



**TESTIMONY BY
THE COUNTY COMMISSIONERS ASSOCIATION OF PENNSYLVANIA
AND
THE PENNSYLVANIA STATE ASSOCIATION
OF TOWNSHIP SUPERVISORS**

**BEFORE THE
JOINT LEGISLATIVE AIR AND WATER
POLLUTION CONTROL AND CONSERVATION COMMITTEE**

ON

**ACT 101 OF 1988
THE MUNICIPAL WASTE PLANNING, RECYCLING,
AND WASTE REDUCTION ACT**

PRESENTED BY

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Good morning. I am Douglas Hill, executive director of the County Commissioners Association of Pennsylvania. Ours is a non-profit, non-partisan association representing all of the Commonwealth's 67 counties. With me today is Elam Herr, assistant executive director for the Pennsylvania State Association of Township Supervisors, appearing today on behalf of the 1,455 townships in Pennsylvania represented by that Association.

We appreciate the opportunity to present remarks to you today on Act 101 of 1988, the Municipal Waste Planning, Recycling, and Waste Reduction Act. I will present some general comments on the Act and review some pending issues, and then turn the testimony over to Mr. Herr to further elaborate on recycling aspects of the Act.

Twenty years after its inception, our two Associations remain strong supporters of the Act and the principles it embodies. We came to the issue in 1985, at a time when the Commonwealth was acting aggressively to close substandard disposal facilities and to improve the environmental standards that would apply to facilities that were permitted to remain open. In a few short years more than a thousand landfills were closed and only a few dozen remained open, and there were projections that we would exhaust our disposal capacity within a decade.

Unfortunately at that time both our markets and our statutory structure were insufficient to deal with this impending crisis, and the then-Department of Environmental Resources began discussions with our two associations, along with other interest groups, on potential solutions. The County Commissioners Association took the counterintuitive position of asking for a state mandate: To vest counties with responsibility for developing county-wide solid waste management plans, recognizing the public health and safety, economic development, and quality of life issues at stake.

We – our Associations and Elam and I personally -- worked with the Thornburgh administration on the first proposals, directed primarily toward resource recovery solutions. When the issue transitioned to the Casey administration, the focus shifted to include emphasis on reduction of the waste stream, and particularly on recycling. The result was Act 101.

Key elements of Act 101 included county responsibility for developing plans for environmentally-sound disposal of all waste anticipated to be generated within the county over a 10-year period, mandatory curbside recycling programs for larger municipalities, and voluntary recycling programs for all others.

As a condition of taking on this mandate, we insisted on a number of components, including strong planning tools; mechanisms to build a binding consensus among all municipalities to enable implementation of the county plans; ability to control waste flow as a means to ration scarce disposal capacity, encourage development of new capacity, and limit speculative development; host municipality protections and incentives; stable and predictable funding for county and municipal responsibilities; state participation in development of recycling markets; and development of significant public education efforts.

All of these elements were included in the Act and, although we had some initial difficulties with regulatory mechanisms, grant evaluation processes, and recycling market development, we ultimately succeeded in meeting the objectives – significant reduction of the waste stream,

diversion of a sustainable percentage of waste for recycling and reuse, and assurance that waste was disposed of at environmentally-sound facilities.

Meeting here today on the 20th anniversary of the Act, we are pleased to report that the Act remains a success. We have attained higher rates of recycling than we ever envisioned in 1988, our public is conditioned to recycle as a matter of course, our waste is disposed of properly in good partnership with the private sector, and continuing innovations in waste management systems give us hope that we will continue to improve our reduction and reuse.

But there are a number of issues that we need to address.

First is reauthorization of the \$2 statewide tip fee, set to expire on January 1, 2012. The House yesterday approved HB 961, which extends the fee's sunset to December 31, 2015. We support HB 961, and would support permanent reauthorization.

The second issue for consideration is the use and adequacy of the fee. The fee is currently split among several priority areas, including county planning, municipal recycling, public education, and recycling incentives. We recognize that over time technologies, public behaviors, markets, and composition of waste streams have changed, and so it is appropriate to review the mix of funding priorities in the act. For similar reasons it is also appropriate to consider the adequacy of the fee, particularly as we face recurring short- and long-term difficulties with markets.

A related fee issue is restoration of the county tip fee. Many counties throughout the commonwealth provide supplemental recycling services to their constituents, including household hazardous waste pickup, recycling of electronics and tires, and recycling drop-off centers. In more than half the counties, these services have historically been funded by a county administrative fee levied on each ton of trash generated in the county. These services are now being reduced or eliminated as the result of a 2005 Commonwealth Court decision that declared the administrative fees illegal, leaving counties without a revenue source to fund these programs. Detrimental environmental impacts include more hazardous waste in landfills and more illegal dumping on public and private lands, and will undermine the public's other environmental investments, including the Growing Greener 2 bond initiative. House Bill 1069 would clarify county ability to levy this fee, and comparable legislation will soon be circulated for introduction in the Senate.

Let me now turn to Elam Herr for remarks on the recycling component of Act 101.

As noted, I am Elam Herr, assistant executive director of the Pennsylvania State Association of Township Supervisors, and I appreciate the opportunity to appear before you today.

Pennsylvania became a national leader in recycling with passage of Act 101, placing in statute a system that partnered DEP (then DER), counties, municipalities, and the private sector in an effort to reduce our waste stream and return what were formerly waste materials to productive reuse. Act 101 has successfully accomplished this mission by increasing the volume of recycled materials in Pennsylvania to nearly 5 million tons annually. Today, 457 mandated municipalities

with populations greater than 5,000 participate in the recycling effort and an additional 500 municipalities provide voluntary curbside recycling. Also, more than 400 municipalities provide drop-off centers for recyclables as a community service and to reduce the amount of waste sent to landfills or dumped along the roadside. The more than 10 million people recycling in these communities led to the achievement of the statewide recycling goal of 35 percent in 2002.

While we have accomplished the goal of significantly reducing the amount of recyclable materials that end up in our landfills, continuing and chronic difficulties with fickle and rapidly fluctuating markets cause us to be concerned about the sustainability of our programs. In this respect, this hearing is particularly timely. Revenues from the sale of recyclable materials have plummeted over the last year, and if our recycling programs are to continue to achieve current goals, the state must continue to provide a steady and reliable source of funding. This includes reauthorization of the existing tipping fee as mentioned earlier, and most particularly requires consideration of the adequacy of the fee.

Let me illustrate just how timely this hearing is. In 2008, many recycling programs were able to see sustainable returns for certain recyclables. But in just one year, demand has all but disappeared. For example, metal cans were selling for \$430 per ton in 2008, but are going for only \$18 per ton in today. Even aluminum cans have dropped, from 88 cents per pound in 2008 to 35 cents per pound today. Newspaper has dropped from \$155 per ton in 2008 to \$25 per ton today.

Although our income from the sale of recyclables has dropped to a trickle, the costs to run our recycling programs have not decreased. For example, Washington Township, Franklin County runs a transfer station and incurs costs regardless of whether it is producing revenues from the sale of recyclables. For the first three months of 2009, its recycling program received just \$5,962 in revenues, while spending \$38,567 in operating costs. Clearly, such a financial statement demonstrates that recycling programs are not sustainable and that increased revenues should be considered to assist with these programs, possibly through an increase in the tipping fees.

We know and concur that recycling is first and foremost sound public policy, and is not intended as a municipal revenue stream. But as market conditions worsen they could force municipalities to eliminate voluntary curbside recycling and drop-off programs, even though these municipalities see these programs as a valuable community service. If the commonwealth agrees with the public policy objective of recycling, then the commonwealth must share an equal commitment to helping us secure sufficient and predictable funding to maintain mandatory and voluntary recycling efforts. Moreover, the commonwealth must exert its broader leverage toward development and expansion of the markets for recyclable materials.

Townships support continuation and expansion of the state Recycling Fund to help townships financially meet the recycling mandate. Similarly, we support continuation of funding to targeted aspects of the recycling program. Section 902 grants help municipalities acquire needed capital equipment, which can be a substantial cost and hinder a community from beginning a recycling program or force it out of business when equipment becomes worn out. These grants are also needed to help communities that may be newly mandated to recycle after the 2010 census. In addition, Section 904 grants reward successful recycling programs. We need to continue to encourage and reward the implementation and development of successful recycling programs.

A more recent, and more perplexing, problem is the Department of Environmental Protection's plan to prohibit any landfill from accepting any of Act 101's eight listed recyclable materials (clear glass; colored glass; plastics; aluminum; steel and bimetallic cans; high grade office paper; corrugated paper; and newsprint). The issue is that counties are required to plan for, and municipalities are required to provide for collection at curbside, only three of the eight. We have met with DEP staff to determine how our three at curbside becomes eight at the landfill gate, and their only reply is that "the market will take care of it."

We and our county partners find this response to be wholly inadequate. It ignores the broad array of public and private collection mechanisms, the voluntary collection programs, the non-mandated municipalities, the mix of source-separated and single-stream collection systems, and drop-off collection systems. It ignores planning relationships between counties and municipalities and contractual relationships between collectors and municipalities and between collectors and landfills.

Act 101 was developed in response to a failed policy that relied on the market to fill the needs caused by rapid loss of disposal capacity. But that is what the Department again proposes in this instance – "hoping" the market will fill in the gulf between the municipal and landfill mandates. Prohibiting all recyclables at landfills is a public policy debate by itself. And if we ultimately agree to pursue it, it certainly should not be done in a top-down way that will throw existing collection practices and relationships into disarray.

And one final point on this matter, noting our earlier testimony about recycling market conditions, what do we do with the eight out of eight if we have no markets for our currently-mandated three? We foresee the need for some sort of vast above-ground storage capacity for all of these materials as we look for return of their markets.

Twenty years after the enactment of Act 101, those municipalities that are mandated, and those that volunteer, to recycle are doing an excellent job of keeping recyclables out of landfills. Before the Department considers mandating additional recyclables, it should instead focus on more aggressive promotion of sustainable businesses and markets for our recyclables.

The final issue we would like to close with is our interest in working with the General Assembly and the Administration as we proceed through whatever revisions are warranted in Act 101 at its 20 year mark. Our associations were active participants in its initial development, and in partnership with DER (DEP), the legislature, and the private sector we developed a statute that hit all of its short and long term objectives, and did so in a way that assigned roles properly and recognized the capacities of all concerned. Any changes to Act 101 should be approached in the same way, not by regulation or policy directive but first by active review of the statute and then in a procedurally-correct manner through the regulatory process. We are proud of what we have accomplished under Act 101, and look forward to working with you in this effort.

Thank you for the opportunity to comment on this issue today. We will be happy to answer any questions that you may have.