



TESTIMONY ON ACT 101 OF 1988

MUNICIPAL WASTE PLANNING, RECYCLING AND WASTE REDUCTION ACT

PRESENTED TO THE JOINT LEGISLATIVE AIR AND WATER POLLUTION CONTROL
AND CONSERVATION COMMITTEE

BY

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Good morning. I am Lisa Schaefer, Director of Government Relations for the County Commissioners Association of Pennsylvania. The CCAP is a non-profit, non-partisan association providing legislative, education, research, insurance, technology, and other services on behalf of all of the Commonwealth's 67 counties.

I am pleased to appear before you today to present our comments on Act 101 of 1988, the Municipal Waste Planning, Recycling and Waste Reduction Act.

As you have likely heard from other testifiers, in the 1980s, Pennsylvania faced critical environmental and economic problems with solid waste, including rapidly declining disposal capacity and a fragmented planning process. Unfortunately, at the time, both markets and the statutory structure were insufficient to deal with this impending crisis. Recognizing the public health and safety, economic development and quality of life issues at stake, counties requested responsibility for developing county-wide solid waste management plans. Throughout discussions with the state and other stakeholders, the focus shifted to include emphasis on reduction of the waste stream, and particularly on recycling. The result was Act 101 of 1988.

For counties, 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, counties insisted on strong planning tools and mechanisms to build a binding consensus among municipalities to enable implementation of the county plans. In addition, counties requested the ability to control waste flow to ration scarce disposal capacity and encourage development of new capacity, as well as stable and predictable funding, state participation in development of recycling markets and development of public education efforts.

Overall, Pennsylvania counties have succeeded in meeting the objectives of Act 101, including significant reduction of the waste stream and diversion of a sustainable percentage of waste for recycling and reuse. The commonwealth has attained higher rates of recycling than ever envisioned in 1988, citizens are accustomed to recycling as a matter of course, waste is disposed of properly in good partnership with the private sector, and continuing innovations in waste management systems offer hope that Pennsylvania will continue to improve its reduction and reuse.

However, since Pennsylvania's enactment of Act 101 some 25 years ago, technologies, public behaviors, markets, capacity and composition of waste streams have changed. The result

is a statute that no longer reflects the current state of waste management and recycling in Pennsylvania and will impede the ability of the commonwealth to continue its successes.

Pennsylvania and its counties instead need a statute that takes into account the differing needs and recycling market availability now facing urban and rural communities. While recycling commodity processing is well-established in urban areas, many rural areas continue to struggle with limited access to adequate processing facilities. Further, some programs will cost more, and others can be operated more efficiently, due to a number of factors such as population served, types of services provided and distances to markets. As in many other aspects of government, one size does not fit all, and Act 101 should provide the flexibility needed to address these different dynamics.

Given that available disposal capacity is not the issue it was in the 1980s, the General Assembly should revisit the overall planning and approval process, which in many cases has become cumbersome, time-consuming and costly for counties. While counties continue to support their leadership role in management of solid waste and recycling, they nonetheless seek to review the Act to assure plans and programs are developed and implemented as effectively and efficiently as possible, to revisit the county's mission in solid waste management as relevant to today's landscape, and to re-engage the development of markets.

Assuring appropriate funding is also critical to keeping the commonwealth on a successful waste management path. Funding for Act 101 grant programs has declined even while the costs to collect and transport recyclables has increased over time. The funds, administered by the state Department of Environmental Protection (DEP), provide grants through the state's Recycling Fund to local governments with recycling programs. Counties benefit from assistance for developing their solid waste plans every ten years, as mandated under the Act, for planning and implementation of programs and for covering the cost of the county recycling coordinator. In addition, 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; those counties are also eligible for various grants offered under Act 101.

A \$2 state tipping fee per ton of solid waste processed generates revenues for these grants. While the statewide tip fee does not officially sunset until January 1, 2020, we understand that because many of the contracts awarded for Act 101's grant programs are multi-year, DEP is not awarding new contracts until the fee is reauthorized. We ask for the General Assembly's swift consideration of Senate Bill 646 to assure the longevity of the Recycling Fund

and the important grant programs it supports, and to maintain continuity in our local recycling efforts.

While assuring there are no breaks in the funding available for this grant program is the immediate priority, we also believe that, given the changes that have occurred since 1988, it is appropriate to also consider a review the mix of funding priorities in Act 101. For similar reasons it is also appropriate to consider the adequacy of the fee, particularly as counties face recurring short- and long-term difficulties with markets.

As previously mentioned, many counties provide supplemental recycling services to their constituents, including household hazardous waste pickup, recycling of electronics and tires, and recycling drop-off centers. More than half of the counties historically funded these services by supplementing Act 101 grant monies with a county administrative fee levied on each ton of trash generated in the county and disposed of in accordance with approved county solid waste management plans. Supplemental recycling services are now being reduced or eliminated because of a 2005 Commonwealth Court decision that declared the county administrative fees lacked an adequate statutory base, leaving counties without a dedicated revenue source to fund these programs for the past decade.

Guidance since issued by DEP indicates that counties may negotiate administrative fees with local waste collectors as part of their contracts, and DEP has approved several county plans with negotiated fees, consistent with this guidance. However, DEP will not approve plans whereby the county requires a waste collector to negotiate a fee, or uses a collector's unwillingness to negotiate a fee as part of their selection criteria for services, determining that those situations violate the Commonwealth Court decision as the equivalent to requiring a fee. The situation has continued to be the ongoing subject of litigation as counties try to find innovative ways to work with private industry to fund these much-needed programs. Although some waste collectors have shown a willingness to work with counties, there is no guarantee that fees can be negotiated, and many counties will not be able to maintain programs without a dedicated funding source.

A perfect storm of increasing costs, decreasing revenues, a changing recycling market and economic difficulties in recent years has led many counties to curtail, if not outright eliminate, some of these programs for their residents. Although not the subject of this particular hearing, this situation has been compounded by the ongoing issues with electronics recycling under the Covered Device Recycling Act (CDRA). While the responsibility for electronics recycling programs under the CDRA was intended to be on manufacturers, some counties have offered electronics recycling, but not every county is equipped with either funds or infrastructure

to provide this type of service. The funding provided under the CDRA, though, is not coming close to covering costs, and many counties that had offered collection opportunities are simply no longer able to do so. Counties have also reported that they are no longer receiving bid responses from recyclers, even though they may be in several manufacturers' plans – so even if the funding were adequate, without vendors there are no options to provide to residents. The lack of availability of electronics recycling opportunities, combined with the landfill ban in the CDRA, is already leading to an increase in illegal dumping, particularly in our rural areas.

As a result of all of these factors, counties are evaluating the services they have been able to provide with the administrative fund revenues, and are considering program consolidation, integrated solid waste management facilities, single stream recycling and public-private partnerships. But without these important services, detrimental environmental impacts such as more hazardous waste in landfills and more illegal dumping on public and private lands are likely to occur, undermining the 25-year success of Act 101.

Counties seek support from the General Assembly to reverse the Court's ruling by amending Act 101 to empower counties or their delegates to assess fees to fund county solid waste and recycling programs within the county. Further, with the statewide fee set to sunset Jan. 1, 2020, the commonwealth must begin now to proactively examine how Act 101 can better serve the needs of its residents and evaluate the funding support needed to promote the viability of the state's Act 101 grant programs. We will also continue to work with the General Assembly and other stakeholders on amendments that will address the issues with the CDRA.

Thank you for your attention to these comments, and I will be pleased to answer your questions.