

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA  
CIVIL DIVISION

PENNSYLVANIA WASTE INDUSTRIES :  
ASSOCIATION, PENNSYLVANIA :  
INDEPENDENT WASTE HAULERS :  
ASSOCIATION, IESI PA BETHLEHEM :  
LANDFILL CORPORATION, :  
CHRIN BROTHERS, INC., :  
CHRIN HAULING, INC., GRAND CENTRAL :  
SANITARY LANDFILL, INC., PINE GROVE :  
LANDFILL, INC., :  
WASTE MANAGEMENT DISPOSAL :  
SERVICES OF PENNSYLVANIA, INC., :  
WASTE MANAGEMENT OF :  
PENNSYLVANIA, INC., :  
BERGER SANITATION, INC. :  
ROYER SANITATION, :  
LEN SYMONS & SONS SANITATION :

Plaintiffs

v.

No.2003-C-2523

COUNTY OF LEHIGH, :  
Defendant :

\* \* \* \* \*

APPEARANCES:

DAVID J. BROOMAN, ESQUIRE AND MARYANNE  
STARR GARBER, ESQUIRE, AND WITH THEM  
DRINKER, BIDDLE & REATH, LLP,  
For Plaintiffs Pennsylvania Waste Industries  
Association, IESI PA Bethlehem Landfill  
Corporation, Chrin Brothers, Inc., Grand Central  
Sanitary Landfill, Inc., Pine Grove Landfill, Inc.,  
Waste Management Disposal Services of  
Pennsylvania, Inc. and Waste Management of  
Pennsylvania, Inc.

CHRISTOPHER MAZULLO, ESQUIRE, AND WITH  
HIM MAZULLO & MURPHY, P.C.,  
For Plaintiffs Pennsylvania Independent Waste  
Haulers Association, Chrin Hauling, Inc., Berger  
Sanitation, Inc., Royer Sanitation, Len Symons &  
Sons Sanitation

DONALD LIPSON, ESQUIRE AND LEE D.  
MESCOLOTTO, ESQUIRE  
For Defendants

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**MEMORANDUM OPINION**

**LAVELLE, S.J. May 11, 2005**

This case began when Plaintiffs filed an action for declaratory judgment against Defendant County of Lehigh (County) on September 26, 2003 challenging the County's Administrative Fee and Waste Hauler Licensing Scheme.<sup>1</sup>

Before this court for disposition, are three Motions for Summary Judgment. The County filed the first Motion for Summary Judgment on January 14, 2005 asserting that IESI PA Bethlehem Landfill Corporation (IESI), Chrin Brothers, Inc. (Chrin Brothers), Grand Central Sanitary Landfill, Inc. (Grand Central), Pine Grove Landfill, Inc. (Pine Grove), Waste Management Disposal Services of Pennsylvania, Inc. (Waste Management Disposal), Pennsylvania Waste Industries Association (PWIA) and Pennsylvania Independent Waste Haulers Association (PTWHA) lack standing to seek a declaratory judgment. On January 18, 2005, Plaintiffs filed their own Motion for Summary

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<sup>1</sup> The Complaint was amended on September 15, 2004

Judgment seeking judgment on Counts I, II, III and V of their Amended Complaint. On the same day, the County filed a second Motion for Summary Judgment against PWIA and PIWHA claiming counts II and V of Plaintiffs' Amendment Complaint failed to state a cause of action upon which relief can be granted. Responses to the three motions were filed, briefs submitted and argument was held before the undersigned.

### BACKGROUND

In 1996, the County adopted the current version of the Lehigh County Solid Waste Management Plan (Solid Waste Management Plan) and cited the Municipal Waste Planning, Recycling and Waste Reduction Act, 53 P.S. §§ 4000.101- 4000.1904 (Act 101) as its enabling authority. The Lehigh County Municipal Waste Management and Licensing Ordinance (Waste Management Ordinance) was adopted in 2000 and cites the Solid Waste Management Plan and Act 101 as its authority. Both the Solid Waste Management Plan and the Waste Management Ordinance authorize the imposition of an administrative fee which is defined as “(t)he fee, if any, which may be designated by the County, from time to time, as the County’s Administrative Fee to be paid by the Haulers to the County to subsidize the programs of the Lehigh County Office of Solid Waste Management.” (Solid Waste Management Plan, Appendix B and Waste Management Ordinance 2000-No.13, Section 2). The Waste Management Ordinance gives the County Planning Department the authority to adopt, amend, revise implement and enforce Waste Rules and Regulations to implement the Solid Waste Management Plan and the Ordinance and specifically authorizes the Waste Rules and Regulations to “establish and govern the billing and collection of the Administrative Fee.” (Waste Management Ordinance 2000-No. 103, Sections 6(a) and (f)(2)).

In 1997, the County Planning Department adopted the first version of the Waste Rules and Regulations to impose County Administrative Fees. (Waste Management Ordinance 1997- No.130, Exhibit A Section 6). Since that time the County has imposed, through its Waste Rules and Regulations, a “County Administrative Fee” on haulers that collect and transport municipal waste generated in the county, “to subsidize the programs of the Lehigh County Office of Solid Waste Management.” (Waste Management Ordinance 1997-No.130 and attached Lehigh County Waste Rules and Regulations). In January 2002, the County Planning Department raised that fee for haulers from \$.75 per ton to \$1.25 per ton. (Lehigh County Waste Rules and Regulations, January 2002, Section 6.1). In October 2003, the fee was again increased to \$2.75 per ton and the Administrative Fee was shifted entirely to landfills.<sup>2</sup> (Lehigh County Waste Rules and Regulations, August 2003).

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<sup>2</sup> The Licensing Regulation now reads:

Section 6 – Fees

- 6.1 The Hauler License Fee is set at \$30.00 plus \$10.00 per vehicle if operating with Small Vehicles only. If operating with any vehicle other than Small Vehicles, the Hauler License Fee is set at \$250.00, \$25.00 per vehicle.
- 6.2 The County Administrative Fee is \$2.75 per ton.
  - (a) Haulers are required to pay \$1.25 per ton to all Lehigh County MSW collected and delivered to a Disposal Facility or Transfer Station. The amount due from each hauler will be based on the tonnage reported on the quarterly reporting forms referenced under Section 5 above, and is due and payable along with said quarterly reporting forms, no later than the 20<sup>th</sup> day after the end of each quarter for the proceeding quarter’s activity.
  - (b) Disposal Facilities, or their Contractors, shall collect a County Administrative Fee of \$1.50 on each ton of Lehigh County Municipal Solid Waste delivered to the Contractor’s Facility from Lehigh County sources.
- 6.3 Any waste hauler that is charged a County Administrative Fee may pass through and obtain Fee from the generator of said waste as a surcharge on any fee schedule established pursuant to the law, ordinance, resolution or contract for solid waste collection, transfer, transport and delivery.
- 6.4 The County will offer a 1% discount to all Haulers and Disposal Facilities on the total County Administrative Fee due for that quarter, if the payment and corollary reports are received on or before the 20<sup>th</sup> day of the reporting month.
- 6.5 If the Hauler or Contractor fails to make timely payment to the County of the County Administrative Fee, the Hauler or Contractor shall additionally pay the County interest on the unpaid amount due as the rate established pursuant to Section 806 of the Act of April 6, 1929 (PL343, No. 176), known as the Fiscal Code, from the last day for timely payment to the date paid.

Plaintiffs argue that the County's Administrative Fee against disposal facilities is ultra vires the Solid Waste Management Plan and the Waste Management Ordinance. Plaintiffs further argue that the County lacks legislative authority to impose the County's Administrative Fee on haulers or disposal facilities and is preempted by Act 101 and by the Waste Transportation and Safety Act, 27 Pa. C.S. §§ 6201-6306 (Act 90).

Also at issue in this case, is the licensing requirement imposed on all haulers transporting municipal solid waste generated in Lehigh County. The Waste Rules and Regulations set forth the requirements that must be met in order for a person to obtain a Hauler License from the County, the Rules and Regulations also establish Hauler Licensing Fees. (Waste Management Ordinance 2000 – No. 103, Section 5 and Waste Rules and Regulations, August 2003, Section 4). Plaintiffs contend that the County's licensing scheme is preempted by Act 90.

Our standard of review for the motions for summary judgment before us is set forth in Pa.R.C.P. 1035.2, which provides:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part, as a matter of law.

- (1) Whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or
- (2) If, after the completion of discovery, relevant to the motion, including the Production of expert reports, any adverse party who will bear the burden of proof at trial, has failed to produce evidence of facts essential to the cause of action or defense, which in a jury trial would require the issue to be submitted to a jury.

Summary judgment is appropriate when the record clearly demonstrates that there are no Genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Dean v. Department of Transp., 561 Pa. 503, 751 A.2d 1130 (2000). The parties

agree that this case is appropriate for summary judgment as there are no material issues of fact and the issues can be decided as a matter of law.

## ANALYSIS

### I. STANDING

Initially, we address whether Plaintiffs have standing to bring this declaratory judgment action. The County asserts that the two Plaintiff Associations, PWIA and PIWHA, along with the five Plaintiff Disposal Facilities, IESI, Chrin Brothers, Grand Central, Pine Grove and Waste Management Disposal all lack standing. The County points out that PWIA, an unincorporated association, does not operate any landfills in Pennsylvania, does not receive Lehigh County waste, does not operate any waste hauling vehicles or collect any administrative fees from waste haulers. PIWHA, an incorporated trade association, does not operate or own any waste hauling vehicles, does not transport Lehigh County waste, and does not pay Administrative Fees to the County. The disposal facilities are all Pennsylvania corporations that accept and dispose of waste generated in Lehigh County. These disposal facilities collect the County's Administrative Fee from the waste haulers who deposit waste in their haulers and remit the fee to the County.

In order to have standing, Plaintiffs must be "aggrieved" by the administrative fee established by the County that is now being challenged. William Penn Parking Garage, Inc. v. City of Pittsburgh, 346 A.2<sup>nd</sup> 269, 289 (Pa. 1975). A party is aggrieved if it has substantial, direct and immediate interest in the matter being litigated. Id. An interest is "substantial" if there is some discernable adverse effect on the party beyond that of the general public. An interest is "direct" if, looking at the facts in the light most favorable

to that party, there is a likelihood that the interest they claim is or will be adversely affected. An interest is “immediate” if there is a substantial probability of harm to that interest. Id.

The Waste Rules and Regulations provide “Disposal facilities, or their Contractors, shall collect a County Administrative fee of \$1.50 on each ton of Lehigh County Municipal Solid Waste delivered to the Contractor’s Facility from Lehigh County sources.” Section 6.2 (b). The County argues that the collection and remittance of the administrative fee by the disposal facilities make their interest remote and inconsequential, especially because the disposal facilities are not personally responsible or liable if the fee is not collected from a hauler; additionally, there are no penalties or enforcement proceedings authorized in the event the disposal facility fails to pay the administrative fee to the County.<sup>3</sup>

Samuel J. Donato, Jr., John Wardzinski, and Thomas McMonigle testified in their depositions that the disposal facilities have been faced with the burden of administrative costs associated with collecting the fee from the haulers and in remitting the monies to the County. (Depositions of Samuel J. Donato, Jr., September 14, 2004, pp. 13-15; John Wardzinski, November 11, 2004, pp. 38-39, 44-45; Thomas McMonigle, September 15, 2004, pp. 29-31, 47). We find this obligation to collect and remit and the attendant costs is more than sufficient to characterize the disposal facilities’ interest as substantial, direct and immediate. We therefore have no hesitancy in finding for the Plaintiff disposal

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<sup>3</sup> These assertions are not readily apparent from the Lehigh County Municipal Waste Management and Recycling Ordinance or the Waste Rules and Regulations and in fact, pursuant to depositions testimony, the disposal facilities believed it was their responsibility for paying the administrative fee regardless of whether it was collected from the hauler. (Depositions of Samuel J. Donato, Jr., September 14, 2004, pp.11-12, 25; John Wardzinski, November 11, 2004, pp. 14-16, 35-36, 42; Thomas McMonigle, September 15, 2004, pp. 27, 40-42, 47-48).

facilities are aggrieved parties and therefore, have standing to assert the instant declaratory judgment.

We similarly find that the Plaintiff associations have standing to bring suit. Unlike standing for an individual entity, an association may have standing in the absence of injury to itself; standing may exist solely as the representative of its members. The association may initiate a cause of action if its members are suffering immediate or threatened injury as a result of the contested action. Nat'l Solid Waste Mgmt. Ass'n v. Casey, 135 Pa. Commw. 134, 580 A.2d 893 (1990). The Plaintiff disposal facilities in this case are all members of PWIA, and for the reasons previously discussed, the individual disposal facilities have standing in this matter. As a result, PIWHA has standing derived from their members, individual waste haulers, whose standing has not been challenged by the County.

Therefore, the County's Motion for Summary Judgment based on lack of standing shall be denied and all Plaintiffs shall remain as parties for the disposition of the remaining two Motions for Summary Judgment.

## II. PREEMPTION

"The matter of pre-emption is a judicially created principle based on the proposition that a municipality, as an agent of the state, cannot act contrary to the state. Duff v. Township of Northampton, 110 Pa. Commonw. 277, 284,532 A. 2d. 500, 503 (1987), *aff'd* 520 Pa. 79, 550 A.2d. 1319 (1988). The Pennsylvania Supreme Court has set forth in detail the standard for pre-emption:

There are statutes which expressly provide that nothing contained therein should be construed as prohibiting municipalities from adopting appropriate

ordinances, not inconsistent with the provisions of the act or the rules and regulations adopted thereunder, as might be deemed necessary to promote that purpose of the legislation. On the other hand, there are statutes which expressly provide that municipal legislation in regard to the subject covered by the state Act is forbidden. Then there is a third class of statutes which, regulating some industry or occupation, are silent as to whether municipalities are or are not permitted to enact supplementary legislation or to impinge in any matter upon the field entered by the state; in such cases the question whether municipal action is permissible must be ascertain the probable intention of the legislature in that regard. It is of course self-evident that a municipal ordinance cannot be sustained to the extent that it is contradictory to, or inconsistent with, a state statute. But generally speaking, it has long been the established general rule, in determining whether a conflict exists between a general and local law, that where the legislature has assumed a regulate to given course of conduct by prohibitory enactments, a municipal corporation with subordinate power to set in the matter may make such additional regulations in aid and furtherance of the purpose of the general law as may seem appropriate to the necessities of the particular locality and which are not in themselves unreasonable.

W. Pennsylvania Rest. Ass'n v. Pittsburgh, 366 Pa. 374, 380-81, 77 A.2d. 616, 620

(1951). The test for preemption is well-established: either the statute must state on its face that local legislation is forbidden, or its must indicate the legislature's intention that it should not be supplemented by municipal bodies. *Id.* At 381, 77 A. 2d, 616,620.

The pertinent questions to consider when determining a preemption issue are: (1) Does the ordinance conflict with the state law, either because of conflicting policies or operational effect, that is does the ordinance permit what the statute forbids or prohibit what that statute allows? (2) Was the state law intended expressly or impliedly to be exclusive in that field? (3) Does the subject matter reflect a need for uniformity? (4) Is the state scheme so pervasive or comprehensive that it precludes coexistence of municipal regulation? (5) Does the ordinance stand as an obstacle to the accomplishment and execution of the full purposes and objectives of the legislature? Duff, supra.

#### A. Administrative Fees

It is Plaintiffs' position that Acts 101 and 90 preempt the County's administrative fee, not as the result of express preemption, but from the alleged intent of the legislature that the statutes should not be supplemented by municipal bodies. Plaintiffs argue that Acts 101 and 90 impose statutory fees on disposal facilities and waste haulers that are so comprehensive that they impliedly preclude co-existing municipal regulation. The County argues that Act 101 gives it the power to adopt regulations and that power carries with it the power to impose fees to pay for the administrative costs for implementing and enforcing the regulations. We agree with the County that Act 101 provides the legislative authority to enact administrative fees and that the legislature has not preempted this area of the law.

Act 101 sets forth powers and duties of the counties under the Act. Specifically, counties may require persons to obtain licenses to collect and transport municipal waste and adopt ordinances, resolutions and regulations and standards for the recycling of municipal waste or recyclable material. 53 P.S. 4000.303. We agree with the County, that along with the power to require licenses and adopt regulations comes to power to impose fees to pay for the administrative costs incurred in implementing and enforcing the regulations.

In addition, the purpose of the Act is, in part, to "(e)stablish and maintain a cooperative State and local program of planning and technical and financial assistance for comprehensive municipal waste management." 53 P.S. 4000.102(b)(1). We find the purpose of the Act consistent with intergovernmental coordination and cooperation, not preemption. Further, we find no evidence of the legislature's intent to preclude or prohibit the imposition of such fees in Act 101 or Act 90. Therefore, we conclude that the

County is not preempted from imposing such fees. It is worth noting that the legislature did preempt local action within Act 101, and did so with express language, when it felt necessary to do so. *See* 53 P.S. 4000.1301 (“The fee imposed in this section shall preempt and supercede any tax imposed on each municipal waste land fill or resource recovery facility under the Act...”).

#### B. Hauler Licensing Scheme

Plaintiffs next assert that the County’s “hauler licensing scheme” is preempted by Act 90. This alleged preemption requires closer analysis because it appears that the legislature did intend to expressly preempt municipal licensing programs. Act 90 provides:

(c) Relationship to other laws. Notwithstanding anything to the contrary in this chapter, the Solid Waste Management Act or the Municipal Waste Planning Recycling and Waste Reduction Act, no county and no municipality may implement a municipal waste or residual waste transportation authorization or licensing program after the effective date of this Act.

27 Pa. C.S. § 6203(c) (Adopted June 29, 2002 to be effective in sixty days). We agree with Plaintiffs that such language is preemptive. That, however, does not end our inquiry. We must examine when such preemption becomes effective. The County argues that the legislature’s use of the word “implement” carries with it meaning of initial or new legislation; that counties are prohibited from establishing *new* municipal waste or residual waste transportation or licensing programs after August 29, 2002, but that *existing* programs are not preempted.

The Pennsylvania Legislature did not define “implement” in Act 90. Statutory construction requires that words are interpreted “according to their common and approved usage.” 1 Pa. C.S. § 1903(a). “Implement” is defined as: “1. To fulfill or

satisfy the conditions of; to accomplish. 2. To fulfill or perform; to carry into effect or execution; as to implement a bargain or contract. 3. To provide or equip with implements.” Webster’s New Twentieth Century Dictionary 866 (1957).

Judicial construction of the word “implement” tells us that the word includes an element of newness. Lebanon Farms Disposal, Inc. v. County of Lebanon and the Greater Lebanon Refuse Auth., CV-03-0682, Memorandum Opinion, (M.D. Pa. July 9, 2004).

The court in Lebanon found that something is “implemented” only at the time it is initially given practical effect or commenced, such as when a plan first goes into effect. The Lebanon County ordinance was adopted over eleven years prior to the effective date of Act 90. Therefore, the court determined that under the “clear terms of this statute then, the County “implemented” its licensing program before the effective date of the Act. Id.

In addition, the Lebanon court appointed out that to read the statute otherwise would implicitly overrule the portion of Act 101 which allows counties “to insure the availability of adequate permitted processing and disposal, capacity for the municipal waste which is generated within its boundaries” and to “require all persons to obtain licenses to collect and transport municipal waste”. Id. Quoting 53 P.S. § 4000.303(a). We believe that the proper construction of the statute is to read Act 90 in the reconciliatory way the Lebanon court described.

The record reveals that Lehigh County’s Licensing Program was implemented in 1996, well before the effective date of Act 90. Therefore, Act 90 does not preempt the hauler licensing scheme.

### III. ULTRA VIRES

Plaintiffs next contend that the County’s administrative fee against the

disposal facilities is ultra vires the Solid Waste Management Plan and the Waste Management Ordinance. Plaintiffs correctly point out that administrative fee is a fee “which may be designated by the County, from time to time, as the County’s Administrative Fee to be *paid by Haulers of the County* to subsidize the programs of the Lehigh County Office of Solid Waste Management.” (Solid Waste Management Plan, Appendix B and Waste Management Ordinance, Section 1). Plaintiffs contend that if a fee is proper, it is only properly imposed against the haulers not the disposal facilities. The County responds by pointing out that the fees are only imposed against the haulers pursuant to the definition of administrative fee.

It appears that Plaintiffs have misconstrued the administrative fee. The Lehigh County Waste Rules and Regulations provide in relevant part <sup>4</sup>

6.2 The County administrative fee is \$2.75 per ton.

- (a) Haulers are required to pay \$1.25 per ton on all Lehigh County MSW collected and delivered to a disposal facility or Transfer Station. The amount due from each Hauler will be based on the Tonnage reported on the quarterly reporting forms referenced under Section 5 above, and is due and payable along with quarterly reporting forms, no later than the 20<sup>th</sup> day after the end of eachquarter for the preceding quarter’s activity.
- (a) Disposal facilities or their contractor shall collect a County Administrative fee of \$1.50 on each ton of Lehigh County Municipal solid waste delivered to the contractor’s facility from Lehigh County sources.

Even a cursory reading of the statute persuades us that the Administrative Fee is not imposed against the disposal facilities. Instead the fee is imposed against the haulers, part of which is to be collected by the disposal facilities. Plaintiffs’ argument on this issue is without merit.

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<sup>4</sup> The Fee Section is quoted in its entirety at footnote 2.

#### IV. LEGISLATIVE AUTHORITY TO IMPOSE THE ADMINISTRATIVE FEE ON HAULERS OR DISPOSAL FACILITIES.

Act 101 forms the basis for the County's authority to adopt administrative fees. Plaintiff's however, assert that a review of Act 101's conferred powers makes it clear none of the powers listed expressly authorizes the imposition of county administrative fees upon haulers or disposal facilities. 53 P.S. §4000.303.(a)(1)-(5). The County argues that it has the authority to impose administrative fees because of the broad language in Act 101 and because Act 101 did not prohibit such fees. It points out that Act 101 expressly authorized the imposition of various fees, and in particular a recycling fee, thereby making it clear that when the legislature intended to impose a fee, it would do so expressly.

In our view, the broad language of Act 101 gives it the power to require persons to obtain licenses to collect and transport waste includes with it the power to impose a fee to insure the availability of adequate permitted waste processing.

The County relies on the following provision of Act 101 to its authority to impose a "licensing fee:"<sup>5</sup>

- (a) Primary responsibility of county. – Each county shall have the power and its duty shall be to insure the availability of adequate permitted processing and disposal capacity for the municipal waste which is generated within its boundaries. As part of this power, a county:
  - (1) May require all persons to obtain license to collect and transport municipal waste subject to the plan to a municipal waste processing or disposal facility designated pursuant to subsection (c).
  
- (c). Ordinances and resolutions.- In carrying out its duties under this section, a county may adopt ordinances, resolutions, regulations and standards for the processing and disposal of municipal waste, which shall not be less

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<sup>5</sup> The County argues that the characterization of an administration fee is erroneous and that the fine is actually a licensing fee.

stringent than, and not in violation of or inconsistent with the provisions and purposes of the Solid Waste Management Act, this act and the regulations promulgated pursuant thereto.

The licensing regulation reads in part as follows: **6**

Section 6 – Fees:

- 6.1 The Hauler License Fee is set at \$30.00 plus \$10.00 per vehicle if operating with Small Vehicles only. If operating with any vehicles other than Small Vehicles, the Hauler License Fee is set at \$250.00, \$25.00 per vehicle, and \$1.25 per ton Administrative Fee on all Lehigh County MSW collected and delivered to a Disposal Facility or transfer station. The amount due from each Hauler will be based on the tonnage reported on the quarterly reporting forms referenced under Section 5 above, and is due and payable along with said quarterly reporting forms, no later than the 15<sup>th</sup> day after the end of each quarter for the proceeding quarter's activity.

The language in section (c) above allows the County to adopt ordinances, resolutions, regulations, and standards not less stringent than or inconsistent with the Solid Waste Management Act in carrying out its duty to insure the availability of adequate permitted processing and disposal capacity of municipal waste. Section 6.1 imposes the licensing on each hauler based on the tonnage of waste transported by the hauler. In August of 2003, the County raised the administrative fee portion of the licensing fee from \$1.25 to \$2.75 per ton. In an effort to cure discrepancies between the amount of waste licensed waste haulers reported and the amount of waste reportedly received by municipal waste landfills, the County revised the licensing provision to have the disposal facilities collect \$1.50 of the \$2.50 per ton administrative fee imposed on the waste haulers. (Deposition of Kurt Fenstermacher, pp. 105-106).

The record shows that the County delegated to the Department of Planning and its Solid Waste Department the power to implement the hauler-licensing program. The licensing program has developed goals that promote and enhance the state-run programs,

such as the reduction of hazardous waste materials including household hazardous waste. This reduction increases the safety of the haulers who are at risk when they pick up said waste. Additionally, because of such waste cannot be deposited in landfills, it also insulates haulers from violations if they inadvertently deposit hazardous waste into the landfills. (Deposition of John Wardzinski, pp.30-34; Deposition of William J. Gallagher, p. 44; Deposition of Anthony J. Wright, pp. 33-35; and Deposition of Thomas E. McMonigle, Jr. p. 44). Another program developed as a result of the licensing fee is a composting operation, which permits trash haulers to drop off leaf and yard waste free of charge at a location distinct and separate from the landfill site. The compost program benefits the haulers by reducing their transportation and disposal costs by reducing the tonnage of waste distributed at the landfill site.

We hold, therefore, that the use of the licensing fee to establish programs that reduce hazardous household waste increase safety of haulers and encourage composting are permitted by Act 101 and specifically fall within the power to insure the availability of adequate permitted processing and disposal capacity for the municipal waste generated within its boundaries.

For the foregoing reasons, we shall enter summary judgment in favor the County and against the Plaintiffs.