

**CHESTER COUNTY DESIGNATED SITE ORDINANCE**

**COUNTY OF CHESTER, PENNSYLVANIA**

**ORDINANCE NO. 2010-2**

**AN ORDINANCE OF THE COUNTY OF CHESTER, PENNSYLVANIA AMENDING AND REENACTING CERTAIN PROVISIONS OF ORDINANCE NO. 92-1, AS SUPPLEMENTED AND AMENDED, WHICH REENACTS, RESTATES AND REPLACES SAID ORDINANCE NO. 92-1, AS SUPPLEMENTED AND AMENDED.**

**WHEREAS**, it is deemed by the Board of Commissioners of Chester County, Commonwealth of Pennsylvania, to be in the best interest of the health, safety and welfare of the citizens of Chester County that comprehensive planning for Municipal Waste management be a public function controlled and implemented by the County as provided herein;

**WHEREAS**, the Municipal Waste Planning, Recycling and Waste Reduction Act of July 28, 1988, P.L. 556, No. 101, 53 P.S. Subsection 4000.101 *et seq.* (hereinafter referred to as "Act 101"), requires counties to prepare a plan for Municipal Waste management systems within their boundaries;

**WHEREAS**, Act 101 gave Chester County primary responsibility for planning for Municipal Waste processing and disposal within its boundaries and the primary authority to control the flow of Municipal Waste generated within its boundaries;

**WHEREAS**, Act 101 requires counties to provide adequate permitted waste processing and disposal capacity for at least ten (10) years and authorizes a County with an approved plan for Municipal Waste management systems, submitted under Act 101, to require that all Municipal Waste generated within its boundaries shall be processed or disposed at a designated processing or disposal facility;

**WHEREAS**, Act 101 authorizes a county, in carrying out its duties under Section 303 of Act 101, to adopt ordinances, resolutions, regulations and standards for the processing and disposal of Municipal Waste and for the recycling of Municipal Waste or source separated recyclable material;

**WHEREAS**, Section 303(d) of Act 101 authorizes counties to enter into a written agreement with another person, including a municipal authority, pursuant to which that person undertakes to fulfill some or all of the county's responsibilities under Act 101 for Municipal Waste planning and implementation of the approved plan for Municipal Waste management systems;

**WHEREAS**, the Board of Commissioners adopted the Chester County Act 101 Municipal Waste Management Plan on September 25, 1990 and on the 2<sup>nd</sup> day of April, 1992,

the Board of Commissioners adopted Ordinance No. 92-1. The Board of Commissioners subsequently amended said Ordinance No. 92-1 on the 1<sup>st</sup> day of June, 1993 by Ordinance No. 93-2, and again amended said Ordinance on the 17<sup>th</sup> day of November, 1993, by Ordinance No. 93-7;

**WHEREAS**, the Chester County Act 101 Municipal Waste Management Plan was revised by the Chester County Municipal Waste Management Plan Revision of March 2007 adopted by the Board of Commissioners in March 2007, and subsequently approved by the Pennsylvania Department of Environmental Protection;

**WHEREAS**, the Chester County Municipal Waste Management Plan Revision of March 2007 reserved the right to reexamine the redirection of Municipal Waste to public facilities and its benefits to local public landfills in the event that court authority became supportive;

**WHEREAS**, the Board of Commissioners, in light of the United States Supreme Court Decision in United Haulers Association, Inc., et al., vs. Oneida-Herkimer Solid Waste Management Authority, et al., 550 U.S. 330, 127 S. Ct. 1768, 167 L. Ed. 2d 655 (2007), is desirous of adopting this Ordinance to designate the redirection of Municipal Waste to public facilities and treating all private facilities in an equal manner;

**WHEREAS**, the Chester County Act 101 Municipal Waste Management Plan, as revised by the Chester County Municipal Waste Management Plan Revision of March 2007, was further revised by the Chester County Municipal Waste Management Plan Revision of August 2009 and adopted by the Board of Commissioners in December of 2009, and subsequently approved by the Pennsylvania Department of Environmental Protection;

**WHEREAS**, the Chester County Municipal Waste Management Plan Revision of August 2009 provides for the enactment of a Designated Site Ordinance to regulate Municipal Waste and the Board of Commissioners of Chester County, Commonwealth of Pennsylvania, are desirous of combining, reenacting, and restating certain provisions of Ordinance No. 92-1, as supplemented and amended, in the Designated Site Ordinance contained herein, in furtherance of the provisions of the Chester County Municipal Waste Management Plan; and

**WHEREAS**, the purpose and requirements of Act 101 will be best carried forth by adopting this Ordinance and the local benefits of the health, safety and welfare of the citizens of Chester County outweigh any incidental burdens of private interstate commerce that may be impacted.

**IT IS HEREBY ENACTED AND ORDAINED** by the Board of Commissioners of Chester County as follows:

**Section 1. Short Title.** This Ordinance shall be known and referred to as the "Chester County Designated Site Ordinance."

**Section 2. Definitions.** The following terms shall have the following meanings in this Ordinance:

“Act 97” – the Solid Waste Management Act, Act of July 7, 1980, P.S. 380, No. 97, as now or hereafter amended.

“Act 101” – the Municipal Waste Planning, Recycling and Waste Reduction Act of July 28, 1988, P.L. 556, No. 101, 53 P.S. Subsection 4000.101 *et seq.*, as now or hereafter amended.

“Authority” – the Chester County Solid Waste Authority (“CCSWA”) or the Southeastern Chester County Refuse Authority (“SECCRA”).

“Authority Rules and Regulations” – the rules and regulations adopted and revised from time to time by the Authority pertaining to the implementation of the Plan.

“By-Pass Disposal Facility” - any Municipal Waste storage, collection, transfer, processing, or disposal facility not owned or operated by, or not operated on behalf of, the Authority as set forth in the Plan or hereinafter approved by the Authority.

“County” –the County of Chester, Commonwealth of Pennsylvania.

“Designated Facility” – any Municipal Waste storage, collection, transfer, processing, or disposal facility owned and operated by, or operated on behalf of, the Authority.

“Designated Site Ordinance” – an ordinance adopted by the County which provides *inter alia* for regulation of the flow of any and all Municipal Waste generated within the County.

“Existing Contract” – any agreement or contract (1) fully executed and delivered and in effect, and (2) in reliance upon which, there has been a material change in position by any person who is a party thereto, or beneficiary thereof, prior to the 2<sup>nd</sup> day of April, 1992, for the collection, disposal or transportation of Municipal Waste generated within the County.

“Hearing Officer” – a person appointed and empowered by the Chester County Board of Commissioners to review and decide requests for review of the County’s administrative determination.

“Manifest” – a form provided by the Authority to be completed upon delivery of Municipal Waste to a Designated Facility.

“Municipal Waste” – Municipal Waste as defined in Section 103 of Act 101, including any solid waste generated or collected within the County which includes 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 in Act 97 from a municipal, commercial or institutional water supply treatment plant, waste water treatment plant or air pollution control facility. The term “Municipal Waste” does not include source separated recyclable materials.

“Municipality” – a county, city, borough, incorporated town, township or home rule municipality.

“Municipal Waste Delegation Agreement” – the agreement between the County and the Authority defining and delegating certain Municipal Waste management powers and responsibilities of the County to the Authority, as authorized by Act 101.

“Ordinance” – the Designated Site Ordinance.

“Person” – any individual, partnership, association, corporation, limited liability company, institution, cooperative enterprise, municipality, municipal authority, federal government or agency, Commonwealth institution or agency, or any other legal entity whatsoever which is recognized by law. In any provisions of this Ordinance pertaining to a fine, imprisonment or penalty, or any combination of the foregoing, the term “Person” shall also include the officers, directors, and/or managing members of any limited liability company, corporation, or other legal entity having officers, directors and/or managing members.

“Plan” – the Chester County Act 101 Municipal Waste Management Plan, September, 1990 approved pursuant to Act 101, as revised by the Chester County Municipal Waste Management Plan Revision of March 2007 and February 2009 (including all Appendices, Exhibits, and Attachments thereto), and any subsequent revisions, amendments or updates thereto which are approved pursuant to the provisions of Act 101.

“Processing” – any technology used to reduce the volume or bulk of Municipal Waste or any technology used to convert part or all of such materials for off-site reuse. Processing facilities include, but are not necessarily limited to, transfer facilities, recycling facilities, composting facilities and resource recovery facilities.

“Recycling” – the collection, separation, recovery and sale or reuse of the materials cited in Section 1501(c) of Act 101 which would otherwise be disposed or processed as Municipal Waste or the mechanized separation and treatment of Municipal Waste (other than by combustion) and creation and recovery of reusable materials other than a fuel for the operation of energy.

“Service Area” – the geographical area in which all Municipal Waste generated in such area is to be disposed at a Designated Facility pursuant to this Ordinance. The Service Area for a particular Designated Facility shall be defined by the boundaries of those Municipalities assigned to that Designated Facility pursuant to the Plan.

“Source Separated Recyclable Materials” – materials designated in Section 1501(c) of Act 101 that are separated from Municipal Waste at the point of origin or generation to be recycled.

“System” – The overall Municipal Waste management system, and every aspect thereof, owned or operated or utilized by or on behalf of the County or the Authority in implementation of the Plan, including but not limited to equipment, vehicles, offices, staff, transfer stations, Designated Facilities and the like.

**Section 3. Prohibited Activities.**

3.1 It shall be unlawful for any Person to collect, transport, process or dispose Municipal Waste generated from any sources within the County in a manner inconsistent with the provisions of this Ordinance, Plan, and any Authority Rules and Regulations adopted pursuant to this Ordinance or the Plan.

3.2 It shall be unlawful for any Person to violate, cause or assist in the violation of any provision of this Ordinance, or violate, cause or assist in the violation of any of the Authority Rules and Regulations pursuant to this Ordinance and the Municipal Waste Delegation Agreement, or any rules, regulations, resolutions or standard promulgated by the County consistent with this Ordinance and the provisions of the Plan and Act 101, or any rules and regulations adopted pursuant thereto. All unlawful conduct shall also constitute a public nuisance.

**Section 4. Delivery to Designated Facility.** The County is divided into two (2) Service Areas as described in subsections 4.1 and 4.2 below. All Municipal Waste generated in these Service Areas must be delivered to the Designated Facility assigned by the County to receive said waste.

4.1 All Municipal Waste generated in the Southeastern Chester County Refuse Authority (“SECCRA”) Service Area must be delivered to the SECCRA landfill located in London Grove, PA, which shall be the Designated Facility for the SECCRA Service Area. The SECCRA Service Area consists of the following municipalities:

Avondale Borough	East Marlborough Township
East Nottingham Township	Elk Township
Franklin Township	Highland Township
Kennett Square Borough	Kennett Township
London Britain Township	London Grove Township
Londonderry Township	Lower Oxford Township
New Garden Township	New London Township
Newlin Township	Oxford Borough
Parkesburg Borough	Penn Township
Pennsbury Township	Pocopson Township
Upper Oxford Township	West Grove Borough
West Marlborough Township	West Nottingham Township

4.2 All Municipal Waste generated in the Chester County Solid Waste Authority (“CCSWA”) Service Area must be delivered to the Lanchester landfill located in Narvon, PA, which shall be the Designated Facility for the CCSWA Service Area. The CCSWA Service Area consists of the following municipalities:

- |                           |                           |
|---------------------------|---------------------------|
| Atglen Borough            | Birmingham Township       |
| Caln Township             | Charlestown Township      |
| City of Coatesville       | Downingtown Borough       |
| East Bradford Township    | East Brandywine Township  |
| East Caln Township        | East Coventry Township    |
| East Fallowfield Township | East Goshen Township      |
| East Nantmeal Township    | East Pikeland Township    |
| Easttown Township         | East Vincent Township     |
| East Whiteland Township   | Elverson Borough          |
| Honey Brook Borough       | Malvern Borough           |
| Modena Borough            | North Coventry Township   |
| Phoenixville Borough      | Sadsbury Township         |
| Schuylkill Township       | South Coatesville Borough |
| South Coventry Township   | Spring City Borough       |
| Thornbury Township        | Tredyffrin Township       |
| Upper Uwchlan Township    | Valley Township           |
| Wallace Township          | Warwick Township          |
| West Bradford Township    | West Brandywine Township  |
| West Caln Township        | West Chester Borough      |
| West Fallowfield Township | West Goshen Township      |
| West Nantmeal Township    | West Pikeland Township    |
| West Sadsbury Township    | Westtown Township         |
| Uwchlan Township          | West Vincent Township     |
| West Whiteland Township   | Willistown Township       |
| Honey Brook Township      |                           |

4.3 [Reserved.]

4.4 Nothing contained in this Ordinance shall be deemed to prohibit Source Separation or Recycling or to affect any sites at which Source Separation or Recycling may take place.

4.5 The Designated Facility reserves the right to reject waste if the Designated Facility is not permitted by the Pennsylvania Department of Environmental Protection Rules and Regulations to accept such waste or if the manner of delivery endangers the health, safety, environment or well-being of the Designated Facility’s employees or property.

4.6 Delivery to a By-Pass Disposal Facility may occur only as allowed by written authorization from the Authority authorizing delivery to a By-Pass Facility for a period of time as defined by the Authority. Written authorization from the Authority may cover a time period not exceeding twelve (12) months.

**Section 5. System Administration.**

5.1 Pursuant to the Municipal Waste Delegation Agreement between the County and the Authority, the Authority shall have the power and duty to implement the Plan and this Ordinance and, in order to carry forth such power and duty, to adopt and enforce Authority Rules and Regulations. Notwithstanding anything to the contrary, none of the Authority Rules and Regulations shall be contrary to or less stringent than the provisions of this Ordinance, the Plan, Act 97, Act 101 or any regulations adopted thereunder.

5.2 Authority Rules and Regulations shall, at a minimum:

5.2.1 specify such predisposal processing or separation or other requirements as are deemed necessary or convenient for the efficient, effective, reliable and safe operation of a Designated Facility and the System; and

5.2.2 establish fees for use of the System; and

5.2.3 establish criteria for the registration of Municipal Waste haulers.

5.3 Authority Rules and Regulations shall ensure the efficient, effective, reliable and safe operation of the System. Authority Rules and Regulations shall be consistent with, and shall carry forth, the Plan.

**Section 6. Penalties and Enforcement.**

6.1 The County shall have the power, and its duty shall be, to bring any and all enforcement proceedings authorized by Act 101 or this Ordinance.

6.2 Any Person who violates any provision of this Ordinance or who engages in unlawful conduct as defined in Section 3 of this Ordinance, shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not more than One Thousand Dollars and No Cents (\$1,000.00) and not less than One Hundred Dollars and No Cents (\$100.00) to be paid to the County, with costs of prosecution, or to be imprisoned in the County Jail for a period of not more than ten (10) days, or both.

6.3 Each continuing day of any violation of this Ordinance or unlawful conduct as defined in Section 3 of this Ordinance, shall constitute a separate offense.

6.4 Any Person who engages in unlawful conduct as defined in Section 3 of this Ordinance shall, in accordance with the applicable provisions of the laws of the Commonwealth of Pennsylvania, also be subject to the enforcement and remedies provisions of Act 101, Chapter 17, which may apply to unlawful conduct.

6.5 This Ordinance and any Authority Rules and Regulations adopted pursuant hereto shall be enforceable by an action in equity where unlawful conduct, as defined in Section 3 of

this Ordinance, or a public nuisance exists to obtain an injunction to restrain a violation of this Ordinance, Authority Rules and Regulations, any rules, regulations, resolutions or standards promulgated or issued by the County pursuant to this Ordinance, and/or a violation of the Municipal Waste Delegation Agreement. This Ordinance and any Authority Rules and Regulations adopted pursuant hereto may also be enforceable by an action at law.

6.6 Upon finding that any Person has engaged in unlawful conduct as defined in Section 3 of this Ordinance, the Authority may, (a) revoke any license issued by the Authority to the Person and (b) deny any subsequent application by that Person or any Person who or which was, or who or which is, affiliated with, related to, or controlled by, any Person who was, at the time of commitment of such unlawful conduct, or any time thereafter, an officer, director, member, shareholder, partner, or joint venturer of, under contract with, employed by, or related or affiliated in any manner with such Person.

6.7 The penalties and remedies prescribed by this Section 6 of this Ordinance shall be deemed concurrent. The existence or exercise of any remedy shall not prevent the County from exercising any other remedy provided by this Ordinance or otherwise provided at law or equity.

6.8 Notwithstanding anything to the contrary contained herein, this Ordinance further recognizes the right of the Pennsylvania Department of Environmental Protection to take action to enforce this Ordinance under Title 25 (Environmental Protection) of the Pennsylvania Administrative Code.

#### **Section 7. Existing Contracts.**

7.1 Non-interference with Existing Contracts. Nothing contained in this Ordinance shall be construed to interfere with or in any way modify the provisions of any Existing Contract.

7.2 New Contracts and Renewals of Existing Contracts. No renewal of any Existing Contract upon the expiration of the original term thereof and no new contract for Municipal Waste collection, transportation, processing or disposal shall be entered into after the effective date of this Ordinance, unless such renewal or such contract shall conform to the requirements of the Plan, this Ordinance, Authority Rules and Regulations adopted pursuant to this Ordinance and the Municipal Waste Delegation Agreement, and shall further conform to any of the terms and conditions of licenses issued by the County pursuant to this Ordinance, as specified or required by the Plan.

7.3 No Person shall use or permit to be used any property owned or occupied by that Person within the County as a Municipal Waste processing or disposal facility, either for Municipal Waste generated within the County or elsewhere, unless such use is authorized pursuant to the provisions of Act 101, and is consistent with, and it reflected in, this Ordinance and the Plan.

**Section 8. Construction.** The terms and provisions of this Ordinance are to be liberally construed, so as best to achieve and to effectuate the goals and purpose hereof. This Ordinance shall be construed in accordance with Act 97 and Act 101.

**Section 9. Municipal Ordinances.** Pursuant to Section 304(d) of Act 101, the provisions of this Ordinance shall supersede the provisions of any municipal ordinance to the extent that the provisions of any such municipal ordinance are inconsistent with, or conflict with, the provisions of this Ordinance, except as otherwise provided by Section 502(o) of Act 101.

**Section 10. Severability.** If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any remaining provisions, sentences, clauses or parts of this Ordinance. It is hereby declared as the intent of the Board of Board of Commissioners of Chester County that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof had not been included herein.

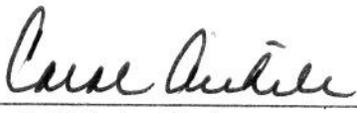
**Section 11. Repealer.** Ordinances Nos. 92-1, 93-2 and 93-7 are hereby repealed in their entirety.

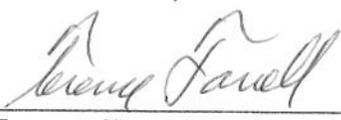
**Section 12. Effective Date.** This Ordinance shall become effective immediately upon its adoption by the Board of Commissioners of Chester County.

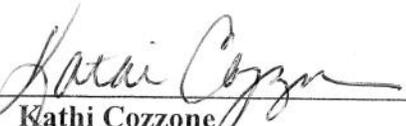
ENACTED AND ORDAINED this 7<sup>th</sup> day of October, 2010.

BOARD OF COMMISSIONERS

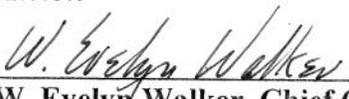
CHESTER COUNTY, PENNSYLVANIA

By:   
Carol Aichele, Chairman

By:   
Terence Farrell

By:   
Kathi Cozzone

Attest:

  
W. Evelyn Walker, Chief Clerk