

No. 1980-97

## AN ACT

HB 1840

Providing for the planning and regulation of solid waste storage, collection, transportation, processing, treatment, and disposal; requiring municipalities to submit plans for municipal waste management systems in their jurisdictions; authorizing grants to municipalities; providing regulation of the management of municipal, residual and hazardous waste; requiring permits for operating hazardous waste and solid waste storage, processing, treatment, and disposal facilities; and licenses for transportation of hazardous waste; imposing duties on persons and municipalities; granting powers to municipalities; authorizing the Environmental Quality Board and the Department of Environmental Resources to adopt rules, regulations, standards and procedures; granting powers to and imposing duties upon county health departments; providing remedies; prescribing penalties; and establishing a fund.

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

**ARTICLE I  
GENERAL PROVISIONS**

**Section 101. Short title.**

This act shall be known and may be cited as the "Solid Waste Management Act."

**Section 102. Legislative finding; declaration of policy.**

The Legislature hereby determines, declares and finds that, since improper and inadequate solid waste practices create public health hazards, environmental pollution, and economic loss, and cause irreparable harm to the public health, safety and welfare, it is the purpose of this act to:

(1) establish and maintain a cooperative State and local program of planning and technical and financial assistance for comprehensive solid waste management;

(2) encourage the development of resource recovery as a means of managing solid waste, conserving resources, and supplying energy;

(3) require permits for the operation of municipal and residual waste processing and disposal systems, licenses for the transportation of hazardous waste and permits for hazardous waste storage, treatment, and disposal;

(4) protect the public health, safety and welfare from the short and long term dangers of transportation, processing, treatment, storage, and disposal of all wastes;

(5) provide a flexible and effective means to implement and enforce the provisions of this act;

(6) establish the Pennsylvania Hazardous Waste Facilities Plan, which plan shall address the present and future needs for the treatment and disposal of hazardous waste in this Commonwealth;

(7) develop an inventory of the nature and quantity of hazardous waste generated within this Commonwealth or disposed of within this Commonwealth, wherever generated;

(8) project the nature and quantity of hazardous waste that will be generated within this Commonwealth in the next 20 years or will be disposed of within this Commonwealth, wherever generated;

(9) provide a mechanism to establish hazardous waste facility sites;

(10) implement Article I, section 27 of the Pennsylvania Constitution; and

(11) utilize, wherever feasible, the capabilities of private enterprise in accomplishing the desired objectives of an effective, comprehensive solid waste management program.

**Section 103. Definitions.**

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

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

**"Agricultural waste."** Poultry and livestock manure, or residual materials in liquid or solid form generated in the production and marketing of poultry, livestock, fur bearing animals, and their products, provided that such agricultural waste is not hazardous. The term includes the residual materials generated in producing, harvesting, and marketing of all agronomic, horticultural, and silvicultural crops or commodities grown on what are usually recognized and accepted as farms, forests, or other agricultural lands.

**"Captive facilities."** Facilities which are located upon lands owned by a generator of hazardous waste and which are operated to provide for the treatment or disposal solely of such generator's hazardous waste.

**"Commercial establishment."** Any establishment engaged in nonmanufacturing or nonprocessing business, including, but not limited to, stores, markets, office buildings, restaurants, shopping centers and theaters.

**"Commonwealth."** The Commonwealth of Pennsylvania.

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

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

**"Food processing waste."** Residual materials in liquid or solid form generated in the slaughtering of poultry and livestock, or in processing and converting fish, seafood, milk, meat, and eggs to food products; it also means residual materials generated in the processing, converting, or manufacturing of fruits, vegetables, crops and other commodities into marketable food items.

**"Food processing wastes used for agricultural purposes."** The use of food processing wastes in normal farming operations as defined in this section.

**"Hazardous waste."** Any garbage, refuse, sludge from an industrial or other waste water treatment plant, sludge from a water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid or contained gaseous material resulting from municipal, commercial, industrial, institutional, mining, or agricultural operations, and from community activities, or any combination of the above, (but does not include solid or dissolved

material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under § 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880) or source, special nuclear, or by-product material as defined by the U.S. Atomic Energy Act of 1954, as amended (68 Stat. 923)), which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

(1) cause or significantly contribute to an increase in mortality or an increase in morbidity in either an individual or the total population; or

(2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

The term "hazardous waste" shall not include coal refuse as defined in the act of September 24, 1968 (P.L.1040, No.318), known as the "Coal Refuse Disposal Control Act." "Hazardous waste" shall not include treatment sludges from coal mine drainage treatment plants, disposal of which is being carried on pursuant to and in compliance with a valid permit issued pursuant to the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law."

"Industrial establishment." Any establishment engaged in manufacturing or processing, including, but not limited to factories, foundries, mills, processing plants, refineries, mines and slaughterhouses.

"Institutional establishment." Any establishment engaged in service, including, but not limited to, hospitals, nursing homes, orphanages, schools and universities.

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

"Manifest system." A written record identifying the quantity, composition, origin, routing, and destination of hazardous waste from the point of generation to the point of disposal, treatment or storage.

"Mine." Any deep or surface mine, whether active, inactive or abandoned.

"Mining." The process of the extraction of minerals from the earth or from waste or stockpiles or from pits or banks.

"Municipality." A city, borough, incorporated town, township or county or any authority created by any of the foregoing.

"Municipal waste." Any garbage, refuse, industrial lunchroom or office waste and other material including solid, liquid, semisolid or contained gaseous material resulting from operation of residential, municipal, commercial or institutional establishments and from community activities and any sludge not meeting the definition of residual or hazardous waste hereunder from a municipal, commercial or institutional water supply treatment plant, waste water treatment plant, or air pollution control facility.

“Normal farming operations.” The customary and generally accepted activities, practices and procedures that farms adopt, use, or engage in year after year in the production and preparation for market of poultry, livestock, and their products; and in the production, harvesting and preparation for market of agricultural, agronomic, horticultural, silvicultural and aquicultural crops and commodities; provided that such operations are conducted in compliance with applicable laws, and provided that the use or disposal of these materials will not pollute the air, water, or other natural resources of the Commonwealth. It includes the storage and utilization of agricultural and food process wastes for animal feed, and includes the agricultural utilization of septic tank cleanings and sewage sludges which are generated off-site. It includes the management, collection, storage, transportation, use or disposal of manure, other agricultural waste and food processing waste on land where such materials will improve the condition of the soil, the growth of crops, or in the restoration of the land for the same purposes.

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

“Point sources subject to permits under § 402 of the Federal Water Pollution Control Act.” Point source discharges for which valid and current permits have been issued under § 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880) to the extent that such discharges are authorized by said permits.

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

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

“Residual waste.” Any garbage, refuse, other discarded material or other waste including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, mining and agricultural operations

and any sludge from an industrial, mining or agricultural water supply treatment facility, waste water treatment facility or air pollution control facility, provided that it is not hazardous. The term "residual waste" shall not include coal refuse as defined in the "Coal Refuse Disposal Control Act." "Residual waste" shall not include treatment sludges from coal mine drainage treatment plants, disposal of which is being carried on pursuant to and in compliance with a valid permit issued pursuant to "The Clean Streams Law."

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

"Solid waste." Any waste, including but not limited to, municipal, residual or hazardous wastes, including solid, liquid, semisolid or contained gaseous materials.

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

"Transportation." The off-site removal of any solid waste at any time after generation.

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

Section 104. Powers and duties of the department.

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

- (1) administer the solid waste management program pursuant to the provisions of this act;
- (2) cooperate with appropriate Federal, State, interstate and local units of government and with appropriate private organizations in carrying out its duties under this act;
- (3) develop a Statewide solid waste management plan in cooperation with local governments, the Department of Community Affairs, the Department of Commerce and the State Planning Board; emphasis shall be given to area-wide planning;
- (4) provide technical assistance to municipalities including the training of personnel;
- (5) initiate, conduct, and support research, demonstration projects, and investigations, and coordinate all State agency research programs, pertaining to solid waste management systems;

(6) regulate the storage, collection, transportation, processing, treatment and disposal of solid waste;

(7) issue permits, licenses and orders, and specify the terms and conditions thereof, and conduct inspections and abate public nuisances to implement the purposes and provisions of this act and the rules, regulations and standards adopted pursuant to this act;

(8) require the payment of a fee according to a standard uniform schedule of permit and license fees for the processing of any permit or license application. Permit and license fees shall be in an amount sufficient to cover the aggregate cost of reviewing all applications, acting on all applications, processing all renewals, and administering all the terms and conditions of all permits and all provisions of this act relating thereto;

(9) serve as the agency of the Commonwealth for the receipt of moneys from the Federal Government or other public agencies or private agencies and expend such moneys for studies and research with respect to, and for the enforcement and administration of, the purposes and provisions of this act and the rules and regulations promulgated thereunder;

(10) institute in a court of competent jurisdiction, proceedings against any person or municipality to compel compliance with the provisions of this act, any rule or regulation issued thereunder, any order of the department, or the terms and conditions of any permit;

(11) institute prosecutions against any person or municipality under this act;

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

(13) do any and all other acts and things not inconsistent with any provision of this act, which it may deem necessary or proper for the effective enforcement of this act and the rules or regulations which may be promulgated hereunder after consulting with the Department of Health regarding matters of public health significance;

(14) develop, prepare and submit to the Environmental Quality Board, within two years after the effective date of this act, its proposed Pennsylvania Hazardous Waste Facilities Plan;

(15) develop, prepare and publish in the Pennsylvania Bulletin six months after the effective date of this act its preliminary environmental, social and economic criteria and standards for siting hazardous waste treatment and disposal facilities;

(16) require the payment of such annual inspection fees and perform such inspections of hazardous waste treatment and disposal facilities as are provided for in the Environmental Quality Board guidelines adopted pursuant to section 105(e). This provision shall

not be construed to limit or restrict the department's inspection powers as elsewhere set forth in this act; and

(17) administer funds collected by the United States Government and granted to Pennsylvania for the purpose of closing, maintaining or monitoring abandoned or closed hazardous waste storage, treatment or disposal sites and for the purpose of action to abate or prevent pollution at such sites. If Congress has not authorized the collection of such funds within one year after the effective date of this act, or if the department finds that the funding program authorized is inadequate, the department shall transmit to the General Assembly within 15 months after the effective date of this act a proposal for the establishment of a fund in Pennsylvania comprised of surcharges collected from users of hazardous waste storage, treatment and disposal facilities excluding captive facilities in the Commonwealth. Such fund shall be proposed for the purpose of closing, maintaining or monitoring hazardous waste storage, treatment or disposal sites excluding captive facilities which have been abandoned or which have been closed for at least 20 years, and for the purpose of taking action to abate or prevent pollution at such closed or abandoned sites.

**Section 105. Powers and duties of the Environmental Quality Board.**

(a) The Environmental Quality Board shall have the power and its duty shall be to adopt the rules and regulations of the department to accomplish the purposes and to carry out the provisions of this act, including but not limited to the establishment of rules and regulations relating to the protection of safety, health, welfare and property of the public and the air, water and other natural resources of the Commonwealth.

(b) The Environmental Quality Board shall, by regulation, set the term of expiration of permits and licenses appropriate to the category of the permit or license.

(c) The Environmental Quality Board shall have the power and its duty shall be to adopt rules and regulations and standards to provide for the coordination of administration and enforcement of this act between the Department of Environmental Resources and county health departments where they exist.

(d) The Environmental Quality Board shall have the power and its duty shall be to adopt a Pennsylvania Hazardous Waste Facilities Plan.

(e) The Environmental Quality Board shall have the power and its duty shall be to adopt guidelines which shall:

(1) Provide for the necessary inspection of hazardous waste treatment and disposal facilities considering the degree of hazard and the quantity of wastes handled.

(2) Establish an inspection fee based on the frequency of inspection provided for in paragraph (1).

(3) Encourage cooperative agreements between local communities and the hazardous waste facility operators to minimize local concerns regarding the operation of the facility.

(f) In addition to exercising its powers and duties under section 1920-A of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," the Environmental Quality Board shall have the power and its duty shall be to assist in the implementation of the Pennsylvania Hazardous Waste Facilities Plan through the issuance of certificates of public necessity for the establishment of hazardous waste treatment or disposal facilities. Any person prior to applying for a certificate of necessity shall have obtained all permits from the department of the Federal agency authorized to issue such permits in the Commonwealth and shall have implemented all impact assessments and public participation programs. In issuing certificates of public necessity the Environmental Quality Board shall:

(1) Prescribe the form and content of applications for a certificate of public necessity to operate a hazardous waste treatment or disposal facility.

(2) Require the payment of a fee for the processing of any application for a certificate of public necessity. Fees shall be in an amount sufficient to cover the aggregate cost of reviewing the application and acting on it.

(3) Issue such certificates of public necessity for the operation of hazardous waste treatment and disposal facilities as are warranted by:

(i) the extent to which the facility is in conformance with the Pennsylvania Hazardous Waste Facilities Plan;

(ii) the impact of the proposed facility on adjacent populated areas and areas through which wastes are transported to such facility;

(iii) the impact on the borough, township, town or city in which the facility is to be located in terms of health, safety, cost and consistency with local planning; and

(iv) the extent to which the proposed facility has been the subject of a public participation program in which citizens have had a meaningful opportunity to participate in evaluation of alternate sites or technologies, development of siting criteria, socioeconomic assessment, and all other phases of the site selection process.

(4) Provide the public with opportunities to comment upon the application for certificate of public necessity and consider the comments submitted.

(5) Accept applications for certificates of public necessity only from persons or municipalities which have obtained the necessary solid waste treatment or disposal permits from the department or from the Federal agency authorized to issue such permits in the Commonwealth.

(g) In carrying out the powers and duties set forth in this subsection, the board may consult with any person and hold any hearings which it deems necessary and proper to enable it to render a decision to issue or deny the certificate of public necessity and in any such hearing the board shall be represented by a minimum of three members.

(h) Issuance of a certificate of public necessity under this section shall suspend and supersede any and all local laws which would preclude or prohibit the establishment of a hazardous waste treatment or disposal facility at said site, including zoning ordinances. The suspension and supersession is explicitly extended to any person to whom such certificates issued for the purpose of hazardous waste treatment or disposal, and to the successors and assigns of such person.

(i) During all deliberations of the board a representative of the county and township, borough or municipality affected will be invited to participate.

(j) Regulations promulgated under this section concerning the generation, transportation, storage, treatment and disposal of hazardous wastes may, to the extent consistent with Federal regulations promulgated under the Resource Conservation and Recovery Act, establish classes of hazardous wastes taking into account the relative availability to the environment of the hazardous constituents in waste materials and the degree of hazard thereby presented.

Section 106. Powers and duties of county health departments; limitation.

(a) The county health department where it exists of each of the counties of the Commonwealth may elect to administer and enforce any of the provisions of this act together with the department in accordance with the established policies, procedures, guidelines, standards and rules and regulations of the department. Where this program activity exceeds the minimum program requirements adopted by the Advisory Health Board under the provisions of the act of August 24, 1951 (P.L.1304, No.315), known as the "Local Health Administration Law," such activity may be funded through contractual agreements with the department. The department is authorized to provide funds to county health departments from funds appropriated for this purpose by the General Assembly.

(b) Notwithstanding the grant of powers in subsection (a), in any case where administration and enforcement of this act by a county health department shall conflict with administration and enforcement by the Department of Environmental Resources, administration and enforcement by the Department of Environmental Resources shall take precedence over administration and enforcement by a county health department.

**Section 107. Legislative oversight.**

At least 30 days prior to consideration by the Environmental Quality Board of draft regulations for proposed rule making, the department shall submit such draft regulations to the Senate Environmental Resources and House Conservation Committees of the General Assembly for their review and comment.

**Section 108. Powers and duties of the Environmental Hearing Board.**

In addition to exercising its powers and duties to hold hearings and issue adjudications or any order, permit, license or decision of the department according to the provisions of "The Administrative Code of 1929" and the Administrative Agency Law, the Environmental Hearing Board shall have the power and its duty shall be to hold, if requested to do so by any party to a duly perfected appeal of an oral order under section 602(d), to hold a hearing on any duly filed petition for supersedeas of such order within six business days of the receipt of such request by the board.

## ARTICLE II MUNICIPAL WASTE

**Section 201. Submission of plans; permits.**

(a) No person or municipality shall store, collect, transport, process, or dispose of municipal waste within this Commonwealth unless such storage, collection, transportation, processing or disposal is authorized by the rules and regulations of the department and no person or municipality shall own or operate a municipal waste processing or disposal facility unless such person or municipality has first obtained a permit for such facility from the department.

(b) Each municipality with a population density of 300 or more inhabitants per square mile and each municipality with a population density of less than 300 wherein the department has identified a waste problem or a potential waste problem shall submit to the department an officially adopted plan for a municipal waste management system or systems serving the areas within its jurisdiction within two years of the effective date of this section, and shall, from time to time, submit such revisions of said plan as it deems necessary or as the department may require. Nothing in this subsection shall prohibit such a municipality from requesting the county in which it is located, and the county or an agency it designates from agreeing, to perform this function in its behalf. Whenever a county prepares and adopts such a solid waste management plan and revisions thereto, it shall provide for the participation and review of all affected municipalities. Whenever a city, borough, incorporated town or township prepares its own solid waste management plan or revisions thereto, it shall provide for review by the county prior to adoption. All solid waste management plans and subsequent revisions shall become official upon formal adoption by the governing body of the municipality and approval and certification by the department.

(c) When more than one municipality has authority over an existing or proposed municipal waste management system or systems or any part thereof, the required plan or any revisions thereof shall be submitted jointly by the municipalities concerned or by an authority or county or by one or more of the municipalities with the concurrence of the affected municipalities.

(d) Every plan, and any revision thereof, shall delineate areas where municipal waste management systems are in existence and areas where the municipal waste management systems are planned to be available within a ten-year period.

(e) Every plan shall:

(1) Provide for the orderly extension of municipal waste management systems in a manner consistent with the needs and plans of the whole area, and in a manner which will not create a risk of pollution of the water, air, land or other natural resources of the Commonwealth, nor constitute a public nuisance, and shall otherwise provide for the safe and sanitary disposal of municipal waste.

(2) Take into consideration all aspects of planning, zoning, population estimates, engineering and economics so as to delineate with precision those portions of the area which may reasonably be expected to be served by a municipal waste management system within ten years of the submission of the plan, as well as those areas where it is not reasonably foreseeable that a municipal waste management system will be needed within ten years of the submission of the plan.

(3) Take into consideration any existing State plan affecting the development, use and protection of air, water, land or other natural resources.

(4) Set forth a time schedule and proposed methods for financing the development, construction and operation of the planned municipal waste management systems, together with the estimated cost thereof.

(5) Include a provision for periodic revision of the plan.

(6) Include such other information as the department shall require.

(f) The plan shall be reviewed by appropriate official planning agencies within a municipality, including a planning agency with area-wide jurisdiction, if one exists, the county, county planning commission, and county health department for consistency with programs of planning if one exists, of planning for the area, and all such reviews shall be transmitted to the department with the proper plan. In the event a review of any plan has not been transmitted by such planning agency or commission within 90 days of its submission to such agency or commission, then such agency or commission shall be deemed to have waived its right to review the plan, and the department shall then review the plan for approval in the absence of the reviews of such planning agency or commission.

(g) The department is hereby authorized to approve or disapprove plans for municipal waste management systems submitted in accordance with this act. Any plan which has not been disapproved within 120 days of the date of its submission shall be deemed an approved plan, unless notice of pending investigation is given to the applicant by the department before expiration of the 120-day period.

(h) The department is hereby authorized to approve or disapprove revisions of plans for municipal waste management systems submitted in accordance with this act.

(i) The department is authorized to provide technical assistance to counties, municipalities and authorities in coordinating plans for municipal waste management systems required by this act, including revisions of such plans.

(j) The department may establish priorities for the time within which plans shall be submitted and may, in appropriate cases, require the submission of joint plans.

(k) The department may issue any order or may institute any appropriate legal or equitable action to compel municipalities to submit plans in accordance with this act and the rules, regulations and procedures of the department.

(l) The department may order, or obtain an injunction requiring municipalities to implement the plans which they have submitted, in accordance with this act and the rules, regulations and procedures of the department.

#### Section 202. Powers and duties of municipalities.

(a) Each municipality shall be responsible for the collection, transportation, processing, and disposal of municipal waste which is generated or present within its boundaries and shall be responsible for implementing its approved plan as it relates to the storage, collection, transportation, processing, and disposal of its municipal wastes.

(b) In carrying out its responsibilities, any such municipality may adopt ordinances, regulations and standards for the storage and collection of municipal wastes which shall be not less stringent than, and not in violation of, the rules, regulations, standards, and procedures of the department for the storage, collection, transportation, processing and disposal of municipal waste. Any ordinances, regulations and standards so adopted shall be made a part of the plan required in section 201.

(c) Municipalities may contract with any person or other municipality to carry out their responsibilities for the collection, transportation, processing and disposal of municipal wastes, provided that the ultimate disposal is known to be at a site permitted to accept such waste, and provided, further, that no municipality may delegate the duties imposed by this section. In cases where the planning agency determines and the governing body approves that it is in the public interest for municipal wastes management and disposal to be a public function, the plan shall provide for the mechanisms. Municipalities are

authorized to require by ordinance that all municipal wastes generated within their jurisdiction shall be disposed at a designated facility.

Section 203. Grants authorized.

(a) The department is authorized to assist municipalities by administering grants to pay 50% of the costs of preparing official plans for municipal waste management systems in accordance with the requirements of this act and the rules, regulations, and standards adopted pursuant to this act, and for carrying out related studies, surveys, investigations, inquiries, research and analyses.

(b) All grants shall be made from funds appropriated for this purpose by the General Assembly.

### ARTICLE III RESIDUAL WASTE

Section 301. Management of residual waste.

No person or municipality shall store, transport, process, or dispose of residual waste within this Commonwealth unless such storage, or transportation, is consistent with or such processing or disposal is authorized by the rules and regulations of the department and no person or municipality shall own or operate a residual waste processing or disposal facility unless such person or municipality has first obtained a permit for such facility from the department.

Section 302. Disposal, processing and storage of residual waste.

(a) It shall be unlawful for any person or municipality to dispose, process, store, or permit the disposal, processing or storage of any residual waste in a manner which is contrary to the rules and regulations of the department or to any permit or to the terms or conditions of any permit or any order issued by the department.

(b) It shall be unlawful for any person or municipality who stores, processes, or disposes of residual waste to fail to:

(1) Use such methods and facilities as are necessary to control leachate, runoff, discharges and emissions from residual waste in accordance with department regulations.

(2) Use such methods and facilities as are necessary to prevent the harmful or hazardous mixing of wastes.

(3) Design, construct, operate and maintain facilities and areas in a manner which shall not adversely effect or endanger public health, safety and welfare or the environment or cause a public nuisance.

Section 303. Transportation of residual waste.

(a) It shall be unlawful for any person or municipality to transport or permit the transportation of residual waste:

(1) to any processing or disposal facility within the Commonwealth unless such facility holds a permit issued by the department to accept such waste; or

(2) in a manner which is contrary to the rules and regulations of the department or any permit or the conditions of any permit or any order issued by the department.

(b) It shall be unlawful for any person or municipality who transports residual waste to fail to:

(1) use such methods, equipment and facilities as are necessary to transport residual waste in a manner which shall not adversely affect or endanger the environment or the public health, welfare and safety; and

(2) take immediate steps to contain and clean up spills or accidental discharges of such waste, and notify the department, pursuant to department regulations, of all spills or accidental discharges which occur on public highways or public areas or which may enter the waters of the Commonwealth as defined by the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," or any other spill which is governed by any notification requirements of the department.

#### ARTICLE IV HAZARDOUS WASTE

##### Section 401. Management of hazardous waste.

(a) No person or municipality shall store, transport, treat, or dispose of hazardous waste within this Commonwealth unless such storage, transportation, treatment, or disposal is authorized by the rules and regulations of the department; no person or municipality shall own or operate a hazardous waste storage, treatment or disposal facility unless such person or municipality has first obtained a permit for the storage, treatment and disposal of hazardous waste from the department; and, no person or municipality shall transport hazardous waste within the Commonwealth unless such person or municipality has first obtained a license for the transportation of hazardous waste from the department.

(b) The storage, transportation, treatment, and disposal of hazardous waste are hereby declared to be activities, which subject the person carrying on those activities to liability for harm although he has exercised utmost care to prevent harm, regardless whether such activities were conducted prior to the enactment hereof.

##### Section 402. Listing of hazardous waste.

The Environmental Quality Board shall establish rules and regulations identifying the characteristics of hazardous wastes and listing particular hazardous wastes which shall be subject to the provisions of this act. The list promulgated shall in no event prevent the department from regulating other wastes, which, although not listed, the department has determined to be hazardous; the Department of Environmental Resources may regulate such hazardous wastes when the department has determined such waste poses a substantial present or potential hazard to the human health or the environment by any means including, but not limited to, issuance of orders and the imposition of terms and conditions of permits. The board shall identify the characteristics of hazardous wastes and list particular hazardous

wastes within 30 days after the effective date of this section, which initial list shall not be subject to section 107 of this act but shall be promulgated in accordance with section 204(3) (relating to omission of notice of proposed rule making) of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

**Section 403. Generation, transportation, storage, treatment and disposal of hazardous waste.**

(a) It shall be unlawful for any person or municipality who generates, transports or stores hazardous waste to transfer such waste unless such person or municipality complies with the rules and regulations of the department and the terms or conditions of any applicable permit or license and any applicable order issued by the department.

(b) It shall be unlawful for any person or municipality who generates, transports, stores, treats or disposes of hazardous waste to fail to:

(1) Maintain such records as are necessary to accurately identify the quantities of hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, the method of transportation and the disposition of such wastes; and where applicable, the source and delivery points of such hazardous waste.

(2) Label any containers used for the storage, transportation or disposal of such hazardous waste so as to identify accurately such waste.

(3) Use containers appropriate for such hazardous waste and for the activity undertaken.

(4) Furnish information on the general chemical composition of such hazardous waste to persons transporting, treating, storing or disposing of such wastes.

(5) Use a manifest system as required by the department to assure that all such hazardous waste generated is designated for treatment, storage or disposal in such treatment, storage or disposal facilities (other than facilities on the premises where the waste is generated, where the use of a manifest system is not necessary) approved by the department, as provided in this article.

(6) Transport hazardous waste for treatment, storage or disposal to such treatment, storage or disposal facilities which the shipper has designated on the manifest form as a facility permitted to receive such waste or as a facility not within the Commonwealth.

(7) Submit reports to the department at such times as the department deems necessary, listing out:

(i) the quantities of hazardous waste generated during a particular time period; and

(ii) the method of disposal of all hazardous waste.

(8) Carry out transportation activities in compliance with the rules and regulations of the department and the Pennsylvania Department of Transportation.

(9) Treat, store and dispose of all such waste in accordance with the rules and regulations of the department and permits, permit conditions and orders of the department.

(10) Develop and implement contingency plans for effective action to minimize and abate hazards from any treatment, storage, transportation or disposal of any hazardous waste.

(11) Maintain such operation, train personnel, and assure financial responsibility for such storage, treatment or disposal operations to prevent adverse effects to the public health, safety and welfare and to the environment and to prevent public nuisances.

(12) Immediately notify the department and the affected municipality or municipalities of any spill or accidental discharge of such waste in accordance with a contingency plan approved by the department and take immediate steps to contain and clean up the spill or discharge.

(c) After January 1, 1981 any producer of any hazardous waste or any producer having a by-product of production which is a hazardous waste may be required by the department to submit to the department for its approval a plan relating to the disposal of such hazardous waste at either an on-site disposal area or an off-site disposal area before transferring, treating or disposing of this waste.

Section 404. Transition scheme.

(a) Any person or municipality who:

(1) owns or operates a hazardous waste storage or treatment facility required to have a permit under this act, which facility is in existence on the effective date of this act;

(2) has complied with the requirements of section 501(c);

(3) has made an application for a permit under this act; and

(4) operates and continues to operate in such a manner as will not cause, or create a risk of, a health hazard, a public nuisance, or an adverse effect upon the environment;

shall be treated as having been issued such permit until such time as a final departmental action on such application is made. In no instance shall such person or municipality continue to store or treat hazardous wastes without obtaining a permit from the department within two years after the date of enactment hereof.

(b) Any person or municipality who:

(1) as of the effective date of this act transports hazardous waste within the Commonwealth and is required to have a license under this act;

(2) has complied with the requirements of section 501(c);

(3) has made an application for a license under this act; and

(4) transports and continues to transport in such a manner as will not cause, or create a risk of, a health hazard, a public nuisance, or an adverse effect upon the environment;

shall be treated as having been issued such license until such time as a final departmental action on such application is made. In no instance

shall such person or municipality continue to transport hazardous waste without obtaining a license from the department within two years after the date of enactment.

**Section 405. Conveyance of disposal site property.**

After the effective date of this act, the grantor in every deed for the conveyance of property on which hazardous waste is presently being disposed, or has ever been disposed by the grantor or to the grantor's actual knowledge shall include in the property description section of such deed an acknowledgement of such hazardous waste disposal; such acknowledgement to include to the extent such information is available, but not be limited to, the surface area size and exact location of the disposed waste and a description of the types of hazardous wastes contained therein. Such amended property description shall be made a part of the deed for all future conveyances or transfers of the subject property: Provided, however, That the warranty in such deed shall not be applicable to the surface area size and exact location of the disposed waste and a description of the types of hazardous wastes contained therein.

**ARTICLE V  
APPLICATIONS AND PERMITS**

**Section 501. Permits and licenses required; transition scheme; reporting requirements.**

(a) It shall be unlawful for any person or municipality to use, or continue to use, their land or the land of any other person or municipality as a solid waste processing, storage, treatment or disposal area without first obtaining a permit from the department as required by this act: Provided, however, That this section shall not apply to the short-term storage of by-products which are utilized in the processing or manufacturing of other products, to the extent that such by-products are not hazardous, and do not create a public nuisance or adversely affect the air, water and other natural resources of the Commonwealth: And provided further, however, That the provisions of this section shall not apply to agricultural waste produced in the course of normal farming operations nor the use of food processing wastes in the course of normal farming operations provided that such wastes are not classified by the board as hazardous.

(b) It shall be unlawful for any person or municipality to transport hazardous waste within the Commonwealth unless such person or municipality has first obtained a license from the department to conduct such transportation activities.

(c) Not later than 90 days after promulgation or revision of regulations under section 402 identifying by its characteristics or listing any substance as hazardous waste, any person or municipality generating or transporting such substance or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the department a notification stating the location and general description

of such activity and the identified or listed hazardous wastes handled by such person or municipality. Not more than one such notification shall be required to be filed with respect to the same substance. No identified or listed hazardous waste may be transported, treated, processed, stored or disposed of unless notification has been given as required under this subsection.

**Section 502. Permit and license application requirements.**

(a) Application for any permit or license shall be in writing, shall be made on forms provided by the department and shall be accompanied by such plans, designs and relevant data as the department may require. Such plans, designs and data shall be prepared by a registered professional engineer.

(b) The application for a permit to operate a hazardous waste storage, treatment or disposal facility shall also be accompanied by a form, prepared and furnished by the department, containing the written consent of the landowner to entry upon any land to be affected by the proposed facility by the Commonwealth and by any of its authorized agents prior to and during operation of the facility and for 20 years after closure of the facility, for the purpose of inspection and for the purpose of any such pollution abatement or pollution prevention activities as the department deems necessary. Such forms shall be deemed to be recordable documents and prior to the initiation of operations under the permit, such forms shall be recorded and entered into the deed book (d.b.v.) indexing system at the office of the recorder of deeds in the counties in which the area to be affected under the permit is situated.

(c) All records, reports, or information contained in the hazardous waste storage, treatment or disposal facility permit application submitted to the department under this section shall be available to the public; except that the department shall consider a record, report or information or particular portion thereof, confidential in the administration of this act if the applicant can show cause that the records, reports or information, or a particular portion thereof (but not emission or discharge data or information concerning solid waste which is potentially toxic in the environment), if made public, would divulge production or sales figures or methods, processes or production unique to such applicant or would otherwise tend to affect adversely the competitive position of such applicant by revealing trade secrets. Nothing herein shall be construed to prevent disclosure of such report, record or information to the Federal Government or other State agencies as may be necessary for purposes of administration of any Federal or State law.

(d) The application for a permit shall set forth the manner in which the operator plans to comply with the requirements of the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," the act of

January 8, 1960 (1959 P.L.2119, No.787), known as the "Air Pollution Control Act," and the act of November 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and Encroachments Act," as applicable. No approval shall be granted unless the plan provides for compliance with the statutes hereinabove enumerated, and failure to comply with the statutes hereinabove enumerated during construction and operation or thereafter shall render the operator liable to the sanctions and penalties provided in this act for violations of this act and to the sanctions and penalties provided in the statutes hereinabove enumerated for violations of such statutes. Such failure to comply shall be cause for revocation of any approval or permit issued by the department to the operator. Compliance with the provisions of this subsection and with the provisions of this act and the provisions of the statutes hereinabove enumerated shall not relieve the operator of the responsibility for complying with the provisions of all other applicable statutes, including, but not limited to the act of July 17, 1961 (P.L.659, No.339), known as the "Pennsylvania Bituminous Coal Mine Act," the act of November 10, 1965 (P.L.721, No.346), known as the "Pennsylvania Anthracite Coal Mine Act," and the act of July 9, 1976 (P.L.931, No.178), entitled "An act providing emergency medical personnel; employment of emergency medical personnel and emergency communications in coal mines."

(e) The application for a permit shall certify that the operator has in force, or will, prior to the initiation of operations under the permit have in force, an ordinary public liability insurance policy in an amount to be prescribed by rules and regulations promulgated hereunder.

(f) The department may require such other information, and impose such other terms and conditions, as it deems necessary or proper to achieve the goals and purposes of this act.

(g) The department, upon receipt of an application for a permit, shall give written notice to each and every municipality in which the proposed hazardous waste facility will be located.

Section 503. Granting, denying, renewing, modifying, revoking and suspending permits and licenses.

(a) Upon approval of the application, the department shall issue a permit for the operation of a solid waste storage, treatment, processing or disposal facility or area or a license for the transportation of hazardous wastes, as set forth in the application and further conditioned by the department.

(b) No permit shall be issued unless and until all applicable bonds have been posted with the department.

(c) In carrying out the provisions of this act, the department may deny, suspend, modify, or revoke any permit or license if it finds that the applicant, permittee or licensee has failed or continues to fail to comply with any provision of this act, the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," the act of

January 8, 1960 (1959 P.L.2119, No.787), known as the "Air Pollution Control Act," and the act of November 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and Encroachments Act," or any other state or Federal statute relating to environmental protection or to the protection of the public health, safety and welfare; or any rule or regulation of the department; or any order of the department; or any condition of any permit or license issued by the department; or if the department finds that the applicant, permittee or licensee has shown a lack of ability or intention to comply with any provision of this act or any of the acts referred to in this subsection or any rule or regulation of the department or order of the department, or any condition of any permit or license issued by the department as indicated by past or continuing violations. In the case of a corporate applicant, permittee or licensee, the department may deny the issuance of a license or permit if it finds that a principal of the corporation was a principal of another corporation which committed past violations of this act.

(d) Any person or municipality which has engaged in unlawful conduct as defined in this act, or whose partner, associate, officer, parent corporation, subsidiary corporation, contractor, subcontractor or agent has engaged in such unlawful conduct, shall be denied any permit or license required by this act unless the permit or license application demonstrates to the satisfaction of the department that the unlawful conduct has been corrected. Independent contractors and agents who are to operate under any permit shall be subject to the provisions of this act. Such independent contractors, agents and the permittee shall be jointly and severally liable, without regard to fault, for violations of this act which occur during the contractor's or agent's involvement in the course of operations.

(e) Any permit or license granted by the department, as provided in this act, shall be revocable or subject to modification or suspension at any time the department determines that the solid waste storage, treatment, processing or disposal facility or area or transportation of solid waste:

(1) is, or has been, conducted in violation of this act or the rules, regulations, adopted pursuant to the act;

(2) is creating a public nuisance;

(3) is creating a potential hazard to the public health, safety and welfare;

(4) adversely affects the environment;

(5) is being operated in violation of any terms or conditions of the permit; or

(6) was operated pursuant to a permit or license that was not granted in accordance with law.

Section 504. Approval by governing body.

Applications for a permit shall be reviewed by the appropriate county, county planning agency or county health department where

they exist and the host municipality, and they may recommend to the department conditions upon, revisions to, or disapproval of the permit only if specific cause is identified. In such case the department shall be required to publish in the Pennsylvania Bulletin its justification for overriding the county's recommendations. If the department does not receive comments within 60 days, the county shall be deemed to have waived its right to review.

**Section 505. Bonds.**

(a) With the exception of municipalities operating landfills solely for municipal waste not classified hazardous, prior to the commencement of operations, the operator of a municipal or residual waste processing or disposal facility or of a hazardous waste storage, treatment or disposal facility for which a permit is required by this section shall file with the department a bond for the land affected by such facility on a form prescribed and furnished by the department. Such bond shall be payable to the Commonwealth and conditioned so that the operator shall comply with the requirements of this act, the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," the act of January 8, 1960 (1959 P.L.2119, No.787), known as the "Air Pollution Control Act," and the act of November 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and Encroachments Act." The department may require additional bond amounts for the permitted areas should such an increase be determined by the department to be necessary to meet the requirements of this act. The amount of the bond required shall be in an amount determined by the secretary based upon the total estimated cost to the Commonwealth of completing final closure according to the permit granted to such facility and such measures as are necessary to prevent adverse effects upon the environment; such measures include but are not limited to satisfactory monitoring, post-closure care, and remedial measures. The bond amount shall reflect the additional cost to the Commonwealth which may be entailed by being required to bring personnel and equipment to the site. All permits shall be bonded for at least \$10,000. Liability under such bond shall be for the duration of the operation, and for a period of up to ten full years after final closure of the permit site. Such bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth and approved by the secretary: Provided, however, That the operator may elect to deposit cash, certificates of deposit, automatically renewable irrevocable letters of credit which are terminable only upon 90 days written notice to the operator and the department, or negotiable bonds of the United States Government or the Commonwealth of Pennsylvania, the Pennsylvania Turnpike Commission, the General State Authority, the State Public School Building Authority, or any municipality within the Commonwealth, with the department in lieu of a

corporate surety. The cash amount of such deposit, irrevocable letters of credit or market value of such securities shall be equal at least to the sum of the bond. The secretary shall, upon receipt of any such deposit of cash or negotiable bonds, immediately place the same with the State Treasurer, whose duty it shall be to receive and hold the same in the name of the Commonwealth, in trust, for the purposes for which such deposit is made. The State Treasurer shall at all times be responsible for the custody and safekeeping of such deposits. The operator making the deposit shall be entitled from time to time to demand and receive from the State Treasurer, on the written order of the secretary, the whole or any portion of any collateral so deposited, upon depositing with him, in lieu thereof, other collateral of the classes herein specified having a market value at least equal to the sum of the bond, also to demand, receive and recover the interest and income from said negotiable bonds as the same becomes due and payable: Provided, however, That where negotiable bonds, deposited as aforesaid, mature or are called, the State Treasurer, at the request of the permittee, shall convert such negotiable bonds into such other negotiable bonds of the classes herein specified as may be designated by the permittee: And provided further, That where notice of intent to terminate a letter of credit is given, the department shall, after 30 days written notice to the operator and in the absence of a replacement of such letter of credit within such 30-day period by the operator with other acceptable bond guarantees provided herein, draw upon and convert such letter of credit into cash and hold it as a collateral bond guarantee.

(b) In the case of applications for permits where the department determines that the operations are reasonably anticipated to continue for a period of at least ten years from the date of application, the operator may elect to deposit collateral and file a collateral bond as provided in subsection (a) according to the following phase deposit schedule. The operator shall, prior to commencing operations, deposit \$10,000 or 25% of the amount of the bond determined under subsection (a), whichever is greater. The operator shall, thereafter, annually deposit 10% of the remaining bond amount for a period of ten years. Interest accumulated by such collateral shall become a part of the bond. The department may require additional bonding at any time to meet the intent of subsection (a). The collateral shall be deposited in trust, with the State Treasurer as provided in subsection (a) or with a bank, selected by the department, which shall act as trustee for the benefit of the Commonwealth, according to rules and regulations promulgated hereunder, to guarantee the operator's compliance with this act and the statutes enumerated in subsection (a). The operator shall be required to pay all costs of the trust. The collateral deposit, or part thereof, shall be released of liability and returned to the operator, together with a proportional share of accumulated interest, upon the conditions of and pursuant to the schedule and criteria for release provided in this act.

(c) The operator shall, prior to commencing operations on any additional land exceeding the estimate made in the application for a permit, file an additional application and bond. Upon receipt of such additional application and related documents and information as would have been required for the additional land had it been included in the original application for a permit and should all the requirements of this act be met as were necessary to secure the permit, the secretary shall promptly issue an amended permit covering the additional acreage covered by such application, and shall determine the additional bond requirement therefor.

(d) If the operator abandons the operation of a municipal or residual waste processing or disposal facility or a hazardous waste storage, treatment or disposal facility for which a permit is required by this section or if the permittee fails or refuses to comply with the requirements of this act in any respect for which liability has been charged on the bond, the secretary shall declare the bond forfeited and shall certify the same to the Department of Justice which shall proceed to enforce and collect the amount of liability forfeited thereon, and where the operation has deposited cash or securities as collateral in lieu of a corporate surety, the secretary shall declare said collateral forfeited and shall direct the State Treasurer to pay said funds into the Waste Abatement Fund. Should any corporate surety fail to promptly pay, in full, forfeited bond, it shall be disqualified from writing any further surety bonds under this act.

(e) Prior to the issuance of any license for the transportation of hazardous waste, the applicant for a license shall file with the department a collateral bond on a form prescribed and furnished by the department. Such bond shall be payable to the Commonwealth and conditioned upon compliance by the licensee with every requirement of this act, rule and regulation of the department, order of the department and term and condition of the license. The amount of the bond required shall be in an amount determined by the secretary, but in an amount no less than \$10,000. The department may require additional bond amounts if the department determines such additional amounts are necessary to guarantee compliance with this act. The licensee may elect to deposit cash or automatically renewable irrevocable letters of credit which are terminable only upon 90 days written notice to the operator and the department, or negotiable bonds of the United States Government or the Commonwealth of Pennsylvania, the Pennsylvania Turnpike Commission, the General State Authority, the State Public School Building Authority, or any municipality within the Commonwealth. No corporate surety bond is authorized by this subsection. The cash amount of such deposit, irrevocable letters of credit, or market value of such securities shall be equal at least to the sum of the bond. The secretary shall, upon receipt of any such deposit of cash or negotiable bonds, immediately place the same with the State Treasurer, whose duty it shall be to receive and hold the same in

the name of the Commonwealth, in trust, for the purposes for which such deposit is made. The State Treasurer shall at all times be responsible for the custody and safekeeping of such deposits. The licensee making the deposit shall be entitled from time to time to demand and receive from the State Treasurer, on the written order of the secretary, the whole or any portion of any collateral so deposited, upon depositing with him, in lieu thereof, other collateral of the classes herein specified having a market value at least equal to the sum of the bond, also to demand, receive and recover the interest and income from said negotiable bonds as the same becomes due and payable: Provided, however, That where negotiable bonds, deposited as aforesaid, mature or are called, the State Treasurer, at the request of the licensee, shall convert such negotiable bonds into such other negotiable bonds of the classes herein specified as may be designated by the licensee: And provided further, That where notice of intent to terminate a letter of credit is given, the department shall, after 30 days written notice to the licensee and in the absence of a replacement of such letter of credit within such 30-day period by the licensee with other acceptable bond guarantees provided herein, draw upon and convert such letter of credit into cash and hold it as a collateral bond guarantee. Liability under such bond shall be for the duration of the license and for a period of one year after the expiration of the license.

**Section 506. Financial responsibility.**

The Environmental Quality Board shall adopt such additional regulations to provide for proof of financial responsibility of owners or operators of hazardous waste storage, treatment, and disposal facilities, as necessary or desirable for closure of the facility, post-closure monitoring and maintenance, sudden and accidental occurrences, and nonsudden and accidental occurrences, and to comply with section 3004 of the Resource Conservation and Recovery Act of 1976 42 U.S.C. § 6924.

**Section 507. Siting of hazardous waste treatment and disposal facilities.**

(a) The Department of Environmental Resources shall have the power and authority to develop, prepare and modify the Pennsylvania Hazardous Waste Facilities Plan. The plan shall include:

(1) Criteria and standards for siting hazardous waste treatment and disposal facilities.

(2) An inventory and evaluation of the sources of hazardous waste concentration within the Commonwealth including types and quantities of hazardous waste.

(3) An inventory and evaluation of current hazardous waste practices within the Commonwealth including existing hazardous waste treatment and disposal facilities.

(4) A determination of future hazardous waste facility needs based on an evaluation of existing treatment and disposal facilities including their location, capacities and capabilities, and the existing

and projected generation of hazardous waste within the Commonwealth and including where the department within its discretion finds such information to be available, the projected generation outside the Commonwealth of hazardous wastes expected to be transported into the Commonwealth for storage, treatment or disposal.

(5) An analysis of methods, incentives or technologies for source reduction, detoxification, reuse and recovery of hazardous waste and a strategy for implementing such methods, incentives and technologies.

(6) Identification of such hazardous waste treatment and disposal facilities and their locations (in addition to existing facilities) as are necessary to provide for the proper management of hazardous waste generated within this Commonwealth.

(b) In preparation of the plan the department shall consult with affected persons, municipalities and State agencies. Within 60 days after the effective date of this act the secretary shall appoint the Pennsylvania Hazardous Waste Facilities Planning Advisory Committee. The department shall insure that the advisory body consist of substantially equivalent proportions of the following four groups: private citizens, representatives of public interest groups, public officials and citizens or representatives of organizations with substantial economic interest in the plan. It shall specifically include but not be limited to a representative of a waste treatment operator, a waste generator, local governments, environmentalists, and academic scientist.

(c) The committee may recommend to the department the adoption of such rules and regulations, standards, criteria and procedures as it deems necessary and advisable for the preparation, development, adoption and implementation of the Pennsylvania Hazardous Waste Facilities Plan.

(d) A vacancy occurring on the committee shall be filled in the same manner as the original appointment and the secretary or his representative shall serve as chairperson of the committee.

(e) The committee shall establish operating procedures and may solicit the advice of municipalities or other persons.

(f) The committee shall disband after adoption of the plan by the Environmental Quality Board unless the committee is reconstituted as a provision of the plan.

(g) Not later than two years after the date of enactment of this act, the Environmental Quality Board shall adopt the Pennsylvania Hazardous Waste Facilities Plan and the department shall review and amend said plan as necessary but in no event less than every five years following adoption.

**ARTICLE VI  
ENFORCEMENT AND REMEDIES**

**Section 601. Public nuisances.**

Any violation of any provision of this act, any rule or regulation of the department, any order of the department, or any term or condition of any permit, shall constitute a public nuisance. Any person or municipality committing such a violation shall be liable for the costs of abatement of any pollution and any public nuisance caused by such violation. The Environmental Hearing Board and any court of competent jurisdiction is hereby given jurisdiction over actions to recover the costs of such abatement.

**Section 602. Enforcement orders.**

(a) The department may issue orders to such persons and municipalities as it deems necessary to aid in the enforcement of the provisions of this act. Such orders may include, but shall not be limited to, orders modifying, suspending or revoking permits and orders requiring persons and municipalities to cease unlawful activities or operations of a solid waste facility which in the course of its operation is in violation of any provision of this act, any rule or regulation of the department or any terms and conditions of a permit issued under this act. An order issued under this act shall take effect upon notice, unless the order specifies otherwise. An appeal to the Environmental Hearing Board shall not act as a supersedeas. The power of the department to issue an order under this act is in addition to any other remedy which may be afforded to the department pursuant to this act or any other act.

(b) If the department finds that the storage, collection, transportation, processing, treatment or disposal of solid waste is causing pollution of the air, water, land or other natural resources of the Commonwealth or is creating a public nuisance, the department may order the person or the municipality to alter its storage, collection, transportation, processing, treatment or disposal systems to provide such storage, collection, transportation, processing, treatment, or disposal systems as will prevent pollution and public nuisances. Such order shall specify the length of time after receipt of the order within which the facility or area shall be repaired, altered, constructed or reconstructed.

(c) Any person or municipality ordered by the department to repair, alter, construct, or reconstruct a solid waste facility or area shall take such steps for the repair, alteration, construction, or reconstruction of the facility or area as may be necessary for the storage, processing, treatment and disposal of its solid waste in compliance with this act and the rules and regulations of the department, and standards and orders of the department.

(d) The Department of Environmental Resources shall have the power to order, orally or in writing, any person or municipality to

immediately suspend or modify hazardous waste treatment or disposal activities when he determines that continued operation will jeopardize public health, safety or welfare. Said order shall be effective upon issuance and may only be superseded by further department action or, after an appeal has been perfected, by the Environmental Hearing Board after notice and hearing. Furthermore, said order may require remedial actions to be taken in order to prevent harm to public health, safety or welfare. Within two business days after the issuance of such oral order, the department shall issue a written order reciting and modifying, where appropriate, the terms and conditions contained in the oral order.

**Section 603. Duty to comply with orders of the department.**

It shall be the duty of any person and municipality to proceed diligently to comply with any order issued pursuant to section 602. If such person or municipality fails to proceed diligently, or fails to comply with the order within such time, if any, as may be specified, such person or municipality shall be guilty of contempt, and shall be punished by the court in an appropriate manner and for this purpose, application may be made by the department to the Commonwealth Court, which court is hereby granted jurisdiction.

**Section 604. Restraining violations.**

(a) In addition to any other remedies provided in this act, the department may institute a suit in equity in the name of the Commonwealth where a violation of law or nuisance exists for an injunction to restrain a violation of this act or the rules, regulations, standards or orders adopted or issued thereunder and to restrain the maintenance or threat of a public nuisance. In any such proceeding, the court shall, upon motion of the Commonwealth, issue a prohibitory or mandatory preliminary injunction if it finds that the defendant is engaging in unlawful conduct as defined by this act or is engaged in conduct which is causing immediate and irreparable harm to the public. The Commonwealth shall not be required to furnish bond or other security in connection with such proceedings. In addition to an injunction, the court in such equity proceedings, may levy civil penalties as specified in section 605.

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

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

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

**Section 605. Civil penalties.**

In addition to proceeding under any other remedy available at law or in equity for a violation of any provision of this act, any rule or regulation of the department or order of the department or any term or condition of any permit issued by the department, the department may assess a civil penalty upon a person for such violation. Such a penalty may be assessed whether or not the violation was willful or negligent. In determining the amount of the penalty, the department shall consider the willfulness of the violation, damage to air, water, land or other natural resources of the Commonwealth or their uses, cost of restoration and abatement, savings resulting to the person in consequence of such violation, and other relevant factors. If the violation leads to the issuance of a cessation order or occurs after the release of security for performance, a civil penalty shall be assessed. When the department proposes to assess a civil penalty, it shall inform the person or municipality of the proposed amount of said penalty. The person charged with the penalty shall then have 30 days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, the person shall within such 30 day period file an appeal of such action with the Environmental Hearing Board. Failure to appeal within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty. The maximum civil penalty which may be assessed pursuant to this section is \$25,000 per offense. Each violation for each separate day and each violation of any provision of this act, any rule or regulation under this act, any order of the department, or any term or condition of a permit shall constitute a separate and distinct offense under this section. A generator of hazardous waste who has complied with section 403 and has designated on the manifest a facility permitted to treat or dispose of his wastes shall not be held liable for civil penalties with respect to such wastes by other persons after:

(1) the wastes have been transported in compliance with all applicable provisions of this act and regulations promulgated and licenses issued thereunder; and

(2) such wastes have been accepted by a disposal or treatment facility permitted to receive such wastes and designated on the manifest.

**Section 606. Criminal penalties.**

(a) Any person, other than a municipal official exercising his official duties, or any municipality who violates any provision of this act, the rules and regulations of the department, or any order of the department, or any term or condition of any permit upon conviction thereof in a summary proceeding, shall be sentenced to pay a fine of

not less than \$100 and not more than \$1,000 and costs and, in default of the payment of such fine and costs, to undergo imprisonment for not more than 30 days.

(b) Any person other than a municipal official exercising his official duties who violates any provision of this act, any rule or regulation of the department, any order of the department, or any term or condition of any permit, shall be guilty of a misdemeanor of the third degree and, upon conviction, shall be sentenced to pay a fine of not less than \$1,000 but not more than \$25,000 per day for each violation or to imprisonment for a period of not more than one year, or both.

(c) Any person other than a municipal official exercising his official duties who, within two years after a conviction of a misdemeanor for any violation of this act, violates any provision of this act, any rule or regulation of the department, any order of the department, or any term or condition of any permit shall be guilty of a misdemeanor of the second degree and, upon conviction, shall be sentenced to pay a fine of not less than \$2,500 nor more than \$50,000 for each violation or to imprisonment for a period of not more than two years, or both.

(d) Any person or municipality that knowingly:

(1) transports any hazardous waste to a facility which does not have a permit under this act to accept such waste for storage, treatment or disposal; or

(2) makes any false statement or representation in any application label, manifest, record, report, permit or other document relating to hazardous waste generation, storage, transportation, treatment or disposal, which is filed, submitted, maintained or used for purposes of compliance with this act or any municipality which knowingly stores, treats or disposes of any hazardous waste without having obtained a permit for such storage, treatment or disposal; shall be guilty of a misdemeanor of the third degree and, upon conviction, shall be sentenced to pay a fine of not less than \$1,000 but not more than \$25,000 per day for each violation.

(e) Any person or municipality that within two years after a conviction of a misdemeanor for any violation of this act, commits a violation of subsection (d), shall be guilty of a misdemeanor of the second degree and upon conviction, shall be sentenced to pay a fine of not less than \$2,500 nor more than \$50,000 for each violation or to a term of imprisonment of not less than two years, but not more than 20 years, or both.

(f) Any person who stores, transports, treats, or disposes of hazardous waste within the Commonwealth in violation of section 401, or in violation of any order of the department shall be guilty of a felony of the second degree and, upon conviction, shall be sentenced to pay a fine of not less than \$2,500 but not more than \$100,000 per day for each violation or to imprisonment for not less than two years but not more than ten years, or both.

(g) Any person who intentionally, knowingly or recklessly stores, transports, treats, or disposes of hazardous waste within the Commonwealth in violation of any provision of this act, and whose acts or omissions cause pollution, a public nuisance or bodily injury to any person, shall be guilty of a felony of the first degree, and upon conviction, shall be sentenced to pay a fine of not less than \$10,000 but not more than \$500,000 per day for each violation or to a term of imprisonment of not less than two years, but not more than 20 years, or both.

(h) Each violation for each separate day and each violation of any provision of this act, any rule or regulation of the department, any order of the department, or term and condition of a permit shall constitute a separate and distinct offense under subsections (a), (b), (c), (d) and (e).

(i) With respect to the offenses specified in subsections (a), (b), (c) and (f), it is the legislative purpose to impose absolute liability for such offenses. However, a generator who has complied with section 403 shall not be held criminally liable under this section if wastes have been transported in compliance with all applicable provisions of this act and the regulations promulgated and licenses issued thereunder, and provided that such wastes have been accepted by a facility designated in accordance with section 403(b)(6).

(j) With respect to the offenses specified in subsections (a), (b), (c), (d), (e), (f) and (g), it is the legislative purpose to impose liability on corporations.

Section 607. Existing rights and remedies preserved; cumulative remedies authorized.

Nothing in this act shall be construed as estopping the Commonwealth, or any district attorney or solicitor of a municipality, from proceeding in courts of law or equity to abate pollution forbidden under this act, or abate nuisances under existing law. It is hereby declared to be the purposes of this act to provide additional and cumulative remedies to control the collection, storage, transportation, processing, treatment, and disposal of solid waste within the Commonwealth, and nothing contained in this act shall in any way abridge or alter rights of action or remedies now or hereafter existing in equity, or under the common law or statutory law, criminal or civil, nor shall any provision in this act, or the granting of any permit under this act, or any act done by virtue of this act, be construed as estopping the Commonwealth, persons or municipalities, in the exercise of their rights under the common law or decisional law or in equity, from proceeding in courts of law or equity to suppress nuisances, or to abate any pollution now or hereafter existing, or to enforce common law or statutory rights. No courts of this Commonwealth having jurisdiction to abate public or private nuisances shall be deprived of such jurisdiction in any action to abate any private or public nuisance instituted by any person for the reasons that such nuisance constitutes air or water pollution.

**Section 608. Production of materials; recordkeeping requirements; rights of entry.**

The department and its agents and employees shall:

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

(2) Require any person or municipality engaged in the storage, transportation, processing, treatment or disposal of any solid waste to establish and maintain such records and make such reports and furnish such information as the department may prescribe.

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

**Section 609. Search warrants.**

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

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

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

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

**Section 610. Unlawful conduct.**

It shall be unlawful for any person or municipality to:

(1) Dump or deposit, or permit the dumping or depositing, of any solid waste onto the surface of the ground or underground or into the waters of the Commonwealth, by any means, unless a permit for the dumping of such solid wastes has been obtained from the department; provided, the Environmental Quality Board may by regulation exempt certain activities associated with normal farming operations as defined by this act from such permit requirements.

(2) Construct, alter, operate or utilize a solid waste storage, treatment, processing or disposal facility without a permit from the department as required by this act or in violation of the rules or regulations adopted under this act, or orders of the department, or in violation of any term or condition of any permit issued by the department.

(3) Burn solid wastes without a permit from the department.

(4) Store, collect, transport, process, treat, or dispose of, or assist in the storage, collection, transportation, processing, treatment, or disposal of, solid waste contrary to the rules or regulations adopted under this act, or orders of the department, or any term or any condition of any permit, or in any manner as to create a public nuisance or to adversely affect the public health, safety and welfare.

(5) Transport hazardous waste without first having obtained a license from the department to conduct such transport activities.

(6) Transport or permit the transportation of any solid waste to any storage, treatment, processing or disposal facility or area unless such facility or area possesses a permit issued by the department to accept such wastes, or contrary to the rules or regulations adopted under this act, or orders of the department, or in such a manner as to adversely affect or endanger the public health, safety and welfare or environment through which such transportation occurs.

(7) Refuse, hinder, obstruct, delay, or threaten any agent or employee of the department in the course of performance of any duty under this act, including, but not limited to, entry and inspection under any circumstances.

(8) Consign, assign, sell, entrust, give or in any way transfer residual or hazardous waste which is at any time subsequently, by any such person or any other person;

(i) dumped or deposited or discharged in any manner into the surface of the earth or underground or into the waters of the Commonwealth unless a permit for the dumping or depositing or discharging of such residual or hazardous waste has first been obtained from the department; or

(ii) stored, treated, processed, disposed of or discharged by a residual or hazardous waste facility unless such facility is operated under a permit first obtained from the department.

(9) Cause or assist in the violation of any provision of this act, any rule or regulation of the department, any order of the department or any term or condition of any permit.

**Section 611. Presumption of law for civil and administrative proceedings.**

It shall be presumed as a rebuttable presumption of law that a person or municipality which stores, treats, or disposes of hazardous waste shall be liable, without proof of fault, negligence, or causation, for all damages, contamination or pollution within 2,500 feet of the perimeter of the area where hazardous waste activities have been

carried out. Such presumption may be overcome by clear and convincing evidence that the person or municipality so charged did not contribute to the damage, contamination, or pollution.

**Section 612. Collection of fines and penalties.**

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

**Section 613. Recovery of costs of abatement.**

Any person or municipality who causes a public nuisance shall be liable for the costs of abatement. The department, any Commonwealth agency, or any municipality which undertakes to abate a public nuisance may recover the costs of abatement in an action in equity brought before any court of competent jurisdiction. In addition, the Environmental Hearing Board is hereby given jurisdiction over actions by the department to recover the costs of abatement.

**Section 614. Forfeiture of contraband.**

Any vehicle, equipment, or conveyance used for the transportation or disposal of hazardous waste in the commission of an offense under section 606 shall be deemed contraband and shall be seized and forfeited to the department. The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of intoxicating liquor shall apply to seizures and forfeitures under the provisions of this section.

**Section 615. Right of citizen to intervene in proceedings.**

Any citizen of this Commonwealth having an interest which is or may be adversely affected shall have the right on his own behalf, without posting bond, to intervene in any action brought pursuant to section 604 or 605.

**Section 616. Notice of proposed settlement.**

If a settlement is proposed in any action brought pursuant to section 604 or 605, the terms of such settlement shall be published in a newspaper of general circulation in the area where the violations are alleged to have occurred at least 30 days prior to the time when such settlement is to take effect. The publication shall contain a solicitation for public comments concerning such settlement which shall be directed to the government agency bringing the action.

**Section 617. Limitation on action.**

The provisions of any other statute to the contrary notwithstanding, actions for civil or criminal penalties under this act may be commenced at any time within a period of 20 years from the date the offense is discovered.

**ARTICLE VII  
SOLID WASTE ABATEMENT FUND****Section 701. Solid Waste Abatement Fund.**

(a) All fines, penalties and bond forfeitures collected under the provisions of this act shall be paid into the Treasury of the Commonwealth into a special fund to be known as the "Solid Waste Abatement Fund" hereby established. The Solid Waste Abatement Fund shall be administered by the department for abatement or elimination of present or potential hazards to human health or to the environment from the improper treatment, transportation, storage, processing, or disposal of solid wastes, and for the enforcement of this act.

(b) All such moneys placed in the Solid Waste Abatement Fund under the provisions of this section are hereby made available immediately, and are hereby specifically appropriated to the department for the purposes specified in this section.

(c) Estimates of the amounts to be expended under this act shall be submitted to the Governor for his approval or disapproval.

**ARTICLE VIII  
LEASING REAL ESTATE****Section 801. No prohibition against leasing real estate.**

Nothing in this act shall be construed to prevent the Commonwealth from leasing such real estate owned by the Commonwealth as is not being used in connection with the work of any department, board or commission thereof for a period of not more than 50 years to individuals, firms, corporations or the United States Government pursuant to section 2402(i) of "The Administrative Code of 1929," for the purpose of operating hazardous waste storage, treatment or disposal facilities.

**ARTICLE IX  
LIBERAL CONSTRUCTION****Section 901. Construction of act.**

The terms and provisions of this act are to be liberally construed, so as to best achieve and effectuate the goals and purposes hereof.

**ARTICLE X  
REPEALER; EFFECTIVE DATE****Section 1001. Repeal.**

The act of July 31, 1968 (P.L.788, No.241), known as the "Pennsylvania Solid Waste Management Act," is repealed: Provided,

however, That all permits and orders issued, municipal solid waste management plans approved, and regulations promulgated under such act shall remain in full force and effect unless and until modified, amended, suspended or revoked.

**Section 1002. Severability.**

If any provision of this act or the application thereof is held invalid, such invalidity shall not effect other provisions or applications of this act which can be given effect without the invalid provisions or application and to this end the provisions of this act are declared to be severable.

**Section 1003. Effective date.**

Section 402 of this act shall take effect immediately; the remainder of this act shall take effect in 60 days.

**APPROVED—The 7th day of July, A. D. 1980.**

**DICK THORNBURGH**