Primary Disposal Sites</b>
Avondale Borough	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
East Marlborough Township	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
East Nottingham Township	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
Elk Township	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
Franklin Township	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
Highland Township	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
Kennett Square Borough	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
Kennett Township	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
London Britain Township	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
London Grove Township	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
Londonderry Township	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
Lower Oxford Township	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
New Garden Township	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
New London Township	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
Newlin Township	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
Oxford Borough	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
Parkesburg Borough	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>

<sup>3</sup> By-Pass Disposal must be approved in writing by SECCRA

**TABLE 3 (Continued)**  
**SOUTHEASTERN CHESTER COUNTY REFUSE AUTHORITY (SECCRA) MUNICIPALITIES**  
**AND DISPOSAL SITES**

<b>Municipality</b>	<b>Primary Disposal Facility for Municipal Waste</b>	<b>By-Pass Primary Disposal Site</b>
Penn Township	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
Pennsbury Township	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
Pocopson Township	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
Upper Oxford Township	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
West Grove Borough	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
West Marlborough Township	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>
West Nottingham Township	SECCRA Landfill	Must be a Disposal Facility listed in Table 4 <sup>3</sup>

<sup>3</sup>By-Pass Disposal must be approved in writing by SECCRA

**TABLE 4  
LIST OF CHESTER COUNTY BY-PASS DISPOSAL FACILITIES<sup>4</sup>**

ADV	Company	Facility	Location	Phone
1,000	Solid Waste Service, Inc., T/A JP Mascaro	Pioneer Crossing Landfill Permit #100346	727 Redlane Rd., Birdsboro, PA	610-582-2900
7,210	Republic Services of Pennsylvania, LLC.	Conestoga Landfill Permit #101509	420 Quarry Road Morgantown, PA 19543	610-286-6844
4,667	Republic Services of Pennsylvania, LLC	Modern Landfill Permit #100113	4400 Mount Pisgah Rd, York, PA	717-246-2686
N/A	Republic Services of Pennsylvania, LLC	Honey Go Run Landfill Permit #MD2002 – WRF0579	Perry Hall, MD	484-444-0981
N/A	Republic Services of Pennsylvania, LLC	The 623 Inc. Landfill Permit #SW506	Rockville, VA	804-749-3805
1,000	ONYX Lancaster, LLC	Milton Grove C&D Landfill Permit #101559	Elizabethtown, PA	717 653-4686
10,000	Waste Management, Inc	G.R.O.W.S. Landfill Permit #100148	Morrisville, PA	215 736- 9400
8,333	Waste Management, Inc	Tullytown Landfill Permit #101149	Morrisville, PA	215 736- 9400
2,800	Waste Management, Inc	Wheelabrator WTE Permit #400633	Morrisville, PA	215 736-9400
3,200	Delaware County Solid Waste Authority	Rolling Hills Landfill Permit #100345	Boyertown, PA	610 367-2373
1,500	Northeast Waste Services, Inc.	PA-Community Refuse Services Ld. Permit #100945	Shippensburg, PA	717-423-5917
750	Northeast Waste Services, Inc.	WSI Sandy Run Landfill Permit #101538	Broad Top Township, PA	814-928-5001
2,000	Northeast Waste Services, Inc.	Mostoller Landfill Permit #101571	Somerset Township, PA)	814-444-0112
450	Chestmont Disposal	Western Berks Landfill Permit #100739	Cumru Township, PA	610-375-1516

**ADV** – Permitted Average Daily Volume

<sup>4</sup> Solid Waste Haulers must receive written approval from the owner of the Primary Disposal Facility listed in Table 1 and 2 to divert Municipal Waste to a By-Pass Disposal Facility.

**TABLE 4 (Continued)  
LIST OF CHESTER COUNTY BY-PASS DISPOSAL FACILITIES<sup>4</sup>**

<b>ADV</b>	<b>Company</b>	<b>Facility</b>	<b>Location</b>	<b>Phone</b>
1,200	Lancaster Solid Waste Management Authority	LCSWMA Resource Recovery Facility (Covanta) Permit #400592	Conoy Township	717 397-9968
1,200	Clinton County Solid Waste Authority	Wayne Township Landfill Permit 100995	McElhattan, PA	570 7696977

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<sup>4</sup> Solid Waste Haulers must receive written approval from the owner of the Primary Disposal Facility listed in Table 1 and 2 to divert Municipal Waste to a By-Pass Disposal Facility.

**TABLE 5  
ESTIMATED MUNICIPAL SOLID WASTE DISPOSAL QUANTITIES AND FACILITIES OVER 10  
YEAR PLANNING PERIOD (2010 - 2019) CHESTER COUNTY, PA**

Year	Population (1)	Total Municipal Solid Waste Disposed, Tons (2)	Estimate of Waste Allocation Goal		
			SECCRA (3)	Lanchester Chester Co (4)	By-Pass Disposal Facilities
Actual 2008	482,040	540,100	109,668	271,728	158,704
2009	484,710	543,100	111,861	325,000	106,239
2010	487,380	546,100	114,099	325,000	107,001
2011	490,050	549,100	116,381	325,000	107,719
2012	492,720	552,100	118,708	325,000	108,392
2013	495,390	555,100	121,082	325,000	109,018
2014	498,060	558,100	123,504	325,000	109,596
2015	500,730	561,100	125,974	325,000	110,126
2016	503,400	564,100	128,494	325,000	110,606
2017	506,070	567,100	131,063	325,000	111,037
2018	508,740	570,100	133,685	325,000	111,415
2019	511,424	573,100	136,358	325,000	111,742
<b>Total (2010 - 2019)</b>		<b>5,596,000</b>	<b>1,249,348</b>	<b>3,250,000</b>	<b>1,096,652</b>

Notes:

- (1) US Census and projections made by the Chester County Planning Commission
- (2) Waste Projections from 2007 Plan Revision, Table 6-1. No Residual Waste
- (3) Current Waste Tonnage at County Growth Rate (2 %)
- (4) Waste Allocation goal is 325,000 tons per year.

**4.0 AGENCIES RESPONSIBLE FOR IMPLEMENTATION**

**4.1 Chester County Health Department**

The County Health Department will be responsible for the following programs:

1. Annual review of SECCRA's and CCSWA's progress in implementing the Chester County Municipal Waste Management Plan;
2. Prepare, or delegate to SECCRA and CCSWA, future revisions to the Chester County Municipal Waste Management Plan;
3. Facilitate meetings of the Solid Waste Implementation Committee; and
4. Enforcement of the Designated Site Ordinance.

**4.2 Chester County Solid Waste Authority**

The Chester County Solid Waste Authority will monitor the flow of municipal waste by reviewing waste deliveries to the Lanchester Landfill and any Chester County waste delivered to other PA Solid Waste Facilities as reported by DEP on their website. These Quarterly Reports are typically prepared within 90 days of the end of the quarter by DEP.

**4.3 Southeastern Chester County Refuse Authority**

The Southeastern Chester County Refuse Authority (SECCRA) will monitor the flow of municipal waste by reviewing waste deliveries to the SECCRA Landfill and any Chester County waste delivered to other PA Solid Waste Facilities as reported by DEP on their website. These Quarterly Reports are typically prepared within 90 days of the end of the quarter by DEP.



**5.0 PUBLIC FUNCTION**

The CCSWA and the SECCRA are both public authorities operating public landfills pursuant to the Chester County Solid Waste Management Plan. Each public authority competed with other public and private solid waste companies by submitting proposals in response to two County issued Request for Proposals for Disposal Capacity issued in 2002 and 2003. The County placed national advertisements in Waste News. The Advertisement is provided in Appendix C of the 2007 Plan Revision. No private or public company was prohibited from submitting a proposal to the County. Instate and out-of-state disposal facilities were designated as by-pass disposal facilities in this Plan Revision.

**6.0 IMPLEMENTING DOCUMENTS**

The County implementation document associated with this Plan Revision will consist of a Municipal Waste Designated Site Ordinance (previously referred to as “County Flow Control Ordinance”). The proposed Municipal Waste Designated Site Ordinance is provided in Appendix B.

**7.0 ORDERLY EXTENSION**

**7.1 Solid Waste Implementation Committee**

It is envisioned in the 2007 Plan Revision that a working committee be created to a) review progress made executing the Plan Revision and b) to resolve any issues related to implementing the County Municipal Waste Management Plan. This committee, named the Solid Waste Implementation Committee (the “Committee”), has and will continue to be represented by two representatives of each Authority and one representative of the County. The Committee will encourage consistency in the services offered to County residents, recognizing the service area of each authority may experience different challenges regarding source reduction, recycling, disposal, or topics like illegal dumping. The Committee will be a vehicle to discuss whether the broad objectives of the plan are being achieved.

The Implementation Committee was consulted regarding the development of this Plan Revision during three meetings during 2008 and 2009.

**7.2 Disposal Facilities in Chester County**

Chester County supports the orderly expansion of the Lanchester Landfill and the SECCRA Landfill. Long-term planning of future capacity is a necessity considering the comprehensive regulatory review process conducted by the DEP. With the population growth projected in each service area, expansion of existing permitted areas should be pursued far in advance of running out of capacity and shall provide numerous opportunities for public input.

**8.0 FACILITIES DEVELOPED PURSUANT TO SUB-COUNTY PLANS**

As no other municipal solid waste management plans are in effect in the County, this section is not applicable.

**APPENDIX A**

**GUIDELINES FOR THE DEVELOPMENT OF COUNTY MUNICIPAL WASTE  
MANAGEMENT PLAN REVISIONS, DOCUMENT NUMBER 254-2212-504,  
DATED NOVEMBER 8, 2008**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
BUREAU OF WASTE MANAGEMENT**

**Document Number:** 254-2212-504

**Title:** Guidelines for the Development and Implementation of County Municipal Waste Management Plan Revisions

**Interim Final Effective Date:** November 8, 2008

**Authority:** This document is established in accordance with the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, No. 97, as amended, 35 P.S. § 6018.101 et seq.; the Municipal Waste Planning, Recycling and Waste Reduction Act, Act 101 of July 28, 1988, P.L. 556, No. 101, 53 P.S. § 4000.101 et seq. (Act 101); and 25 Pa. Code Chapter 272.

**Policy:** This technical guidance will be used by DEP regional staff in considering county municipal waste management plan revisions for approval.

**Purpose:** This technical guidance will provide DEP regional staff with updated information they can use to assist counties in the development of their plans, and to review the plans when they are submitted.

**Applicability:** This guidance will apply to DEP Regional Solid Waste Managers, Planning and Recycling Coordinators and Central Office staff.

**Disclaimer:** The technical guidance outlined in this document is intended to supplement existing regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the Department to give these rules that weight or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

**Page Length:** 19 pages

**Location:** Volume 6, Tab 25A

## **REVIEW OF COUNTY MUNICIPAL WASTE PLAN REVISIONS**

### **I. HOW TO USE THIS DOCUMENT.**

This Technical Guidance is designed to assist the Department in reviewing county municipal waste management plan revisions submitted by counties for approval. The

Department's review of a county municipal waste management plan revision includes a determination on whether the plan is consistent with applicable law. See 25 Pa. Code § 272.244. This document explains requirements for county plans in the Municipal Waste Planning, Recycling and Waste Reduction Act, 53 P.S. §§ 4000.101—4000.1904 (Act 101) and subsequent legislation, as well as in relevant court decisions on the Commerce Clause of the United States Constitution. It is assumed the Regional Office's Coordinator will advise and assist a county in its efforts to develop a municipal waste management plan that is approvable under this guidance.

In the process of reviewing plans for approval, DEP staff must understand that each county may have issues that are different from other counties. The possibility of counties having differing circumstances has been contemplated in this document, with the result that several alternatives may be discussed in one topic, allowing the county to make choices. A county is not necessarily required to revise the entire content of its plan when submitting a plan revision to the Department; consequently, not all of this document will always be needed during the preparation or review process.

This document includes discussion of decisions issued by Pennsylvania and Federal Courts and analyses of their applicability to the county planning process. Regional Coordinators should inform any county contemplating a revision that this project should not be completed without the assistance of the county solicitor, or an attorney recommended by the solicitor.

## **II. REVIEW OF PLAN REVISIONS.**

### **A. Introduction.**

Since 1998, changes have been made to policies and regulations that govern the development and approval of county municipal waste management plans. Some of these changes were the result of changes in the waste industry and some were based on the results of litigation involving county plans. This guidance has been modified to reflect changes in law and policy that have occurred since the guidance was last revised in 1998.

All counties in Pennsylvania currently have in effect a municipal waste management plan developed and approved under Act 101. Originally, there were revisions made to several plans begun under the Solid Waste Management Act, 35 P.S. §§ 6018.101—6018.1003, and “grandfathered” under Section 501(b) of Act 101. Regardless of the manner in which the original plan was developed, all plans must be revised and submitted to the Department at least three years before the remaining available permitted capacity is exhausted, at least three years before the expiration of the term of the county's approved plan, or when otherwise required by the Department. See 25 Pa. Code § 272.251. A county with an approved waste management plan may submit a revised plan to the Department at any other time, and the Department encourages counties to be proactive in their municipal waste management planning process. Like the original, the revision must be a plan for a minimum of ten years.

As counties revise their plans, the Department will make decisions on approving or disapproving proposed revisions. The Department will disapprove plan revisions which are not consistent with legal requirements. In determining whether to approve a plan revision, the Department must determine that the plan is complete and accurate, and that applicable requirements related to the content of the plan have been satisfied. Section 502 of Act 101, and the Department's regulations in 25 Pa. Code §§ 272.221 to 272.233 describe the required content of county plans. The Department must also determine that the plan was developed in accordance with the procedural requirements set forth in § 503 of Act 101 and 25 Pa. Code Ch. 272, particularly the requirements for public participation. Counties should be certain the procedures they use to assure that disposal capacity is available to them are in compliance with Act 101, applicable county codes, and constitutional considerations.

Since Act 101 was enacted in 1988, there have been several pieces of legislation enacted that impact Act 101, primarily the recycling programs the act establishes. Some of the provisions that are contained in these acts will figure in the development of plan revisions as the county considers recycling issues. For reference, these Acts are:

\* Act 190 of 1996, codified at 35 P.S. §§ 6029.101 et seq. (Waste Tire Recycling Act); and 35 P.S. §§ 6029.201 et seq. (Small Business and Household Pollution Prevention Act) – Established the waste tire recycling program and provided funding and guidelines for Household Hazardous Waste.

\* Act 57 of 1997, 71 P.S. § 510-37 – Requires actions that must be taken to avoid using 902 grant funding to compete with the private sector.

\* Act 68 of 1999 – Transferred funds from the recycling fund to the Environmental Stewardship Fund

\* Act 90 of 2001, 27 Pa.C.S. §§ 6201 et seq. (Waste Transportation Safety Act) – Established the waste transportation safety program and requires waste transportation vehicles that transport municipal or residual waste to obtain authorization from the Department

\* Act 175 of 2001 (amended §§ 103, 701, 706 and 905 of Act 101, and added § 1513 to Act 101) – New section 1513 requires that municipal recycling programs move toward financial sustainability, and that DEP assist them in this effort.

\* Act 140 of 2006 (amending § 904 of Act 101) – Requires mandated curbside municipalities and other municipalities receiving more than \$10,000 in § 904 recycling performance grant funding to have in place specified recycling, compliance, and reporting programs.



**B. Extent of Departmental Review.**

There is no need for a county to revise all chapters of a plan if the proposed revisions will affect only some of the chapters. The revision must update all relevant and/or out-of-date information in the plan, including correcting parts of the plan that have been found to be in error or unrealistic during the period the plan has been in effect. Waste generation information and recycling progress typically need to be updated, and other plan elements should be reviewed for consistency with current circumstances. Newly available programs associated with recycling, such as resale or reuse of materials, should be examined. The Department will review the plan to the extent it has been revised.

**C. Required Contents of a County Municipal Waste Management Plan.**

Act 101 and the municipal waste regulations describe the required contents of county municipal waste management plans. Generally, county plans are to be concise; the Department does not expect extra chapters or lengthy passages containing general background information. In compiling its plan, the county should use the subheadings of § 502 in Act 101 to create numbered chapters of the plan in the following order:

1. Description of the waste. This means tons and contents of municipal waste that will be generated in the county, including waste from special events.
2. Description of facilities. An analysis of the facilities currently used by the county.
3. Estimated future capacity. An analysis of the potential county need for capacity.
4. Description of Recycling Program. Development of means to meet the 35% goal by 2003.
5. Selection and Justification of Municipal Waste Management Program. An analysis of the county's program, including facility selection and cost of disposal.
6. Location. The identification and locations of available facilities.
7. Implementing Entity Identification. Who will be responsible for implementing the plan on behalf of the county?
8. Public Function. Justification of and mechanisms to implement public ownership or public function in municipal waste processing or disposal, if proposed.
9. Copies of Ordinances and Resolutions.

10. Orderly Extension. An analysis of how the county's waste management system is coordinated with other county plans, ordinances and programs.

11. Methods of Disposal Other Than By Contracts.

12. Non-Interference. A discussion of how the county's plan will not interfere with existing facilities.

13. Public Participation. Advertisements, hearing minutes, SWAC meetings, notices, other public information documents.

14. Other Information. Any other information the Department may require.

The regulations in 25 Pa. Code §§ 272.221 to 272.233 provide further detail on required plan content.

#### **D. Benefits of the Plan.**

The county should develop its plan to withstand legal challenge. The planning process is not to be taken lightly or circumvented. In order to approve a plan and assist any county with appeals, the Department must be reasonably sure the county followed the law, applicable court decisions and the proper procedure for revising an Act 101 county plan. It is in the county's interest to state in its plan a list of benefits the county, its residents and its businesses derive from developing and implementing the revised plan. The description of benefits that accrue to the county because of the plan should be included in the introduction as a list, and the discussion of benefits should be placed into a separate, identified, paragraph. This list should be updated in all subsequent revisions. By way of example, some of the benefits already recognized by the courts include benefits to public health and safety, economic or financial benefits to residents or local government, decreasing the risk of liability from improper disposal of municipal waste, and the relevant purposes and goals of Act 101.

#### **E. Recycling.**

In 1997, the recycling goal in Pennsylvania increased to 35%. All plan revisions should contain a discussion of how the county intends to reach this goal if it has not already done so. There are several methods generally available for use in calculating recycling rates. For the sake of consistency, recycling rates used within the plan revision to show how the goal will be met should be calculated using the EPA Model which is included in the county's annual report documents. EPA amends this model periodically, and the Regional Coordinator should inform the counties when this happens.

Since 2002, the Department has reported the progress of recycling in Pennsylvania through an analysis of economic and environmental benefits rather than simple tonnage and percentage rate. This calculation can also be of use to counties. Each county should calculate the appropriate environmental benefits of the most recent year's recycling using the NERC, the

EPA WARM, or the NRC calculator, and indicate these benefits as part of Chapter 4 in the plan.

All county plans must include an evaluation of the compatibility of recycling with other processing and disposal methods as part of the analysis of recycling required by Section 502(e) of Act 101. Each plan should be developed with a goal of creating an integrated municipal waste management system for the county based on the considerations of recycling, processing and disposal needs, and available capacity in the county.

#### **F. Capacity Assurance.**

An important purpose of a county municipal waste management plan is assuring that disposal capacity is available for waste generated within the county. The plan must show that there is capacity specifically available to the county for disposal of the waste generated within its boundaries for at least a ten-year period (not simply that capacity generally exists in Pennsylvania or surrounding states), and that the county has a right to use that specified capacity. (53 P.S. §§ 4000.502(c), (d); 53 P.S. § 4000.505(b)).

A county may meet its capacity assurance requirements through the use of public facilities, or through agreements with private facilities. A county that meets its capacity assurance needs with a facility over which the county has direct control (county ownership) or indirect control (authority ownership or control) will generally need to demonstrate additional capacity when insufficient capacity remains available at the facility to provide for the waste generated in the county for the next 10 years. A county relying on private facilities will generally need additional capacity when the capacity assurance agreements provide for less than 10 years of capacity assurance.

Capacity assurance agreements must be facility-specific. Counties may not assure capacity by entering into an agreement which simply provides for alternative disposal in another of the company's sites if the chosen facility is unable to accept the waste, unless the alternative site has also been specifically chosen by the county in its facility selection process and is designated in the county plan. A county may ask a facility to demonstrate that the facility actually can provide the capacity to the county.

If a county determines that it is in need of additional disposal or processing capacity, the county must give public notice of this determination and solicit proposals and recommendations from the public regarding facilities and programs that may be used to provide the needed capacity. A copy of the notice should be provided to the Department, and the Department will publish a copy of the county's notice in the Pennsylvania Bulletin. See 53 P.S. §§ 4000.502(c), (d).

#### **G. Selection of Waste Management Programs and Facilities.**

Act 101 authorizes a county to use various types of programs and facilities to properly manage its municipal waste, and to promote waste reduction and recycling. A county may,

for example, determine that it is in the public interest for municipal waste processing or disposal to be a public function; alternatively, a plan may rely on private businesses for the processing and disposal of county-generated waste; a plan may utilize landfills as disposal sites; or resource recovery facilities may be the primary disposal method; a plan may utilize flow control ordinances as part of its waste management system; or, a county may opt to allow its waste to be disposed at any permitted facility. (53 P.S. §§ 4000.303; 4000.502). The planning process involves some basic decisions regarding the type of waste management system the county intends to employ from among the available alternatives.

Many of these basic planning decisions were made at the time Act 101 plans were originally developed and adopted. However, plan revisions may involve some fundamental changes to a county's waste management system. For example, a county that is currently relying on several private landfill facilities for disposal of its municipal waste may decide that resource recovery facilities are more beneficial and should be utilized almost exclusively. A substantial change in recycling services may be contemplated, or a county without flow control may decide to adopt a plan and implementing ordinance which directs all county-generated municipal waste to a single public facility for processing.

Section 502(f) of Act 101 requires that a county use a "fair, open and competitive" process for selecting among alternative waste management programs or facilities. The county plan must provide the Department with "reasonable assurances" that the county has utilized a fair, open and competitive process for selecting among alternatives suggested to the county during its planning process. These Act 101 requirements apply to a county's basic planning decisions such as whether to use public or privately-owned facilities for processing or disposal of county-generated waste, or what kind of recycling programs and facilities will be implemented. A plan revision will be reviewed by the Department for consistency with Act 101's fair, open and competitive process requirement. Generally, when a county properly engages in the substantial plan revision process (see Section I below), the Department will consider the fair, open and competitive process requirement to have been satisfied.

#### **H. Facility Designation Process, "Flow Control" Considerations, and Commerce Clause Analysis.**

Act 101 expressly authorizes a county to require that all municipal waste generated within its boundaries be processed or disposed only at a specific facility (or facilities) designated in the county plan. (53 P.S. § 4000.303(e)). The Act 101 process for assuring capacity often involves designating a limited number of disposal facilities where municipal waste generated within the county may lawfully be disposed in accordance with the county plan and its implementing documents. Generally, a county ordinance is used to implement a county's decision to require that municipal waste within the county be disposed only at a facility or facilities designated in the plan. Act 101 expressly authorizes a county to require by ordinance that all municipal waste generated within its jurisdiction shall be processed or disposed at a designated permitted facility.

The term “flow control” is often used to describe the situation where the county requires by law that waste generated within its boundaries be delivered only to facilities designated in the county plan. (Flow control is also generally used to describe a situation where an exclusive franchise for waste pickup is granted to a single waste hauler by a municipality.) An Act 101 plan will be considered a “flow control” plan even if a county designates more than one facility which may lawfully receive waste generated within the county. It is only when a county allows waste to be disposed or processed at any permitted facility that the plan will not be considered to include “flow control.” A county which decides not to use “flow control” as part of its plan must still assure that it has adequate processing and disposal capacity for all county-generated municipal waste during the next ten years.

The county’s process for selecting a facility or facilities for designation in the county plan will be reviewed by the Department for consistency with applicable law. This typically involves an analysis by the Department of the county’s waste management system, and specifically the facility-designation process, to determine whether the system described in the plan revision would violate the Commerce Clause. The Supreme Court first recognized that the interstate hauling of waste was commerce for the purposes of Commerce Clause analysis in *City of Philadelphia v. New Jersey*, 437 U.S. 617 (1978). The United States Constitution gives Congress the power to regulate commerce amongst the States. Courts have interpreted this delegation of authority to Congress to mean that States do not have the power to interfere with interstate commerce by engaging in economic protectionism. The Commerce Clause is applicable not only to regulation by States, but also to regulation by local governmental units like counties and municipalities.

A plan which allows county-generated waste to be disposed at any permitted facility, whether in-state or out-of state, treats all private businesses the same and thus generally does not raise Commerce Clause issues. If the county has a flow control plan, (i.e. the plan has a designation process which limits the number of facilities designated in the plan as authorized processing or disposal sites and directs that all county-generated waste must be processed or disposed only at the facilities designated in the plan), the Commerce Clause is implicated. Limiting the number of facilities at which county-generated waste may lawfully be processed or disposed raises a question whether the regulation by the county (in the form of its county plan and/or county ordinance) has discriminated in favor of in-state businesses.

It is important to recognize that a county may, consistent with the Commerce Clause, decide to designate a single facility as the only designated facility in the county plan where county-generated waste may lawfully be processed or disposed.<sup>1</sup> The county may enact an ordinance compelling the disposal of all county-generated waste at the single designated

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<sup>1</sup> Similarly, courts have upheld local government ordinances which grant an exclusive franchise to a waste hauler for pickup of waste generated within the jurisdiction of the local government. See, e.g., *Houlton Citizens’ Coalition v. Town of Houlton*, 175 F.3d 178 (1st Cir. 1999); *USA Recycling, Inc. v. Town of Babylon*, 66 F.3d 1272 (2d Cir. 1995); *Douglas Disposal Inc. v. Wee Haul, LLC*, 170 P.3d 508 (Nev. 2007).

facility selected by the county in its facility-selection process (see 53 P.S. § 4000.303(e)), and this ordinance may be upheld as consistent with the Commerce Clause. Over the past several decades, various types of waste flow-control systems have been challenged as a violation of the Commerce Clause, and there are numerous federal court opinions on this question. However, a recent U.S. Supreme Court case, *United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Management Authority*, 127 S. Ct. 1786 (2007), has significantly changed the framework for analyzing whether a waste management system violates the Commerce Clause. Based on this Supreme Court decision, there are now two basic types of flow control systems that may be used in Pennsylvania consistent with the Commerce Clause. The applicable criteria for satisfying Commerce Clause considerations will depend upon the system being utilized.

(1) *Selecting a Single Public Facility as the Only Designated Site in the County Plan*

The first type of flow control system is one in which the county selects a single, in-state, public facility for designation in the plan as the only site which may lawfully receive county-generated waste for processing or disposal. In the *Oneida-Herkimer* case, the U.S. Supreme Court upheld a solid waste flow control ordinance that compels private haulers to deliver all municipal waste generated within a county to a single public processing facility. The Court distinguished its earlier ruling in *C & A Carbone, Inc. v. Clarkstown*, 511 U.S. 383 (1994) on the basis of a public/private distinction. The Court in *Oneida-Herkimer* concluded that a flow control ordinance which directs all county-generated waste to a single, public, facility (in this case a waste processing facility owned and operated by a joint solid waste authority) does not discriminate against interstate commerce.<sup>2</sup> Balancing the benefits of the flow control ordinance against the incidental burden on interstate commerce, the Court decided that the public benefits of the flow control system far outweighed any burden that may have been imposed on interstate

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<sup>2</sup> In the *Oneida-Herkimer* case, two New York counties had established a joint Solid Waste Authority under state law to manage all solid waste generated within the counties. The Authority developed and operated a facility for processing solid waste and recyclables. Under the system, private haulers pick up citizens' trash from the curb, and county flow control ordinances require all solid waste generated within the counties to be delivered to the Authority's facility for processing and ultimate disposal. The Authority charges tipping fees higher than the open market, but uses the revenue to cover the costs of a comprehensive waste management system. In addition to landfill transportation and disposal, the fees enable the Authority to provide robust recycling service, composting, household hazardous waste disposal, and other services. The Authority accepts recyclables and many forms of hazardous waste for free, thus encouraging separation of these items from the waste stream and increasing the counties' ability to enforce recycling laws. A group of trash haulers challenged the flow control ordinances alleging that the ordinances discriminated against interstate commerce and consequently violated the Constitution's Commerce Clause. The court noted: "Disposing of trash has been a traditional government activity for years, and laws that favor government in such areas—but treat every private business, whether in-state or out-of-state, exactly the same—do not discriminate against interstate commerce for purposes of the Commerce Clause." The Court found compelling reasons for treating the county ordinances differently from laws favoring particular private businesses over their competitors. The Court recognized that State and local governments that provide public goods and services on their own, unlike private businesses, are vested with the responsibility of protecting the health, safety, and welfare of their citizens, and laws favoring such States and their subdivisions may be directed toward any number of legitimate goals unrelated to economic protectionism. Applying a balancing test, the Court upheld the county ordinances.

commerce, and the Court upheld the county's flow control system. This recent ruling by the U.S. Supreme Court changes the nature of the Department's Commerce-Clause analysis for Act 101 county plans. If a county has selected a single public facility as the only site where county-generated waste may be lawfully processed or disposed, the Department will analyze that situation using the Oneida-Herkimer case as its guide.<sup>3</sup>

The Department will take into account several important factors of the Oneida-Herkimer case when analyzing a county plan which designates a single public facility for processing or disposal. In Oneida-Herkimer, the county ordinances benefit a public facility while treating all private companies exactly the same. No special exception was provided for a particular in-state private business. Certain benefits resulting from the Oneida-Herkimer system were specifically noted by the Court. The system enabled the counties to finance an integrated package of waste-disposal services for their residents, including robust recycling service, composting, household hazardous waste disposal, and other services. The system increased recycling, which confers significant health and environmental benefits, and increased the ability to enforce county recycling and waste disposal laws.

The Court also emphasized that the residents of Oneida and Herkimer counties had expressed a preference for their system of a public facility with above-market tipping fees, where the money from the higher fees is then used to finance a comprehensive waste management system. Consequently, a county that seeks to revise its plan to implement flow control to a single public facility will be required to use the substantial revision process set forth in 25 Pa. Code § 272.252 because of the public participation elements in that process. The Department will examine the benefits provided to the county and its residents by a flow control plan that designates only a single public facility for disposal of county-generated waste to assure that the benefits of the system outweigh any incidental burden on interstate commerce.

(a) *Flow Control to a Public Facility Owned by Another County*

In the Oneida-Herkimer case, two counties formed a joint solid waste authority which owned and operated a processing facility; each county then required that all county-generated waste be disposed at that facility. The critical distinction by the Court for Commerce Clause purposes was made between a public facility and a private business. The Court did not require

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<sup>3</sup> The recent opinion by the U.S. Court of Appeals for the Third Circuit in *Lebanon Farms Disposal, Inc. v. County of Lebanon*, 2008 U.S. App. LEXIS 16614 (Aug. 8, 2008) provides further support for this approach. The Lebanon County ordinance requires all county-generated municipal waste to be disposed at a landfill owned and operated by the Greater Lebanon Refuse Authority, i.e. a public facility, unless a hauler receives prior written approval from the GLRA to dispose of such waste at another facility. A hauler operating in the county challenged the ordinance as a violation of the Commerce Clause. The Third Circuit applied the analytical framework of the Oneida-Herkimer decision: "This case seems indistinguishable from *United Haulers* in all material ways for the purpose of the facial discrimination analysis . . . . [T]he flow control ordinances in this case clearly benefit a public facility, the GLRA." *Lebanon Farms Disposal, Inc.*, 2008 U.S. App. LEXIS 16614, at \*23--\*24 n.18. The Third Circuit recognized that the decision in *Oneida-Herkimer* overruled the Third Circuit case of *Harvey & Harvey, Inc. v. County of Chester*, 68 F.3d 788 (3d Cir. 1995), "to the extent [Harvey] supports the application of strict scrutiny to publicly operated waste disposal sites like the GLRA site." *Id.* at \*21--\*22.

that the county which flow controlled its waste to a public facility also be the county which owns and operates the public facility to which the waste is being directed. A subsequent Supreme Court case addressing a Commerce Clause challenge has reinforced the broad public/private distinction drawn by the Court. See *Dep't of Revenue v. Davis*, 128 S. Ct. 1801 (2008). The Department will accept for review a county plan revision in which a county selects a single public facility as the only designated facility in the county plan where county-generated waste may lawfully be processed or disposed, even though the county does not own or operate the designated public facility. In other words, county A flow controls its waste to a single facility owned and operated by county B or county B's solid waste authority. In this situation, the Department will closely examine the benefits that planning county A will receive from the public facility owned by county B as a result of directing the county A waste to the single public facility. These benefits should be clearly stated in the county plan, and any implementing documents related to the provision of such benefits, such as an intermunicipal agreement, must be submitted.

(b) *Flow Control to a Publicly-Owned Facility Operated by Private Business*

Courts have not addressed a situation where a county requires that its waste be processed or disposed at a facility which is owned by a local government but is operated to some extent by a private business. In other words, the county owner has contracted with a private business for operation of at least some aspects of the county-owned facility. The Department will examine a county plan which designates a single publicly-owned (but privately-operated) facility where county waste may be lawfully processed or disposed to determine whether the plan benefits a public facility while treating all private processing or disposal companies equally with respect to the business of disposing county-generated waste. The Department will consider whether the county is engaging in economic protectionism through laws that favor in-state business over out-of-state competitors.

A county that has contracted for operation of a processing or disposal facility that it owns is providing the public service of waste disposal for its citizens. Unlike private businesses, local governments that provide public goods and services are vested with the responsibility of protecting the health, safety, and welfare of their citizens. The Supreme Court has recognized that laws favoring such local governments may be directed toward any number of legitimate goals unrelated to economic protectionism. Plans with this type of flow control system will be examined to assure consistency with the parameters outlined by the Supreme Court in the *Oneida-Herkimer* decision.

(2) *Selecting a Single In-State Private Facility as the Only Designated Site in the County Plan or Selecting a Limited Number of In-State Private and Public Facilities as Designated Sites in the Plan*

The second type of flow control system is one in which the county either selects a single in-state private facility for designation in the plan as the only facility at which county-generated waste may be lawfully processed or disposed, or the county selects a limited number of in-state private facilities for designation in the plan. The Department will analyze this type of plan using



as its guide the case of *Harvey & Harvey, Inc. v. County of Chester*, 68 F.3d 788 (3d Cir. 1995), cert. denied, 516 U.S. 1173 (1996).<sup>4</sup> In the *Harvey* case, the court focused on the county's process for designating processing or disposal sites in the county plan, rather than on the effect of an ordinance once a provider or providers had been chosen. The court determined that the fact that all the designated sites in the county plan happen to be in-state does not, in and of itself, establish that the county's flow control plan discriminates against interstate commerce. The court concluded that a local authority could choose a single in-state provider—without impermissibly discriminating against interstate commerce—so long as the selection process was open and competitive and offered truly equal opportunities to in-state and out-of-state businesses. To determine whether the flow control scheme actually discriminates against interstate commerce, three factors should be closely examined: (1) the designation process itself; (2) the duration of the designation; and (3) the likelihood of an amendment to add alternative sites to the plan as designated sites for processing or disposal of county-generated waste. When reviewing a county plan that designates a limited number of in-state private facilities where county waste may be processed or disposed, the Department will examine the three factors identified in the *Harvey* case.

The designation process should not, either purposely or in effect, favor in-state private businesses. The designation process should be open to both in-state and out-of-state facilities. A county can help assure that its designation process is considered open and competitive by publishing its solicitation materials in national trade publications. Whether a national or regional dissemination of solicitation materials is used, the point is to assure that all those facilities who may have an interest in competing for inclusion in the county plan are given an opportunity to do so. A properly conducted selection process should give in-state and out-of-state facilities an equal chance to compete for the county's waste processing or disposal. The criteria should not favor in-state or out-of-state facilities, either overtly or otherwise. Act 101 does not require a county to utilize a request for proposal or bidding process to select a facility, nor does it require the county to select the alternative with the lowest cost. 25 Pa. Code § 272.227(c)(2). Regardless of whether a county solicits processing or disposal capacity in the form of a request for proposals, a precursor to a request for proposals, or another type of solicitation process, the criteria stated in the solicitation documents must be fair to every potential respondent

The duration of the designation of a particular facility in the plan will also be examined when a plan revision is submitted. The court in *Harvey* noted that excessively long periods of exclusive service rights under the designation can raise suspicion that an in-state facility is being favored over out-of-state businesses. The Department generally considers a ten-year contract as an acceptable duration. Counties reaching the end of a ten-year contract with a designated facility should strongly consider undertaking a solicitation process open to in-state and out-of-state facilities rather than simply extending the existing contract. A plan revision which attempts

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<sup>4</sup> See *Lebanon Farms Disposal, Inc.* 2008 U.S. App. LEXIS 16641, at \*24--\* 25 at n.19 (“*Harvey*’s application has now been overruled to the extent it suggests the application of strict scrutiny to nondiscriminatory regulations benefitting public waste disposal sites.”).

to assure capacity through the extension of existing ten-year capacity assurance agreements with a private facility(ies) will generally not be approved unless a designation process is undertaken which allows for equal competition from out-of-state facilities.

The process for designating a facility in the plan will be examined with respect to the likelihood of additional facilities being added to the list of designated sites in the plan. The process by which a facility may be added to the list of designated sites should provide a real possibility for the designation of additional, potentially out-of-state sites to the plan. The process for adding designated sites should treat all applicants equally. A process for adding designated facilities which imposes unequal administrative burdens on out-of-state facilities compared with in-state sites will raise concerns that the Commerce Clause could be violated.

#### **I. Procedure for Developing Plan Revisions: Substantial or Non-Substantial Revisions.**

Section 272.252(a) requires that a county provide written notice to the Department when plan revision development begins. The notice must include a description of the proposed plan revisions the county intends to undertake. After receiving the notice, the Department must decide within 30 days whether the proposed plan revisions are substantial or non-substantial. The type of revision to the plan, substantial or non-substantial, entails the specific process which the county must use to complete the revision. Whether a plan revision is considered substantial or non-substantial depends on the types of changes to the plan rather than the amount of revising that must be accomplished. Many, if not most, revisions are considered non-substantial, and the revision may be accomplished by the county using the non-substantial revision process described in 25 Pa. Code § 272.252.

There may be situations in which the county chooses to use the substantial revision process, even though the plan revision may be considered as non-substantial by the Department. The county is not prohibited from using the substantial plan revision process, which involves significantly more public participation, for a “non-substantial” revision. (25 Pa. Code § 272.252(f)).

The regulations specify certain types of plan revisions which must be considered substantial, and therefore the county must use the procedures for development of a substantial plan revision. Otherwise, the Department has discretion to determine whether a proposed plan revision is substantial. A substantial revision process must always be used when the county proposes to eliminate a recycling program that was included in the current plan and is operating in the county. (25 Pa. Code § 272.252(e)(1)). This action would probably reduce the amount of recycling in the county, and is a very serious consideration. Similarly, if the county decides to manage a waste stream that has not previously been under its control, the Department will require that a substantial revision process be used pursuant to § 272.252(e)(2).

The Department will require a county revising its plan to adopt a flow control system which directs county-generated waste to a single public facility to engage in the procedures for a substantial plan revision. The public participation provided for in the substantial revision process will help to insulate any flow control system being implemented from a Commerce Clause challenge. In a situation where the county has or intends to establish an authority to be responsible for implementing the plan, managing the county's waste management system, managing the recycling program, or any combination of these, the plan must be revised to reflect this change and a substantial revision must be submitted. The same applies to the transfer of waste or recycling responsibilities and personnel from county government to an authority or vice versa. Simply changing a recycling program from drop off to curbside, or changing the collection method or materials, would not require a substantial revision.

*(1) Elements of the Substantial Revision Process (25 Pa. Code § 272.252)*

(i) County provides a written notice to the Department that it intends to revise the plan and what will be revised. This notice must also include a description of how the county intends to assure capacity for the next ten years. The notice will be submitted to the Department within three years of when the revised plan is due.

(ii) Within 30 days after receipt of the notice, the Department will notify the county in writing if it determines that the revision is substantial.

(iii) The county forms an advisory committee to participate in the development of the plan. If the county's advisory committee is active, the county notifies the committee of its intent to revise the plan.

(iv) The county provides a notice to the municipalities when development of the revision begins.

(v) As development of the plan revision progresses, the county provides progress reports to the municipalities.

(vi) When the plan revision is complete, the county publishes a notice in a newspaper of general circulation in the county, in the form of a display ad, twice in two consecutive weeks, containing:

- a. A description of the proposed plan, the facilities the county intends to use for disposal and the recycling programs;
- b. The location of copies for review;
- c. The opportunity for persons to comment within 90 days and the procedure for submitting comments; and

d. The date, time and place of at least one public hearing to be held during the 90-day comment period.

(vii) At the same time that the newspaper notice is published, the county submits copies to:

- a. The Department;
- b. Municipalities within the county;
- c. The county or regional planning agencies; and
- d. The county Health Department.

(viii) A notice accompanying the copies will indicate that the county will receive comments for 90 days from the date of the newspaper notice. Specific reasons for the comments should be provided.

(ix) After the comment period ends, the county, usually the advisory committee makes appropriate revisions and prepare a written response to comment document.

(x) The advisory committee submits the plan revision and the response to comment document to the County Commissioners for adoption.

(xi) The commissioners adopt the plan within 60 days after the public comment period.

(xii) The commissioners send the adopted plan to the municipalities within 10 days after it is adopted.

(xiii) In the process of ratification, each municipality has 90 days to act on the plan. If a municipality does not act, it will be assumed to have ratified. The municipality submits a copy of its resolution of ratification to the county.

(xiv) If a municipality acts to decline to ratify the plan, that municipality must pass a resolution containing a concise statement of its objections and forward a copy of that resolution to the county and the advisory committee. A conditional approval is considered a disapproval.

(xv) When more that one-half of the municipalities, representing more than one-half of the population in the county ratify the plan, the county submits a copy of the plan to the Department within ten days of ratification for approval.

(xvi) If the plan is not ratified, the county must then follow the requirements of 25 Pa. Code § 272.243 (pertaining to failure to ratify plan) of the Municipal Waste Regulations.

(2) *Elements of Non-Substantial Revision Process*

(i) The county provides a written notice to the Department that it intends to revise the plan and indicates what portions of the plan will be revised. This notice must also include a description of how the county intends to assure capacity for the next ten years.

(ii) Within 30 days after receipt of the notice, the Department will notify the county if it determines that the revision is substantial.

(iii) The county forms an advisory committee to participate in the development of the plan. If the county's advisory committee is active, the county notifies the committee of its intent to revise the plan.

(iv) The county provides a notice to the municipalities when development of the revision begins.

(v) As development of the plan revision progresses, the county provides progress reports to the municipalities.

(vi) At least 30 days before submitting a non-substantial plan revision to the Department, the county submits a copy to the advisory committee and each municipality within the county. After the end of the 30 days, the county submits the non-substantial revision to the Department for approval.

### **III. PLAN IMPLEMENTATION.**

#### **A. Description of Implementation Methods.**

Every plan revision should include a description of how the county intends to implement its plan. This should include, but not be limited to:

(i) A description of the ordinances to be adopted by each municipality and by the county;

(ii) A description of the contracts that the county intends to use to implement disposal, recycling, collection or other programs within the county, and whether they are municipal or county contracts;

(iii) Identification of the person or agency that will be responsible for monitoring the implementation of the plan and making recommendations on any action to be taken

to the Commissioners. This may be the implementing entity described in Chapter 7 of the plan, but must include the duties of this entity; and

(iv) A general description of what the county intends to do to prevent interference with the plan, or what actions the county intends to take in the event that there is interference.

## **B. Interference With County Plans.**

Interference with county plans includes, but is not limited to:

(i) The transportation of waste to facilities that are not designated in the generating county's municipal waste management plan.

(ii) The improper management of recyclables that would affect a county's achievement of its recycling goals. Every county has a recycling goal, and disposing of recyclables prevents the county from achieving its goals.

The Department expects facilities that manage municipal waste and those who transport municipal waste to act in a manner consistent with Act 101, the Department's municipal waste regulations in 25 Pa. Code Ch. 271-285, and all approved county plans. The Department regularly reviews the data from the quarterly fee reports to ascertain if facilities are accepting waste from counties whose plans do not designate the facility as a site where county-generated waste may be processed or disposed. A facility that accepts waste from a county that has not designated that facility may be in violation of the county plan, the municipal waste regulations, and/or Act 101. (53 P.S. § 4000.1701; 25 Pa. Code § 273.201). The facility may be subject to penalties under applicable law.

Haulers of municipal waste who deliver waste to facilities that are not designated in a county plan may be violating the county plan, the municipal waste regulations and Act 101. Violations of this type may lead to the suspension or revocation of a transporter's Act 90 Waste Transportation Authorization. Counties are expected to enforce the provisions of the county plan and its implementing documents. Any enforcement action taken by counties against those who have violated the county plan or implementing documents will be reviewed by the Department when evaluating compliance history of a transporter or disposal facility. In the event a county's enforcement efforts do not result in compliance, the Department may take actions, including notice of violations followed by orders, civil penalties, and/or suspension or revocation or permits or authorizations.

## **C. Licensing and Fees**

### *(1) County Licensing Systems for Haulers*

A county that licenses haulers who operate within its borders, or counties that have developed fees which must be paid to the disposal facilities and returned to the county, must

reconsider the inclusion of such programs in their plan when they revise the plan. Recent court decisions have limited the ability of a county to implement licensing and administrative fee programs as they have in the past.<sup>5</sup> These elements may be revised or eliminated when the plan is next revised.

Under Act 90 of 2001, 27 Pa.C.S. §§ 6201 et seq. (the Waste Transportation Safety Act), the Commonwealth began a program of authorization and registration of trucks over 17,000 pounds gross vehicular weight involved in the transportation of municipal waste. Plan revisions that contain county licensing for waste hauler trucks of greater than 17,000 pounds operating within the county have been restricted by recent Court rulings, and such revisions cannot be accepted for review or approved as part of a county plan revision.

The scope of Act 90's waste transporter safety program does not extend to trucks with an actual gross weight of 17,000 pounds or less. The courts have not addressed the question of whether a county or municipality may license smaller waste hauler trucks that fall outside the scope of Act 90. If a county plan revision submitted to the Department for review and approval contains a licensing system exclusively for waste hauler trucks outside the scope of Act 90, the region should consult with central office and regional counsel before making a decision on whether to approve the plan.

Although the licensing of trucks is subject to the interpretation of court decisions, such decision does not apply to the licensing of waste containers. A recent court decision has upheld a local government's system for licensing waste containers.<sup>6</sup> Plans containing proposed programs involving licensing and/or registration of waste containers thus may be approved as consistent with applicable law.

## (2) *Administrative Fees Imposed by County Ordinance*

Several recent Commonwealth Court decision have determined that county ordinances imposing administration fees on the disposal of county-generated waste are preempted by Act 101.<sup>7</sup> Counties had been using such fees to meet the operation and maintenance costs of implementing their recycling programs. Under Act 101, county plans must include descriptions of recycling programs, including sources of funding for those programs. Thus, many of the counties included these fees in their plans. Legislation has been proposed in the General Assembly to allow such fees, but until such legislation is enacted, the Department will not accept or approve county plan revisions that identify administrative fees imposed by county

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<sup>5</sup> See IESI PA Bethlehem Landfill Corporation v. County of Lehigh, 887 A.2d 1289 (Pa. Cmwlth. 2005); Pennsylvania Independent Waste Haulers Association v. County of Northumberland, 885 A.2d 1106 (Pa. Cmwlth. 2005).

<sup>6</sup> See Pennsylvania Independent Waste Haulers Association v. Township of Lower Merion, 872 A.2d 224 (Pa. Cmwlth. 2005).

<sup>7</sup> See IESI PA Bethlehem Landfill Corporation v. County of Lehigh, 887 A.2d 1289 (Pa. Cmwlth. 2005); Pennsylvania Independent Waste Haulers Association v. County of Northumberland, 885 A.2d 1106 (Pa. Cmwlth. 2005).

ordinance as a funding source for their recycling programs and/or contain copies of an ordinance levying such fees.

The courts have not prohibited counties from obtaining funds through their contracting process. The Department may accept county plans that contain provisions for funding county recycling programs by means of payments received through negotiated contracts between counties and waste haulers or disposal facilities, in the absence of local legislation that imposes fees on waste collection or disposal. Counties are free to negotiate charges as part of solid waste collection or disposal contracts, and can utilize the moneys generated by such charges to fund recycling programs. Plans that rely on negotiated revenues as the funding source for recycling programs can be approved.



**APPENDIX B**

**MUNICIPAL WASTE DESIGNATED SITE ORDINANCE**

**CHESTER COUNTY DESIGNATED SITE ORDINANCE**

**COUNTY OF CHESTER, PENNSYLVANIA**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE COUNTY OF CHESTER, PENNSYLVANIA AMENDING AND REENACTING CERTAIN PROVISIONS OF ORDINANCE NO. 92-1, AS SUPPLEMENTED AND AMENDED, WHICH REENACTS, RESTATES AND REPLACES SAID ORDINANCE NO. 92-1, AS SUPPLEMENTED AND AMENDED.**

WHEREAS, it is deemed by the Board of Commissioners of Chester County, Commonwealth of Pennsylvania, to be in the best interest of the health, safety and welfare of the citizens of Chester County that comprehensive planning for Municipal Waste management be a public function controlled and implemented by the County as provided herein;

WHEREAS, the Municipal Waste Planning, Recycling and Waste Reduction Act of July 28, 1988, P.L. 556, No. 101, 53 P.S. Subsection 4000.101 *et seq.* (hereinafter referred to as "Act 101"), requires counties to prepare a plan for Municipal Waste management systems within their boundaries;

WHEREAS, Act 101 gave Chester County primary responsibility for planning for Municipal Waste processing and disposal within its boundaries and the primary authority to control the flow of Municipal Waste generated within its boundaries;

WHEREAS, Act 101 requires counties to provide adequate permitted waste processing and disposal capacity for at least ten (10) years and authorizes a County with an approved plan for Municipal Waste management systems, submitted under Act 101, to require that all Municipal Waste generated within its boundaries shall be processed or disposed at a designated processing or disposal facility;

WHEREAS, Act 101 authorizes a county, in carrying out its duties under Section 303 of Act 101, to adopt ordinances, resolutions, regulations and standards for the processing and disposal of Municipal Waste and for the recycling of Municipal Waste or source separated recyclable material;

WHEREAS, Section 303(d) of Act 101 authorizes counties to enter into a written agreement with another person, including a municipal authority, pursuant to which that person undertakes to fulfill some or all of the county's responsibilities under Act 101 for Municipal Waste planning and implementation of the approved plan for Municipal Waste management systems;

WHEREAS, the Board of Commissioners adopted the Chester County Act 101 Municipal Waste Management Plan on September 25, 1990 and on the 2<sup>nd</sup> day of April, 1992, the Board of Commissioners adopted Ordinance No. 92-1. The Board of Commissioners subsequently amended said Ordinance No. 92-1 on the \_\_\_ day of \_\_\_\_\_, 1993 by Ordinance No. 93-2, and again amended said Ordinance on the 17<sup>th</sup> day of November, 1993, by Ordinance No. 93-7;

WHEREAS, the Chester County Act 101 Municipal Waste Management Plan was revised by the Chester County Municipal Waste Management Plan Revision of March 2007 adopted by the Board of Commissioners in March 2007, and subsequently approved by the Pennsylvania Department of Environmental Protection;

WHEREAS, the Chester County Municipal Waste Management Plan Revision of March 2007 reserved the right to reexamine the redirection of Municipal Waste to public facilities and its benefits to local public landfills in the event that court authority became supportive;

WHEREAS, the Board of Commissioners, in light of the United States Supreme Court Decision in United Haulers Association, Inc., et al., vs. Oneida-Herkimer Solid Waste Management Authority, et al, 550 U.S. 330, 127 S. Ct. 1768, 167 L. Ed. 2d 655 (2007), is desirous of adopting this Ordinance to designate the redirection of Municipal Waste to public facilities and treating all private facilities in an equal manner;

WHEREAS, the Chester County Act 101 Municipal Waste Management Plan, as revised by the Chester County Municipal Waste Management Plan Revision of March 2007, was further revised by the Chester County Municipal Waste Management Plan Revision of \_\_\_\_\_ and adopted by the Board of Commissioners in \_\_\_\_\_ of 2009, and subsequently approved by the Pennsylvania Department of Environmental Protection;

WHEREAS, the Chester County Municipal Waste Management Plan Revision of \_\_\_\_\_ provides for the enactment of a Designated Site Ordinance to regulate Municipal Waste and the Board of Commissioners of Chester County, Commonwealth of Pennsylvania, are desirous of combining, reenacting, and restating certain provisions of Ordinance No. 92-1, as supplemented and amended, in the Designated Site Ordinance contained herein, in furtherance of the provisions of the Chester County Municipal Waste Management Plan; and

WHEREAS, the purpose and requirements of Act 101 will be best carried forth by adopting this Ordinance and the local benefits of the health, safety and welfare of the citizens of Chester County outweigh any incidental burdens of private interstate commerce that may be impacted.

IT IS HEREBY ENACTED AND ORDAINED by the Board of Commissioners of Chester County as follows:

**Section 1. Short Title.** This Ordinance shall be known and referred to as the “Chester County Designated Site Ordinance.”

**Section 2. Definitions.** The following terms shall have the following meanings in this Ordinance:

“Act 97” – the Solid Waste Management Act, Act of July 7, 1980, P.S. 380, No. 97, as now or hereafter amended.

“Act 101” – the Municipal Waste Planning, Recycling and Waste Reduction Act of July 28, 1988, P.L. 556, No. 101, 53 P.S. Subsection 4000.101 *et seq.*, as now or hereafter amended.

“Authority” – the Chester County Solid Waste Authority (“CCSWA”) or the Southeastern Chester County Refuse Authority (“SECCRA”).

“Authority Rules and Regulations” – the rules and regulations adopted and revised from time to time by the Authority pertaining to the implementation of the Plan.

“By-Pass Disposal Facility” - any Municipal Waste storage, collection, transfer, processing, or disposal facility not owned or operated by, or not operated on behalf of, the Authority as set forth in the Plan or hereinafter approved by the Authority.

“County” –the County of Chester, Commonwealth of Pennsylvania.

“Designated Facility” – any Municipal Waste storage, collection, transfer, processing, or disposal facility owned and operated by, or operated on behalf of, the Authority.

“Designated Site Ordinance” – an ordinance adopted by the County which provides inter alia for regulation of the flow of any and all Municipal Waste generated within the County.

“Existing Contract” – any agreement or contract (1) fully executed and delivered and in effect, and (2) in reliance upon which, there has been a material change in position by any person who is a party thereto, or beneficiary thereof, prior to the 2<sup>nd</sup> day of April, 1992, for the collection, disposal or transportation of Municipal Waste generated within the County.

“Hearing Officer” – a person appointed and empowered by the Chester County Board of Commissioners to review and decide requests for review of the County’s administrative determination.

“Manifest” – a form provided by the Authority to be completed upon delivery of Municipal Waste to a Designated Facility.

“Municipal Waste” – Municipal Waste as defined in Section 103 of Act 101, including any solid waste generated or collected within the County which includes 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 Act 97 from a municipal, commercial or institutional water supply treatment plant, waste water treatment plant or air pollution control facility. The term “Municipal Waste” does not include source separated recyclable materials.

“Municipality” – a county, city, borough, incorporated town, township or home rule municipality.

“Municipal Waste Delegation Agreement” – the agreement between the County and the Authority defining and delegating certain Municipal Waste management powers and responsibilities of the County to the Authority, as authorized by Act 101.

“Ordinance” – the Designated Site Ordinance.

“Person” – any individual, partnership, association, corporation, limited liability company, institution, cooperative enterprise, municipality, municipal authority, federal government or agency, Commonwealth institution or agency, or any other legal entity whatsoever which is recognized by law. In any provisions of this Ordinance pertaining to a fine, imprisonment or penalty, or any combination of the foregoing, the term “Person” shall also include the officers, directors, and/or managing members of any limited liability company, corporation, or other legal entity having officers, directors and/or managing members.

“Plan” – the Chester County Act 101 Municipal Waste Management Plan, September, 1990 approved pursuant to Act 101, as revised by the Chester County Municipal Waste Management Plan Revision of March 2007 and February 2009 (including all Appendices, Exhibits, and Attachments thereto), and any subsequent revisions, amendments or updates thereto which are approved pursuant to the provisions of Act 101.

“Processing” – any technology used to reduce the volume or bulk of Municipal Waste or any technology used to convert part or all of such materials for off-site reuse. Processing facilities include, but are not necessarily limited to, transfer facilities, recycling facilities, composting facilities and resource recovery facilities.

“Recycling” – the collection, separation, recovery and sale or reuse of the materials cited in Section 1501(c) of Act 101 which would otherwise be disposed or processed as Municipal Waste or the mechanized separation and treatment of Municipal Waste (other than by combustion) and creation and recovery of reusable materials other than a fuel for the operation of energy.

“Service Area” – the geographical area in which all Municipal Waste generated in such area is to be disposed at a Designated Facility pursuant to this Ordinance. The Service Area for a particular Designated Facility shall be defined by the boundaries of those Municipalities assigned to that Designated Facility pursuant to the Plan.

“Source Separated Recyclable Materials” – materials designated in Section 1501(c) of Act 101 that are separated from Municipal Waste at the point of origin or generation to be recycled.

“System” – The overall Municipal Waste management system, and every aspect thereof, owned or operated or utilized by or on behalf of the County or the Authority in implementation of the Plan, including but not limited to equipment, vehicles, offices, staff, transfer stations, Designated Facilities and the like.

### **Section 3. Prohibited Activities.**

3.1 It shall be unlawful for any Person to collect, transport, process or dispose Municipal Waste generated from any sources within the County in a manner inconsistent with the provisions of this Ordinance, Plan, and any Authority Rules and Regulations adopted pursuant to this Ordinance or the Plan.

3.2 It shall be unlawful for any Person to violate, cause or assist in the violation of any provision of this Ordinance, or violate, cause or assist in the violation of any of the Authority Rules and Regulations pursuant to this Ordinance and the Municipal Waste

Delegation Agreement, or any rules, regulations, resolutions or standard promulgated by the County consistent with this Ordinance and the provisions of the Plan and Act 101, or any rules and regulations adopted pursuant thereto. All unlawful conduct shall also constitute a public nuisance.

**Section 4. Delivery to Designated Facility.** The County is divided into two (2) Service Areas as described in subsections 4.1 and 4.2 below. All Municipal Waste generated in these Service Areas must be delivered to the Designated Facility assigned by the County to receive said waste.

4.1 All Municipal Waste generated in the Southeastern Chester County Refuse Authority (“SECCRA”) Service Area must be delivered to the SECCRA landfill located in London Grove, PA, which shall be the Designated Facility for the SECCRA Service Area. The SECCRA Service Area consists of the following municipalities:

Avondale Borough	East Marlborough Township
East Nottingham Township	Elk Township
Franklin Township	Highland Township
Kennett Square Borough	Kennett Township
London Britain Township	London Grove Township
Londonderry Township	Lower Oxford Township
New Garden Township	New London Township
Newlin Township	Oxford Borough
Parkesburg Borough	Penn Township
Pennsbury Township	Pocopson Township
Upper Oxford Township	West Grove Borough
West Marlborough Township	West Nottingham Township

4.2 All Municipal Waste generated in the Chester County Solid Waste Authority (“CCSWA”) Service Area must be delivered to the Lanchester landfill located in Narvon, PA, which shall be the Designated Facility for the CCSWA Service Area. The CCSWA Service Area consists of the following municipalities:

Atglen Borough	Birmingham Township
Caln Township	Charlestown Township
City of Coatesville	Downingtown Borough
East Bradford Township	East Brandywine Township
East Caln Township	East Coventry Township
East Fallowfield Township	East Goshen Township
East Nantmeal Township	East Pikeland Township
Easttown Township	East Vincent Township
East Whiteland Township	Elverson Borough
Honey Brook Borough	Malvern Borough
Modena Borough	North Coventry Township
Phoenixville Borough	Sadsbury Township
Schuylkill Township	South Coatesville Borough
South Coventry Township	Spring City Borough
Thornbury Township	Tredyffrin Township
Upper Uwchlan Township	Valley Township
Wallace Township	Warwick Township

West Bradford Township  
West Caln Township  
West Fallowfield Township  
West Nantmeal Township  
West Sadsbury Township  
Uwchlan Township  
West Whiteland Township  
Honey Brook Township

West Brandywine Township  
West Chester Borough  
West Goshen Township  
West Pikeland Township  
Westtown Township  
West Vincent Township  
Willistown Township

4.3 Delivery of Municipal Waste to other sites pursuant to the Plan may occur only as permitted by Authority Rules and Regulations, or other order duly issued by the Authority consistent with this Ordinance and the Plan.

4.4 Nothing contained in this Ordinance shall be deemed to prohibit Source Separation or Recycling or to affect any sites at which Source Separation or Recycling may take place.

4.5 The Designated Facility reserves the right to reject waste if the Designated Facility is not permitted by the Pennsylvania Department of Environmental Protection Rules and Regulations to accept such waste or if the manner of delivery endangers the health, safety, environment or well-being of the Designated Facility's employees or property.

4.6 Delivery to a By-Pass Disposal Facility may occur only as allowed by the Authority Rules and Regulations or by written authorization from the Authority authorizing delivery to a By-Pass Facility for a period of time as defined by the Authority. Written authorization from the Authority may cover a time period not exceeding twelve (12) months.

## **Section 5. System Administration**

5.1 Pursuant to the Municipal Waste Delegation Agreement between the County and the Authority, the Authority shall have the power and duty to implement the Plan and this Ordinance and, in order to carry forth such power and duty, to adopt and enforce Authority Rules and Regulations. Notwithstanding anything to the contrary, none of the Authority Rules and Regulations shall be contrary to or less stringent than the provisions of this Ordinance, the Plan, Act 97, Act 101 or any regulations adopted thereunder.

5.2 Authority Rules and Regulations shall, at a minimum:

5.2.1 specify such predisposal processing or separation or other requirements as are deemed necessary or convenient for the efficient, effective, reliable and safe operation of a Designated Facility and the System; and

5.2.2 establish fees for use of the System; and

5.2.3 establish criteria for the registration of Municipal Waste haulers.

5.3 Authority Rules and Regulations shall ensure the efficient, effective, reliable and safe operation of the System. Authority Rules and Regulations shall be consistent with, and shall carry forth, the Plan.

## **Section 6. Penalties and Enforcement.**

6.1 The County shall have the power, and its duty shall be, to bring any and all enforcement proceedings authorized by Act 101 or this Ordinance.

6.2 Any Person who violates any provision of this Ordinance or who engages in unlawful conduct as defined in Section 3 of this Ordinance, shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not more than One Thousand Dollars and No Cents (\$1,000.00) and not less than One Hundred Dollars and No Cents (\$100.00) to be paid to the County, with costs of prosecution, or to be imprisoned in the County Jail for a period of not more than ten (10) days, or both.

6.3 Each continuing day of any violation of this Ordinance or unlawful conduct as defined in Section 3 of this Ordinance, shall constitute a separate offense.

6.4 Any Person who engages in unlawful conduct as defined in Section 3 of this Ordinance shall, in accordance with the applicable provisions of the laws of the Commonwealth of Pennsylvania, also be subject to the enforcement and remedies provisions of Act 101, Chapter 17, which may apply to unlawful conduct.

6.5 This Ordinance and any Authority Rules and Regulations adopted pursuant hereto shall be enforceable by an action in equity where unlawful conduct, as defined in Section 3 of this Ordinance, or a public nuisance exists to obtain an injunction to restrain a violation of this Ordinance, Authority Rules and Regulations, any rules, regulations, resolutions or standards promulgated or issued by the County pursuant to this Ordinance, and/or a violation of the Municipal Waste Delegation Agreement. This Ordinance and any Authority Rules and Regulations adopted pursuant hereto may also be enforceable by an action at law.

6.6 Upon finding that any Person has engaged in unlawful conduct as defined in Section 3 of this Ordinance, the Authority may, (a) revoke any license issued by the Authority to the Person and (b) deny any subsequent application by that Person or any Person who or which was, or who or which is, affiliated with, related to, or controlled by, any Person who was, at the time of commitment of such unlawful conduct, or any time thereafter, an officer, director, member, shareholder, partner, or joint venturer of, under contract with, employed by, or related or affiliated in any manner with such Person.

6.7 The penalties and remedies prescribed by this Section 6 of this Ordinance shall be deemed concurrent. The existence or exercise of any remedy shall not prevent the County from exercising any other remedy provided by this Ordinance or otherwise provided at law or equity.

6.8 Notwithstanding anything to the contrary contained herein, this Ordinance further recognizes the right of the Pennsylvania Department of Environmental Protection to take action to enforce this Ordinance under Title 25 (Environmental Protection) of the Pennsylvania Administrative Code.

## **Section 7. Existing Contracts.**

7.1 Non-interference with Existing Contracts. Nothing contained in this Ordinance



shall be construed to interfere with or in any way modify the provisions of any Existing Contract.

7.2 New Contracts and Renewals of Existing Contracts. No renewal of any Existing Contract upon the expiration of the original term thereof and no new contract for Municipal Waste collection, transportation, processing or disposal shall be entered into after the effective date of this Ordinance, unless such renewal or such contract shall conform to the requirements of the Plan, this Ordinance, Authority Rules and Regulations adopted pursuant to this Ordinance and the Municipal Waste Delegation Agreement, and shall further conform to any of the terms and conditions of licenses issued by the County pursuant to this Ordinance, as specified or required by the Plan.

7.3 No Person shall use or permit to be used any property owned or occupied by that Person within the County as a Municipal Waste processing or disposal facility, either for Municipal Waste generated within the County or elsewhere, unless such use is authorized pursuant to the provisions of Act 101, and is consistent with, and it reflected in, this Ordinance and the Plan.

**Section 8. Construction.** The terms and provisions of this Ordinance are to be liberally construed, so as best to achieve and to effectuate the goals and purpose hereof. This Ordinance shall be construed in accordance with Act 97 and Act 101.

**Section 9. Municipal Ordinances.** Pursuant to Section 304(d) of Act 101, the provisions of this Ordinance shall supersede the provisions of any municipal ordinance to the extent that the provisions of any such municipal ordinance are inconsistent with, or conflict with, the provisions of this Ordinance, except as otherwise provided by Section 502(o) of Act 101.

**Section 10. Severability.** If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any remaining provisions, sentences, clauses or parts of this Ordinance. It is hereby declared as the intent of the Board of Board of Commissioners of Chester County that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof had not been included herein.

**Section 11. Repealer.** Ordinances Nos. 92-1, 93-2 and 93-7 are hereby repealed in their entirety.

**Section 12. Effective Date.** This Ordinance shall become effective immediately upon its adoption by the Board of Commissioners of Chester County.

ENACTED AND ORDAINED this \_\_\_\_ day of \_\_\_\_\_, 2009.

CHESTER COUNTY, PENNSYLVANIA

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Attest:

\_\_\_\_\_

**APPENDIX C**

**CHESTER COUNTY CONSTRUCTION AND DEMOLITION PROCESSING  
FACILITIES AND TRANSFER STATIONS 2009 TO 2018**

## APPENDIX C

### CHESTER COUNTY CONSTRUCTION AND DEMOLITION PROCESSING FACILITIES AND TRANSFER STATIONS

	<b>Facility Name</b>	<b>Company</b>	<b>Location</b>
1.	IWS of Pennsylvania Downingtown Transfer Station	Interstate Waste Services	Downingtown, PA
2.	River Road Transfer Station	Allied/BFI	King of Prussia, PA
3.	McCusker & Sons Transfer Station	Republic Service of Pennsylvania, LLC	Chester, PA
4.	Quickway Transfer Station	Republic Service of Pennsylvania, LLC	Philadelphia, PA
5.	Richard S. Burns and Company Transfer Station	Richard S. Burns and Company, Inc.	Philadelphia, PA
6.	Waste Management, Inc. Transfer Station (formerly Santangelo)	Waste Management, Inc.	Norristown, PA
7.	Lanchester Landfill	Chester County Solid Waste Authority	Honeybrook, PA
8.	Eldridge Transfer Station	Eldridge Companies, Inc.	West Goshen Township, PA
9.	LCSWMA Transfer Station	Lancaster Solid Waste Authority	Lancaster City, PA

**APPENDIX D**  
**CHESTER COUNTY MUNICIPAL LETTER**



# THE COUNTY OF CHESTER



## COMMISSIONERS

Terence Farrell  
Carol Aichele  
Kathi Cozzone

## CHESTER COUNTY HEALTH DEPARTMENT

Chester County Government Services Center  
601 Westtown Road, Suite 295  
West Chester, PA 19380-0990  
610 -344-6225 FAX: 610-344-4705

MARGARET C. RIVELLO, M.B.A.

[www.chesco.org/health](http://www.chesco.org/health)

County Health Director

January 30, 2009

Dear Municipal Official:

This letter is official notification to each Chester County municipality regarding the County's second revision to the Chester County Solid Waste Management Plan (1990), as provided for and required by the Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101 of 1988), encoded as 25 Pa. code - §272.252 (a) and (e).

The proposed revision is deemed by the County to be a "non-substantial Plan revision" pursuant to §272.252 (e) (3) of Act 101. The Plan Revision will be an updated version of the existing Chester County Solid Waste Management Plan adopted by the County Commissioners in 1990 and revised in March 2007. The Revision will consist of adding seven secondary/ designated sites to the Plan which can take Chester County generated municipal waste that either of the primary sites (Lanchester and SECCRA landfills) cannot manage; and, it will include a Site Designation Ordinance which will replace our existing Flow Control Ordinance.

In accordance with §272.203 of Act 101, this is official notification to all municipalities of the non-substantial Plan revision and the process that the County will follow in completing this task. Chester County Commissioners will also reconvene its Chester County Solid Waste Advisory Committee and will be working with Alamo, Group to prepare this Plan update. The Chester County Solid Waste Advisory Committee will participate in this process by reviewing the County's proposed Plan Revision.

Chester County and consultant, Alamo, Group will follow the procedures as set forth in the 25 Pa. Code – Chapter 272 regulations with regard to the Plan revision process. A copy of the draft Plan Revision will be provided to you to comment on. Once the document has been revised, we will send you a copy of the Plan Revision. If you have any questions, please contact me at (610) 344-6233 or email me at [mrivello@chesco.org](mailto:mrivello@chesco.org).

Sincerely,

Margaret C. Rivello, MBA  
County Health Director

MCR/ifg

S:\MCR\SWPlan Second Revisions\Letter to Municipalities SWP Revision and Site Designation Ordinance Notice Jan 30 2009.doc

**APPENDIX E**  
**DISPOSAL CAPACITY AGREEMENT**

# Chester County Disposal Capacity Agreement

## 1. CONTRACTOR INFORMATION

a.) Disposal Facility Name and Address:

\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Contact Person: \_\_\_\_\_

b.) Owner of Facility: \_\_\_\_\_

Owner Address: \_\_\_\_\_

\_\_\_\_\_

c.) Permit Number and Expiration Date: \_\_\_\_\_

## 2. FACILITY DESIGN CAPACITY

a.) Remaining permitted capacity as of January 1, 2009: \_\_\_\_\_ TONS

b.) Remaining available landfill life as of Jan. 1, 2009: \_\_\_\_\_ YEARS

3. PERMITTED AVERAGE DAILY CAPACITY \_\_\_\_\_ TONS PER DAY

4. CAPACITY AVAILABLE TO CHESTER COUNTY \_\_\_\_\_ TONS PER YEAR

## 5. DESIGNATE DISPOSAL FACILITY

a.) During the term of this Agreement, the County agrees to designate the above named Disposal Facility in the Chester County Municipal Waste Management Plan as a non-exclusive processing or disposal facility for the disposal of Chester County municipal waste.

b.) The County and Contractor acknowledge and agree that the listing of the above named Disposal Facility is non-exclusive in nature and the County and the Contractor may enter into agreements with other disposal facilities and list these additional facilities in Chester County Municipal Waste Management Plan.

## 6. DELIVERY, ACCEPTANCE, DISPOSAL OF CHESTER COUNTY MUNICIPAL WASTE

a.) During the term of this Agreement, the Contractor agrees to accept and dispose of Chester County municipal waste in accordance with this Agreement that is delivered to the Disposal Facility on the open market and under the terms of its operating procedures and conditions.

b.) Chester County is not obligated by the terms of this Agreement to guarantee the delivery to the Disposal Facility of any minimum quantities of Chester County municipal waste and is not responsible for the payment of any disposal fees incurred as a result of the delivery of Chester County municipal waste to the Disposal Facility.



- c.) Contractor agrees to deliver County Waste Destination Reports (also known as “PA Quarterly Reports”) four (4) times a year to the Chester County Health Department at the same time the report is submitted to the Pennsylvania Department of Environmental Protection.

## 7. TERM

- a.) This Agreement shall be for a ten (10) year term which coincides with the term of the 2009 Plan Revision. The effective date of this Agreement shall be the date DEP approves of the 2009 Plan Revision.
- b.) The parties hereto shall have the option to extend this Agreement, in writing, for any additional term negotiated for and deemed appropriate by the parties.
- c.) Notwithstanding 7 (a) above, the County shall have the right to terminate this Agreement with or without cause by giving sixty (60) day's written notice to the Contractor at the address specified in this Agreement.

## 8. INDEMNIFICATION

The County hereby agrees to indemnify and hold the Contractor harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, expenses, suits, or attorneys fees and shall defend the Contractor in any suit, including appeals, arising out of the event or activities occurring in connection with this Agreement and which are caused by acts or omissions of the County. The Contractor shall indemnify and hold the County harmless from and against liabilities, actions, damages, claims, demands, judgments, losses, expenses, suits or attorneys fees and shall defend the County in any suit arising out of events or activities occurring in connection with this Agreement and which are caused by acts or omissions of the Contractor.

## 9. DEFINITIONS

**“Construction/demolition waste”** – Solid waste resulting from the construction or demolition of buildings and other structures, including, but not limited to, wood, plaster, metals, asphaltic substances, bricks, block and unsegregated concrete. The term does not include the following if they are separate from other waste and are used as clean fill:

- (i) Uncontaminated soil, rock, stone, gravel, brick and block, concrete and used asphalt.
- (ii) Waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material.

**“Contractor”** – The individual, firm, partnership, joint venture, corporation, or association providing MSW disposal services under contract with the County.

**“County”** - The County of Chester, Pennsylvania.

**“Disposal Facility”** – Disposal Facility identified in Section 1 above.

**“Municipal Waste”**- Garbage, refuse, industrial lunchroom or office waste and other materials, including solid, liquid, semisolid or contained gaseous material resulting from operation of residential, municipal, commercial or institutional establishments and from community activities; and sludge not meeting the definition of residual or hazardous waste under this section from a municipal, commercial or institutional water supply treatment plant, waste water treatment plant or air pollution control facility. For purposes of this Agreement, does not include residual, sewage sludge or construction/demolition waste.

**“Residual waste”** – Garbage, refuse, other discarded material or waste, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, mining and agricultural operations; and sludge

from an industrial, mining or agricultural water supply treatment facility, wastewater treatment facility or air pollution control facility, it is not hazardous.

**“Sewage Sludge”** – Liquid or solid sludges and other residues from a municipal sewage collection and treatment system; and liquid or solid sludges and other residues from septic and holding tank pumpings from commercial, institutional or residential establishments. The term includes materials derived from sewage sludge.

1CONTRACTOR

CHESTER COUNTY

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Commissioner

Date

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Commissioner

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Commissioner

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Attest or Witness

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Date

**APPENDIX F**

**COMPLIANCE WITH COUNTY PLAN DESIGNATED DISPOSAL FACILITY REQUIREMENTS  
PADEP WEBSITE (MAY, 2009)**

## Compliance with County Plan Designated Disposal Facility Requirements

Municipal waste disposal facilities and transporters are required to comply with county plans that specify which facilities are approved to receive waste from that county.

### § 273.201 and 283.201 - Basic limitations.

(i) A person or municipality may not allow solid waste to be received, disposed or otherwise managed at the facility if the transportation to, or processing or management at, the facility would violate applicable laws in effect in the county or state in which the waste was generated, or state or *local solid waste management plans* in effect where the waste was generated.

### § 285.215. Transportation to permitted facilities.

- (a) Municipal waste shall be transported to prevent a nuisance or hazard to public health, safety or welfare.
- (b) No person or municipality may transport municipal waste to a solid waste processing or disposal facility in this Commonwealth, unless the facility has a permit from the Department that expressly allows processing or disposal of the type of municipal waste being transported.
- (c) No person or municipality may transport municipal waste in a manner contrary to the terms and *conditions of a permit*, an order issued by the Department or requirements in the act, the environmental protection acts or this title.