

Comm 274 3/24/04 jr

ORDINANCE No. 3 - 2004

**DAUPHIN COUNTY
MUNICIPAL WASTE MANAGEMENT ORDINANCE**

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DAUPHIN, PENNSYLVANIA, AUTHORIZING AND APPROVING THE 2004 NONSUBSTANTIAL REVISION TO THE COUNTY'S MUNICIPAL SOLID WASTE MANAGEMENT PLAN AND PROVIDING FOR THE COMPREHENSIVE MANAGEMENT, INCLUDING THE PROCESSING, DISPOSAL AND RECYCLING OF MUNICIPAL SOLID WASTE GENERATED IN THE COUNTY.

WHEREAS, The County of Dauphin, Pennsylvania (the "County"), is a county of the Commonwealth of Pennsylvania; and

WHEREAS, On December 4, 1987, the County created and incorporated the Dauphin County Intermunicipal Solid Waste Authority ("DCISWA"), pursuant to the Municipality Authorities Act of 1945, Act of May 2, 1945, P.L. 382, and the County Code, Act of August 9, 1955, P.L. 323; and

WHEREAS, The County delegated to DCISWA the responsibility to prepare the Dauphin County Municipal Waste Management Plan (the "Plan") pursuant to the provisions of the Pennsylvania Municipal Waste Planning, Recycling and Waste Reduction Act of 1988, active July 28, 1988, P.L. 556 ("Act 101"), and, upon adoption of the Plan, to implement, administer and enforce the Plan; and

WHEREAS, Soon after its creation, DCISWA determined that there was insufficient disposal capacity available in the County, so, pursuant to Resolution No. 4 – 1989, DCISWA

authorized the issuance of a Request for Proposals for the disposal of County-generated waste (the "1989 RFP"); and

WHEREAS, Based on the responses to its 1989 RFP, DCISWA selected the Dauphin Meadows Landfill in Upper Dauphin County and the Modern Landfill in York County to be the County's designated disposal sites for disposal of County-generated waste under Act 101.

DCISWA entered into ten (10) year contracts with these facilities at a fixed price per ton. The Authority incorporated the 1989 RFP and the provisions contained in these contracts into its final waste management plan which was submitted to municipalities in the County, the County and the Department for approval; and

WHEREAS, In March 1991, DCISWA's Plan was ratified by a sufficient number of municipalities of the County, and subsequently adopted by the County through enactment of Ordinance No. 3 – 1991; and

WHEREAS, the Department approved the Plan on May 6, 1991; and

WHEREAS, In 1995, DCISWA amended the Plan to provide for inclusion of the Harrisburg Materials, Energy, Recycling and Recovery Facility (the "Harrisburg Facility") in the Plan and the entry of a long-term waste disposal contract for use of the Harrisburg Facility, pursuant to the terms of a Settlement Agreement between the County and DCISWA and City of Harrisburg ("City") of several, long standing actions brought by the City in state and federal courts challenging the Harrisburg Facility's exclusion from the Plan. The 1995 Plan Revision permitted the Harrisburg Facility to participate in the County Plan through the current ten-year term (expiring in May 2001), and thereafter until February 2017, pursuant to a twenty-year Disposal Agreement dated as of February 1, 1997; and

WHEREAS, The 1995 Settlement Agreement between the County and DCISWA and City provided, *inter alia*, that, to the extent permitted by law, the County and DCISWA would assist the City through the Plan to obtain a waste stream sufficient to generate revenues to finance the retrofit of the Harrisburg Facility to comply with the federal Clean Air Act; and

WHEREAS, On or about January 12, 1999, DCISWA issued a Request for Proposals to provide for solid waste processing and disposal services to the County for the next ten (10) years (the "1999 RFP"); and

WHEREAS, Pursuant to the 1999 RFP, DCISWA selected thirteen (13) facilities to enter into disposal agreements and designate for the disposal of municipal waste generated in the County; and

WHEREAS, In January 2000, the County Commissioners initiated a review of the operation of DCISWA, created the Solid Waste Review Task Team ("Task Team") and directed the Task Team to determine whether DCISWA could be dissolved and whether it would be advantageous for the County to create an intergovernmental solid waste management office with the City to fulfill its statutory requirements for municipal waste management under the County Code and Act 101; and

WHEREAS, After a thorough review of the operating and financial documents of DCISWA, the Task Team recommended that the County Commissioners consider dissolving DCISWA. The Task Team's recommendation was based, in part, on the cost savings to the County's taxpayers which would result from the formation of an intergovernmental solid waste management office with the City for the implementation and administration of the County's Plan; and

WHEREAS, Consistent with the Authorities Act and Act 101, as a condition of dissolution of DCISWA, the County assumed all existing, binding contractual obligations of DCISWA and sole responsibility for implementation and enforcement of the Plan; and

WHEREAS, In 2002, the County initiated a revision to the Plan to (i) consolidate prior revisions to the Plan in one comprehensive planning document and (ii) identify its efforts to reach the goal of a 35% recycling rate by January 2003 using current waste generation calculations and demographic information; and

WHEREAS, The County notified the Department on January 30, 2002, that it would be preparing and filing a non-substantial plan consolidation and revision (the “2002 Plan Revision”); and

WHEREAS, The County applied for and was awarded a Planning Grant by the Department to prepare the 2002 Plan Revision; and

WHEREAS, The County prepared a draft of the 2002 Plan Revision with the assistance of the County’s Solid Waste Advisory Committee (the “SWAC”) and, on November 1, 2002, notified all the Municipalities of the County of the draft 2002 Plan Revision and that it would be considered by the County for adoption at a December 2002 public meeting; and

WHEREAS, The County received letters from several Municipalities in support of the Plan; however, the Municipalities requested that the County examine ways that Municipalities could stem rising landfill disposal costs and any other efforts the County could take to forestall re-opening and re-permitting of the Dauphin Meadows Landfill; and

WHEREAS, On December 17, 2002, by Ordinance No. 7 – 2002, the County approved the 2002 Plan Revision and through Resolution No. 27 – 2002, directed County staff to review

the manner in which the County could address the concerns of its Municipalities raised during the 2002 Plan Revision planning process; and

WHEREAS, In Spring 2003, County staff provided to the Commissioners the advantages of municipal waste combustion versus landfilling and recommended that the County could seek municipal waste combustion capacity through a County bid as a means to addressing rising landfill costs and expansions; and

WHEREAS, On May 27, 2003, the County provided notice to the Department that it would be proceeding with a future plan revision to seek municipal waste combustion capacity (the "2004 Plan Revision"); and

WHEREAS, The County applied for and expects to be awarded a Planning Grant by the Department to prepare the 2004 Plan Revision; and

WHEREAS, On June 27, 2003, the County issued a Request for Proposals (the "2003 RFP") for long-term municipal waste disposal capacity sufficient to dispose of all Regulated Waste (as defined below) in the County. The 2003 RFP requested proposers to provide municipal waste combustion capacity beginning in 2006, which represents the time when the County's current disposal contracts would expire. The 2003 RFP was direct mailed to all municipal waste combustion facilities in Pennsylvania, Ohio, New York, New Jersey, Virginia, Maryland and West Virginia and advertised nationally in *Waste News*; and

WHEREAS, On August 1, 2003, the County received a complete bid from The Harrisburg Authority, on behalf of Harrisburg Facility, and a partial, incomplete bid from a facility located in Chester, Pennsylvania. The County assigned the bid review to an independent engineer. On August 8, 2003, the County's independent engineer recommended the selection of The Harrisburg Authority's bid; and

WHEREAS, On August 13, 2003, the County advised all Municipalities in the County of the 2003 RFP process and the County's plan to enter into the Municipal Waste Combustion Processing/Disposal Agreement with The Harrisburg Authority and requested any comments regarding the proposed Agreement. The August 13th notice also advised that it would be proceeding with a plan amendment prior to implementing the contract and that the Municipalities would have the opportunity to comment on the plan revision during the plan revision process; and

WHEREAS, On September 23, 2003, after several public meetings and discussions, the County awarded the disposal contract to The Harrisburg Authority; and

WHEREAS, On October 30, 2003, the County met with the members of its SWAC to brief them on the proposed 2004 Plan Revision process. On December 24, 2003, the County provided to the SWAC members a draft of the proposed 2004 Plan Revision. On February 2, 2004, the County again met with the SWAC and incorporated comments proposed by the members of SWAC into the final draft revision; and

WHEREAS, On February 9, 2004, the County provided copies of the final draft revision to all Municipalities in the County and allowed for comments for thirty (30) days; and

WHEREAS, .1.5 Reports To County Commissioners At Public Meetings.1.5 Rep
Patriot-News.

WHEREAS, The Plan revision restates and supplants in its entirety the 2002 Plan Revision.

NOW, THEREFORE, it is hereby enacted and ordained by the County of Dauphin as follows:

Section 1. Definitions.

The following terms when capitalized shall have the meanings set forth below when used in this Ordinance:

"Act 101" The Municipal Waste Planning, Recycling and Waste Reduction Act, Act of July 28, 1988, P.L. 528, No. 101, as now or hereafter amended.

"Administrative Fee" The per-ton fee charged by the County under the Disposal Agreements with the Designated Facilities.

"Authority" The Harrisburg Authority.

"Available Tonnage Processing/Disposal Agreement" Pursuant to the 1999 RFP, the disposal contract between the County and a processing or disposal facility that enabled the Facility to become a County Designated Disposal Facility in the County Plan for processing or disposal of Regulated Waste until May 18, 2006.

"Bypass Waste" Waste that cannot be processed and disposed at the Harrisburg Incinerator.

"Bypass Waste Facility" A municipal waste disposal facility which has entered into a Bypass Waste Processing/Disposal Agreement with the County to receive Bypass Waste.

"Bypass Waste Processing/Disposal Agreement" The disposal contract between the County and a processing or disposal facility that enables the Facility to become a County Designated Disposal Facility in the County Plan for processing or disposal of Bypass Regulated Waste after May 18, 2006.

"City" The City of Harrisburg, County of Dauphin, Commonwealth of Pennsylvania.

"Commissioners" The Board of Commissioners of the County of Dauphin, Commonwealth of Pennsylvania.

"County" The County of Dauphin, Commonwealth of Pennsylvania.

"County Rules and Regulations" The rules and regulations of County as adopted and revised from time to time by the County.

"Designated Facility" Any Solid Waste storage, collection, transfer, processing or disposal facility or site which may be utilized by County residents, businesses or institutions for the disposal of Solid Waste pursuant to contracts between the facility owners and the County.

"DEP" or "Department" The Commonwealth of Pennsylvania, Department of Environmental Protection.

"Disposal Agreement" The September 23, 2003 Municipal Waste Combustion Processing/Disposal Agreement between the County and the Authority.

"Facility" Any solid waste storage, collection, transfer, processing or disposal facility site or land, structures and other appurtenances or improvements where Municipal Waste disposal, processing or beneficial use is permitted or takes place.

"Harrisburg" The City of Harrisburg, County of Dauphin, Commonwealth of Pennsylvania.

"Harrisburg Facility" The Harrisburg Materials Energy Recycling and Resource Recovery Facility, a waste-to-energy Municipal Waste processing and disposal Facility and associated landfill, transfer station and other facilities owned by Harrisburg.

"Haulers" Persons engaged in the collection, storage or transport of Municipal Waste or Source Separated Recyclable Materials or Solid Waste.

"License" A license or permit issued by County authorizing (a) a Person to collect, store or transport Municipal Waste or (b) a vehicle to be used for collection, storage or transportation of Municipal Waste.

"Municipalities" Municipalities located within the County.

"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 Waste or Hazardous Waste from a municipal, commercial or institutional water supply treatment plant, wastewater treatment plant or air pollution control facility. The term does not include Source-Separated Recyclable Materials, or Hazardous Waste or Residual Waste. The term includes materials which could be recycled at the source, but are not.

"Person" Any individual, firm, partnership, corporation, association, institution, cooperative enterprise, Municipality, municipal authority, governmental entity or agency, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties. The term "Person" shall include the officers and directors of any corporation or other legal entity having officers and directors.

"Plan" The Dauphin County Municipal Waste Management Plan, as now or hereafter amended.

"Regulated Waste" Municipal Waste generated within the County and regulated by the County pursuant to the County's Rules and Regulations, except Municipal Waste generated within Harrisburg, and Swatara Township and Highspire Borough.

"Solid Waste" Waste generated within the County, including the following Wastes if generated within the County: Municipal Waste, Residual Waste, Sewage Sludge, Infectious/Chemotherapeutic Waste, Resource Recovery Ash Residue, Source Separated Recyclable Materials, Leaf Waste as defined in Act 101, Municipal Solid Waste, Special Handling Municipal Solid Waste, Unacceptable Waste, Hazardous Waste, and all non-liquid Waste.

"Solid Waste Management System or System" The system by which the County manages for the processing and disposal of Waste generated in the County pursuant to this Plan, including without limitation, equipment, vehicles, offices, staff, transfer stations, municipal waste combustors, landfills and the like.

Section 2. Waste Processing and Disposal.

(a) Pursuant to its existing Available Tonnage Processing/Disposal Agreements, all Regulated Waste generated in the County shall be collected and delivered to the Designated Facilities for processing and disposal until May 18, 2006.

(b) Pursuant to the September 23, 2003 Disposal Agreement between the County and the Authority, all Regulated Waste generated in the County shall be collected and delivered to the Harrisburg Facility for processing and disposal after May 18, 2006. No Person shall transport or deliver, or cause to be transported or delivered, Regulated Waste to a Facility other than the Harrisburg Facility after May 18, 2006 unless such transport or delivery is expressly provided for in the Plan and the County Rules and Regulations.

(c) Any Regulated Waste which cannot be processed at the Harrisburg Facility after May 18, 2006, must be transferred from the Harrisburg Facility to a Bypass Waste Facility that has entered into a Bypass Waste Processing/Disposal Agreement with the County.

(d) Any Designated Facility that receives Regulated Waste for disposal shall pay an Administrative Fee to be established by the County from time to time. As of January 1, 2003, the County Administration Fee is \$4.90 per ton.

Section 3. Licensing.

(a) No Person shall store, collection, or transport Municipal Waste generated within the County without a License (or otherwise authorized in writing by the County) duly issued by the County.

(b) No Person who generates, owns or possess Municipal Waste generated within the County shall, by contract for collection services or otherwise, cause, permit or assist in the storage, collection, or transportation of any Municipal Waste generated within the County by any Person who does not hold a License (or is not otherwise authorized in writing by the County).

(c) No Person shall use, or cause, permit or assist in the use of, any vehicle or transportable container for storage, collection or transportation within the County of any Municipal Waste unless such vehicle or transportable container displays a License duly issued by the County (or is otherwise authorized for such use in writing by the County).

(d) Notwithstanding the provisions of Section 3(a), 3(b) and 3(c) above, a Person may, without a License, store or transport to a Designated Facility, Regulated Waste which was generated at such Person's residence.

Section 4. County Rules and Regulations.

(a) In order to carry forth the power and duty to implement the Plan and this Ordinance, the County shall adopt and the County Department of Solid Waste Management and Recycling or such other County official as may be directed by the Commissioners shall enforce Rules and Regulations.

(b) County Rules and Regulations shall, at a minimum:

(i) identify the Facility(ies) to be used for processing and disposal of Regulated Waste;

(ii) specify such requirements as are deemed necessary or convenient for the protection of public health and safety and the efficient, effective, reliable and safe operation of the System;

(iii) govern the issuance, administration and revocation of Licenses, including without limitation, application procedures, fees, standards and conditions for Licenses, record and reporting requirements, License display requirements, equipment and vehicle requirements, and any other matters deemed necessary or convenient by the County for the protection of public health and safety and the efficient, effective, reliable and safe operation of the System, including without limitation:

(A) withholding, suspending or revoking Licenses; and

(B) establishing fees for use of the System; and

(C) establishing fees and penalties for violations of the County Rules and Regulations (which fees and penalties may be established as determined by the County in an amount designed to protect the public health and safety and the System and to compensate the County for the costs, damages and lost revenues related to any such violation).

(c) County Rules and Regulations shall ensure the efficient, effective, reliable and safe operation of the System. All fees necessary for the operation and implementation of the Plan shall be reasonable and uniform, provided, however, that different fees may be charged for:

(i) different categories of Regulated Waste as established by the County;

(ii) Regulated Waste which is generated within any Municipality that fails to observe the provisions of the Plan.

(d) All Municipalities in the County shall require that Hauler(s) collecting and transporting Municipal Solid Waste to comply with the County Plan.

Section 5. Existing Contracts.

(a) Nothing in this Ordinance shall be construed to impair the obligations of any Existing Contract, nor the effectiveness of existing municipal ordinances adopted to implement such Existing Contract.

(b) No renewal or modification of any Existing Contract, and no new contract for the processing or disposal of Regulated Municipal Waste shall be entered into after the effective date of this Ordinance unless such renewal or modification or new contract shall conform to the requirements of the Plan, this Ordinance and all County Rules and Regulations.

Section 6. No Additional Facilities. No additional resource recovery or landfill Facility, other than the Harrisburg Facility shall be sited within the County unless such Facility is provided for in the Plan or otherwise complies with all of the applicable provisions of Section 507(a)(2) of Act 101, and all other applicable federal, state and local laws and regulations.

Section 7. Unlawful Activity.

It shall be unlawful for any Person to violate, or cause or permit or assist in the violation of, any provision of this Ordinance or of any provision of County Rules and Regulations. All unlawful conduct shall also constitute a public nuisance.

Section 8. Penalty.

Any Person violating any provision of this Ordinance, or any provision of the County Rules and Regulations, shall, upon conviction thereof in a summary proceeding, be sentenced for each violation to pay a fine of not more than \$1,000 and the costs of prosecution and restitution, if any, in default of the payment of such fine and costs, to undergo imprisonment for not more than ten days. Each violation of any provision of this Ordinance or of any provision of the County Rules and Regulations, and each day that such a violation shall exist, shall constitute a separate violation and offense.

Section 9. Injunctive Relief.

In addition to any other remedy provided in this Ordinance, the County may institute proceedings to restrain any violation of, or to require compliance with, this Ordinance, the Plan and/or the County Rules and Regulations.

Section 10. Concurrent Remedies.

The penalties and remedies set forth in this Ordinance are in addition to, not in lieu of, any fines, penalties or remedies provided in the County Rules and Regulations or by federal, state and local laws and regulations. The existence or exercise of any remedy shall not prevent the County from exercising any other remedy (a) provided under (i) this Ordinance or (ii) the County Rules or Regulations, or (b) available at law or equity.

Section 11. Severability.


The provisions of this Ordinance are severable. If any provisions of this Ordinance or its application to any Person or circumstance is held invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision or application of this Ordinance.

Section 12. Effective Date.

This Ordinance shall become effective immediately, unless the Plan has not been approved by the Department, in which case, it shall become effective on the earlier of the date of approval of the Plan, or the date on which the Plan is deemed to be approved, by the Department.


ENACTED AND ORDAINED, this 24th day of March 2004 by the Board of Commissioners of Dauphin County.

ATTEST:

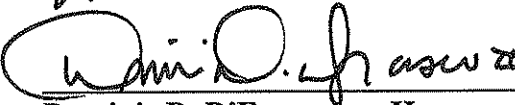


Chad Saylor
Chief Clerk/Chief of Staff


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BOARD OF COMMISSIONERS**



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