Chapter 3

Disposal Capacity Needs

Insurance for the Future

In planning for municipal waste management, probably the most significant responsibility outlined for counties by Act 101 is the need to secure sufficient capacity for disposal. While there are no limitations on the types of disposal, processing and/or handling methods, the selected options are generally expected to meet applicable environmental permitting criteria. Collectively, the facilities or methods must also provide the County with disposal and processing outlets for a ten year period. As the conclusion of each ten year period approaches, counties must reexamine their needs and revisit the process of ensuring that municipal waste disposal capacity is available. This process includes not only the selection of the methodology for various materials, but also, the manner in which the capacity for those materials is legally secured. This chapter discusses the projected volume of material anticipated for disposal; influencing factors and trends; current and future waste management options; and the legal implications.

ANNUAL CAPACITY REQUIREMENTS

For the County to explore its capacity options it is important to identify the volume of material, which is likely to be delivered for disposal after recovery for recycling has occurred. This section presents the estimated future ten year disposal capacity required for Cumberland County. It is based on current reported disposal quantities, possible future changes in the rate of municipal waste generated per capita and projected changes in population.

Based on PADEP annual disposal facility reports for 2010, Pennsylvania Landfills received 166,326 tons of MSW, 57,048 tons of C&D, and 4,537 tons of sewage sludge for a total of 227,911 tons of waste originating in Cumberland County.

Since 1960, the Franklin Associates of Wichita Kansas, on behalf of the USEPA has tracked waste generation, composition, disposal and recovery trends in the United States. Each year the results of those efforts are published in a report. Since approximately 2005, the Franklin Study has shown that the waste generation rate per capita has slowly begun to decrease. In recent years, the per capita rate has remained at 0.85 tons per person per year, with little or no variation. A conservative approach was taken for capacity projection purposes. Thus, it was assumed that per capita generation rates in Cumberland County would remain unchanged throughout the planning period.

TABLE 3- 1 POPULATION PROJECTIONS: 2000-2030

State and County Projected Populations 2000-2030

	April 1, 2000 Census	July 1, 2010 Projection	July 1, 2020 Projection	July 1, 2030 Projection	% Change 2000-2010	% Change 2000-2020	% Change 2000-2030
Pennsylvania	12,281,054	12,540,718	12,871,823	13,190,400	2.1	4.8	7.4
Cumberland	213,674	234,902	258,880	282,921	9.9	21.2	32.4

The Pennsylvania State Data Center at the Pennsylvania State University regularly provides population projections for the Commonwealth of Pennsylvania. Their estimates are based on information from the US Census Bureau and data gathered from county and regional planning sources. Based on projections published in the PA Bulletin on August 3, 2008, over the period 2010 through 2020, the population of Cumberland County is projected to increase by 10.2%. Table 3-1 shows Cumberland County population totals from the 2000 Census and projections for 2010 to 2030.

Table 3-2 presents projected disposal capacity requirements for the years 2010 through 2020. The figures are based on a constant per capita generation rate with adjustments due to projected population changes. For Cumberland County the quantities for 2010 were based on 2006 data escalated at 1 percent per year, the projected population increase for that period.

In examining the volume of airspace permitted at the landfills designated within the current Cumberland County Municipal Waste Management Plan, one might conclude that available capacity is more than sufficient to meet the existing and future needs. At face value, a comparison of the projected municipal waste generation would suggest that the available capacity is greater than the generated volume. This conclusion is easy to reach when one thinks merely in terms of annual or multiyear capacity needs. However, the immediacy of need for most waste transporters and generators is experienced on a daily basis. In addition, disposal facilities have daily gate volume restraints built into their permits. Therefore, other factors with influence on the daily availability of disposal capacity should be considered in a more comprehensive evaluation of secured capacity needs.

TABLE 3-2. PROJECTED LANDFILL CAPACITY REQUIREMENTS 2010 THROUGH 2030 IN TONS

Year	Population	MSW	C&D	Sludge	Total
2010	234,902	183,681	58,437	3,236	245,354
2011	237,200	185,477	59,009	3,268	247,754
2012	239,498	187,274	59,581	3,299	250,154
2013	241,796	189,071	60,152	3,331	252,555
2014	244,094	190,868	60,724	3,363	254,955
2015	246,392	192,665	61,296	3,394	257,355
2016	248,890	194,618	61,917	3,429	259,964
2017	251,387	196,571	62,538	3,463	262,573
2018	253,885	198,524	63,160	3,498	265,181
2019	256,382	200,477	63,781	3,532	267,790
2020	258,880	202,430	64,402	3,566	270,399
2021	261,359	204,368	65,019	3,600	272,988
2022	263,838	206,307	65,636	3,635	275,577
2023	266,317	208,245	66,252	3,669	278,167
2024	268,796	210,184	66,869	3,703	280,756
2025	271,275	212,122	67,486	3,737	283,345
2026	273,604	213,944	68,065	3,769	285,778
2027	275,933	215,765	68,645	3,801	288,211
2028	278,263	217,586	69,224	3,833	290,644
2029	280,592	219,407	69,804	3,865	293,077
2030	282,921	221,229	70,383	3,898	295,509

Site conditions, waste densities, cover materials and general operating practices all play a role in maximizing the available airspace at each facility. Likewise, based on inconsistencies in the manner in which each facility performs its calculations, the reports on available airspace can be misleading. The projections of future available airspace are normally based on the assumption that the current daily and annual tonnage accepted for disposal will remain constant. Reported disposal activity discussed in Chapter 2 demonstrates that a multitude of other Pennsylvania waste generators, both municipal and industrial, compete for the same airspace and waste-to-energy capacity along with Cumberland County. Out-of-state waste is delivered in significant quantities to many of the closest facilities A sudden shift in waste flow from any of these sources could affect daily volumes. Unforeseeable changes in operational status, regulatory constraints, catastrophic events, windfall contracts, or economic conditions could alter those estimates. It is therefore prudent to consider that the airspace required by the County may not be available from all of its current sites on any given day.

WASTE MANAGEMENT METHODOLOGIES

During the last three decades, those responsible for waste management policies have embraced the social, economic and environmental aspects of sustainability. In relation to waste management, the goal of sustainability has created a greater focus on integrated waste management systems in which a broad spectrum of applications and services are utilized to create a comprehensive system of waste management and resource recovery. In seeking future disposal capacity for Cumberland County, alternatives not previously available should be considered. Although land disposal remains prevalent and likely the most affordable in the near term, other options exist that could factor into the development of an integrated system that is more sustainable for the long term.

Following is a discussion of various waste management technologies that could be presented for consideration in proposals for secured disposal capacity. Additionally, there are methods that could be developed into business opportunities. Cost, convenience, public acceptance, and environmental concerns ultimately dictate the components of an integrated system. Future demands for disposal capacity, pending regulatory changes and shifts in funding strategies create a need for the County to explore all options.

LANDFILLS

The disposal of waste in and on the land is a practice with a long history. Waste has traditionally been deposited in ravines, gullies, and a host of other low lying areas. Backfilling with waste was permitted as a form of strip mine reclamation in the not so distant past. Many of these practices were short sighted and neglected to consider the long term impact of waste degradation on soils, ground water and air quality. Thus, in many circles, landfills are suspect as a less than desirable disposal option and are frequently deemed to be at the bottom end of the waste management hierarchy.

Advances in technology offer greater assurances that landfills can operate in an environmentally responsible fashion. Although open dumps were once considered acceptable, today's standards call for covering the waste. Cover materials must meet different standards for daily and intermediate use and eventually permanent closure. Professionally engineered state of the art landfills are designed with surface and groundwater quality protection and monitoring; leachate treatment systems; air quality protection and monitoring; as well as other operational practices that lessen the environmental impact of the operation.

Greenhouse gas emissions from methane are a serious issue for landfills. Methane is a highly potent agent of global climate change, having about 23 times the negative impact on a pound-by-pound basis as CO2. The development of landfill gas to energy systems offers a benefit from land disposal not previously considered. Landfill gas combustion produces some CO2, but the impact of these emissions on global climate change is offset many times over by the methane emission reductions.

The advent of bioreactor technology, which allows landfills to accelerate the degradation and stabilization of organic waste through the addition of liquid and air to enhance microbial processes can extend the life of a facility by as much as 20 years. If the practice of such efficiencies becomes more common, it could reduce the land consumption typical in most landfilling situations.

Landfills accept all types of municipal waste generated by residential, commercial, institutional and industrial sources. For the most part, there are no technical requirements to segregate the materials delivered for disposal, unless the site is designed and permitted specifically for construction and demolition material. Exceptions could also include areas in which source separation for recycling is mandated. However, those restrictions are regulatory rather than by design in nature.

As evidenced in Chapter 2, landfills that could potentially receive municipal waste from Cumberland County are abundant. Many are situated in or within close proximity to the County. The high level of competition that exists between facilities, coupled with the existing infrastructure of intercompany transporters, landfill disposal rates remain highly cost effective. Gate rates at most facilities are posted at or approaching $75 or more per ton. However, actual tipping fees charged to commercial haulers average between $35 and $45 per ton. Based on these factors, landfills will more than likely continue to play a prominent role in the management of waste from Cumberland County into the foreseeable future.

COMBUSTION

Waste management through combustion has a twofold purpose. One is to reduce the volume of material by converting it to ash. The second is produce energy. Waste-to-Energy (WTE) facilities utilize one of two process methods. These include mass burn or Refuse Derived Fuel (RDF) operations.

In mass burn facilities, municipal waste is simply burned with little pre-processing other than the removal of large items such as appliances and hazardous waste materials and batteries. This process mirrors the technology used to burn fossil fuels like coal. The heat that is produced in the process is converted into steam. The generated steam either passes through a turbine to produce electricity, or alternatively is sold as a heat source to nearby buildings.

In RDF facilities, municipal waste is processed prior to burning. Essentially the combustible materials like paper, plastic, food and yard waste are mechanically separated from the noncombustibles, such as metals and glass. The combustibles are pelletized to produce a Refused Derived Fuel source with a higher energy content than untreated municipal waste.. Similar to the mass burn units, RDF then produces steam and/or electricity. The uniformity of RDF pellets or briquettes provides a management benefit. Material handling, transportation, and combustion is easier and more cost effective. Another benefit of RDF rather than raw MSW is that fewer noncombustibles such as heavy metals are burned.

Waste-to-Energy facilities are capable of receiving all types of municipal waste. Problematic materials, such as household hazardous wastes and electronics are discouraged and often banned from such facilities due to the concentration of pollutants in the ash and air emissions resulting from incineration. Scrubbing units, while costly, can eliminate or drastically reduce the issue of air pollutants. Combustion emits large amounts of carbon into the atmosphere. However, considering that incineration produces energy that replaces fossil fuel consumption, it should result in a net reduction of atmospheric carbon.

Locally, two Waste-to-Energy facilities receive Cumberland County municipal waste. Both mass burn operations are in close proximity to the County's most populated areas. Gate rates at both facilities currently range between $50 and $65 per ton, although it is suspected that volume discounts are available to large commercial haulers. One of the facilities is facing financial difficulties that could affect its ability to offer rates comparable to market conditions. Convenience, location and relatively competitive rates will factor into combustion remaining a part of Cumberland County's future disposal arrangements.

DEVELOPMENT OF ALTERNATIVE TECHNOLOGY

When the original disposal capacity agreements were secured, landfills and incineration were considered the most economically feasible method for managing Cumberland County's waste. Based solely on tipping fees, it is possible that the same argument could be made on 2009. However, during a request for disposal capacity county's often receive proposals for options other than landfilling and combustion. Jurisdictions across the nation are exploring emerging processes as legitimate waste management options. Without exploring the current and future availability of those possibilities, the County could overlook the potential for an alternative source of capacity with potential reductions in operational costs or environmental risks. Added benefits could include energy production and revenue generation. Following is an outline of the types of waste processes that are often presented for consideration.

COMPOSTING

When solid waste professionals mention composting, they are likely referring to a controlled process of biological degradation and transformation of organic solid waste designed to promote aerobic decomposition. A very important term in the definition of composting is "controlled." It is the application of control that distinguishes composting from the natural breakdown or decomposition, which takes place in any open environment, in engineered landfills, in illicit dumps, or in manure piles. Natural decay of organic solid waste under these uncontrolled conditions is not typically considered composting.

Applications exist for both enclosed as well as open composting systems. People tend most to identify composting with the windrows of open systems. The windrows can be turned to expose the material to air or they may be static piles that utilize forced aeration. In-vessel systems are an enclosed and highly controlled environment and thus can often provide the best composting process. Another form of composting, called vermicomposting uses worms to digest organic materials.

Composting systems receive and process the organic portion of municipal waste. In the broadest sense, nearly 60% of all municipal waste could be compatible feedstock for solid waste composting. Food waste, yard trimmings, garden residues, woody material, paper, and other organics are all good candidates for composting. However, in spite of its potential, the degree of waste that can be composted is limited by the inability of an operation to handle material delivered in lesser degrees of source separation.

Large scale commercial municipal waste composting operations that can handle unsegregated municipal waste are more prevalent globally than they are throughout the United States and Pennsylvania. Many of these facilities accept the full complement of separated materials found in municipal waste, including recyclables. Others separate the dry material from the wet waste. In both instances, mechanical separation equipment removes non-compostable items.

Facilities that accept only source-separated organics are more common in Cumberland County and Pennsylvania. Leaf and yard waste management sites prevail. The Cumberland County Recycling & Waste Authority, while it currently does not operate a composting site, facilitates the sustainability of municipal operations through its equipment sharing program. There is growing momentum in Pennsylvania to encourage the acceptance of source separated pre-consumer food waste at existing operations. An expedited permitting process with fewer restrictions, particularly for on-farm composting could advance the acceptance of this practice.

Composting operations are not without problems. With decomposition comes naturally occurring odors, which in turn can lead to public complaints and potential regulatory compliance issues. Good management and comprehensive understanding of composting technologies are essential in controlling the incidence of off-site odor migration. With in-vessel systems, the exhaust air can be more easily cleaned, thus eliminating odors.

Some obvious environmental benefits can be derived from composting when compared to other waste management alternatives. The ability to conserve landfill capacity is the most obvious positive factor. An additional benefit of diverting organic materials is the reduction in landfill gas and leachate. That the facility can produce a marketable end product is an advantage in many operations. Greenhouse gas emissions from composting are approximately the same as incineration. In addition, it is argued that based on avoidance of methane emissions, composting generates lesser amounts of global warming gases than a landfill. A counter opinion holds that carbon sequestering from the woody waste that does not degrade likely offsets this benefit. Composting is a net consumer of energy. In other words, composting does not produce a useable form of energy to offset the energy required by the process.

Depending on the extent of processing involved in each operation, composting can potentially be less expensive than other more complicated disposal methods. Facilities that operate windrow systems and that accept only source separated organics, particularly those that only process yard waste, will have significantly lower costs than more sophisticated operations. In vessel composting units with the potential to produce a higher quality product, are a costly investment. Likewise, development costs are high for those that require mechanical separation equipment to process unsegregated loads. The capital outlay alone would be an entry barrier for most start-up operations.

Tipping fees in Pennsylvania at open composting systems range from free at many on-farm sites to between $18 and $50 per ton at municipal and commercial facilities. Future disposal restrictions on certain organic materials along with a new outlook on permitting requirements could present business opportunities for the Authority to create facilities. In addition, it could incentivize private sector investment in areas currently underserved or for materials not presently managed. These factors along with a public interest in processes perceived as environmentally friendly will likely maintain a role for composting in Cumberland County's municipal waste management system.

The development of integrated waste management systems often breeds hybrid solutions to previously overlooked, but nevertheless important issues. Recycling programs have advanced in recent years to accept a broader spectrum of materials than ever before. This is particularly true with the growth of single stream recycling. While the convenience of these systems has increased participation and the recovery of materials, they have also presented operators with another dilemma. Consider the volume of contaminated and low grade papers that is collected and delivered to material recovery facilities, but yet has no marketable value. Also take into account the tons of wood scraps, brush and other yard waste that are rejected for composting, or for whatever reason remain in the waste stream. Today, residual materials from the very processes designed for waste diversion end up in landfills. Yet, these unwanted and discarded materials might have value when converted to energy.

Conversion technologies refer to a wide array of biological, chemical, thermal and mechanical technologies such as hydrolysis, gasification, and anaerobic digestion. These systems have the potential to transform the recovery and composting residuals into clean, renewable energy like electricity, as well as green fuels including hydrogen, natural gas, ethanol and biodiesel. The difference between conversion technologies and incineration and traditional biomass-to-energy approaches is that they do not involve combustion.

Following are common conversion technologies being considered in the United States based on the viability of the process and the availability of reliable vendors.

ANAEROBIC DIGESTION

Anaerobic digestion is a process that lends itself to organic materials such as sewage sludge and other relatively wet organic materials. Source separated garden and food waste usually enter the process with little or no extra handling. When mixed municipal waste is delivered to an anaerobic digester, it must be mechanically sorted to remove materials that are not biodegradable. Anaerobic digestion is a simple process. Essentially, in a series of steps, microorganisms break down biodegradable material in the

absence of oxygen. While the process produces a high quality compost–like product, a desired by-product of anaerobic digestion is methane gas, which is a source of energy. Such systems can potentially produce 55 to 75 percent pure methane. Lastly, the resulting liquid can be used as a fertilizer depending on the composition of the input material. In a well maintained system, these gases are not released into the atmosphere and therefore reduce greenhouse gas emissions. In general, anaerobic digesters are not predicted to be stand-alone solutions to municipal waste management. The start-up and operational costs are significant and cannot be supported by the net energy. However, as part of an integrated system, the reduction in waste landfilled coupled with the bonus of several end products could make a digester a viable option for select applications.

GASIFICATION

Petroleum-based materials, such as plastics, and organic materials are the primary sources of municipal waste that could supply feedstock for gasification. In the gasification process, waste is subjected to extreme heat pressure, and steam to directly convert these materials into Syngas, a blend of carbon monoxide and hydrogen, which can be used as a fuel source. Syngas, when mixed with air, can be used in gasoline or diesel engines with minor modifications. A major challenge for waste gasification technologies is its energy consumption. The high efficiency of converting syngas to electric power is counteracted by significant power consumption in the waste preprocessing, the consumption of large amounts of pure oxygen and gas cleaning. Another issue is that even the handful of facilities in operation globally still burn waste in conjunction with fossil fuels.

HYDROLYSIS

Forest material, sawmill residues, agricultural residue, urban waste, and waste paper are all candidates for hydrolysis. Simply defined, hydrolysis is chemical reaction of a compound with water, usually resulting in the formation of one or more new compounds. In a chemical decomposition process, water splits the chemical bonds of substances to break down the component sugars. Eventually these sugars are fermented producing ethanol. Sugars can also be converted to levulinic acid and citric acid. Manufacturers use levulinic acid to produce chemicals, fuels and fuels additives, herbicides, and pesticides. Food and beverage companies are large consumers of citric acid.

CHALLENGES AND OPPORTUNITIES OF NEW TECHNOLOGY

Throughout Europe, Israel, Japan, and many Asian countries, conversion technologies are successfully used to manage solid waste. A few pilot projects of conversion technologies have occurred in the United States. To date, no commercial facilities currently operate here. A movement is on in portions of the Western United States to at least explore the potential of these systems.

Numerous challenges exist for the development of conversion technologies. Relatively high operational costs versus relatively inexpensive cost of landfill disposal provide an economic disincentive. Distrust and misconceptions about emerging technologies thwart development of a straightforward and manageable permitting process. A lack of grants, loans, credits or other funding mechanisms provides no incentive for development.

Benefits include a reduction in pollution such as greenhouse gas emissions, reduced dependence on fossil fuels, conservation of landfill capacity, and the beneficial use of waste. Development of such facilities could provide a source of revenue from tipping fees, the production of energy, and the marketing of by-products.

FLOW CONTROL

The term "flow control" refers to governmental laws or policies that require or encourage waste materials to be disposed at designated disposal facilities (landfills, transfer stations or incinerators). Waste flow control is one of the most widely debated issues in municipal waste management. Opponents claim it interferes with free trade and interstate commerce. Supporters view it as a simple tool to ensure proper management and funding of their overall solid waste programs.

Cumberland County has utilized the waste flow concept since the adoption of its Plan and subsequent revisions. Through a combination of ordinances and a licensing requirement, waste transporters were directed to designated landfills with signed contractual agreements to dispose of municipal waste generated within Cumberland County’s boundaries.

As part of the plan revision process, the economic and environmental impact of abandoning waste flow control was evaluated. Such factors as feasible daily access to capacity, the natural market conditions and practices impacting the flow of waste were taken into consideration. Important attention was directed to a series of interrelated court interpretations and rulings that have defined if, when, and how flow control can be implemented. Following is a brief synopsis of each of those decisions and their impact on Cumberland County’s selection process for waste management options.

IMPORTANT LEGAL DECISIONS

"DORMANT" COMMERCE CLAUSE

Article I, Section 8, Clause 3 of the U.S. Constitution empowers Congress "to regulate Commerce with Foreign Nations, and among the several states…," in other words, interstate commerce. The Supreme Court has a long history of interpreting the Commerce Clause to have a "dormant" aspect, which limits the power of states and local authorities to pass laws or adopt practices that impose substantial burdens on interstate commerce. This has been true even when Congress has not acted directly on a specific issue.

Two factors must be considered in determining whether a local activity violates the dormant Commerce Clause. These include the issues of market participation and regulation. Market participation, in which a government entity selects its business partners, and establishes its goals and terms of buying and selling goods and services, falls outside the scope of the Commerce Clause. However, when the government activity is regulatory in nature, then it must be determined if the laws or regulations discriminate against interstate commerce or regulates in-state and out-of-state interests equally. An example of regulation is when a local jurisdiction passes a law requiring all waste generated within its boundaries to be disposed at a specified transfer station or landfill. On the other hand, market participation occurs when a local government contracts with a waste hauler and under the terms of that agreement, the hauler is required to dispose waste at a designated disposal facility. The courts have generally held this type of market participation is permissible under the Commerce Clause.

A government entity must show a legitimate local purpose unachievable by nondiscriminatory means, when an activity is deemed to discriminate against interstate commerce. Cases that have met this burden are limited. On the other hand, when the local activity treats in-state and out-of-state interests equally, it must be evaluated under a balancing test that weighs the burdens on commerce against the local benefits. Courts tend to rule favorably for local government programs in these cases.

PIKE V. BRUCE CHURCH, INC.

The balancing test that measures the local benefits against the burdens on interstate commerce refers to a decision in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). In this case a grower of fruits in Arizona challenged a state law that prevented the transport of harvested fruit directly to California for packaging, but rather required it to be packaged in Arizona prior to distribution. The Court ruled that the burden on interstate commerce imposed by the state was unconstitutional. The decision stated that Arizona's minimal interest in identifying the origin of the fruit was to enhance the reputation of Arizona and therefore did not justify subjecting the growers to the substantial capital expenditure of building and operating in Arizona a packing plant that they did not need. Under the *Pike* balancing test, the burden is on the party challenging the statute to show that it imposes too great a burden on commerce.

C.A. CARBONE, INC. V. CLARKSTOWN

The City of Clarkstown adopted a flow control ordinance to finance a new transfer station. The transfer facility was constructed and operated by a private contractor for a period of five years, at which time the town purchased it for one dollar. To guarantee the profitability of the operation the City committed a minimum waste flow of 120,000 tons per year for which the contractor charged haulers an $81 per ton fee. The ordinance was the mechanism to assure delivery of the waste required to attain the financial goals for, at that point in time, a private operation.

C & A Carbone, Inc. operated a business that received solid waste, much of which came from outside the jurisdiction of Clarkstown. The City claimed all materials processed thru the Carbone plant fell under the flow control restrictions. Therefore, the company was required to pay the $81 per ton fee before hauling waste for disposal outside of the town. Such a regulation, the company insisted, hampered them in competing with other companies not subject to the ordinance. The lower federal courts upheld the constitutionality of the city ordinance, but the Supreme Court overturned it as a violation of the Commerce Clause of the Constitution.

HARVEY & HARVEY, INC., V COUNTY OF CHESTER

The case of Harvey & Harvey v. Chester County, 68 F.3d 788 (3d Cir. 1995) is important because it reinforces Act 101’s requirements for fair, open and competitive selection practices for disposal capacity particularly when flow control is involved. An interstate collector, hauler and processor of municipal waste, brought suit against Chester County, the Chester County Solid Waste Authority, the Southeastern Chester County Refuse Authority and the Pennsylvania Department of Environmental Resources. The suit claimed that an ordinance for waste flow control stipulations resulting from development of the Chester County Municipal Solid Waste Plan were in violation of interstate commerce. The Court found the ordinance to be nondiscriminatory. Harvey conceded that it could not prove its case under the Pike standard. In an appeal filed by Harvey, the Court found that although the Solid Waste Advisory Committee did consider at least one out-of-state and several out-of-county sites, the designation process did not provide a level playing field and for many reasons, including the county’s own financial interests, the process appeared to have been biased in favor of the Lanchester, SECCRA and Pottstown facilities.

UNITED HAULERS V. ONEIDA HERKIMER

On April 30, 2007, the U.S. Supreme Court ruled in United Haulers Association Inc. v. Oneida-Herkimer Solid Waste Management Authority, 127 S.Ct. 1786 (2007) that in specific circumstances local governments are permitted to engage in flow control to government-owned and operated disposal facilities. The actual scope and full impact of the Supreme Court's recent decision continues to be debated. It is likely that future test cases will result from varied scenarios and interpretations of issues related to the degrees of ownership and operation to which this decision applies. In this case, the Supreme Court determined that flow control laws favoring government-owned and operated disposal facilities do not discriminate against interstate commerce, and are reviewed under the Pike balancing test. The Clarkstown facility challenged by Carbone was a private sector facility at the time. Thus, the Court's Carbone decision in 1994 now takes on a much more narrow scope.

EFFECTS ON THE PLANNING PROCESS

These cases illustrate that the process for selecting the County's waste disposal options must be taken seriously. Attempts to exclude certain options or facilities must be grounded in sound legal precedents. Likewise, to enter into ownership of its own facility or partner with another public facility must be evaluated based on sound economics and the direct benefits to the citizens of Cumberland County.

REQUESTING PROPOSALS FOR FUTURE DISPOSAL OR PROCESSING CAPACITY

From discussion and analyses of conditions, it was determined that the County should advertise and accept proposal's from facilities for processing or disposal capacity. The PADEP was notified of the County's determination and proposals were solicited. A formal request was advertised nationally in the industry trade journal, Waste News as well as the Pennsylvania Bulletin. Proof of the public notification is provided in Appendix B.

"The ultimate test of man's conscience may be his willingness to sacrifice something today for future generations whose words of thanks will not be heard."

Gaylord Nelson

former governor of Wisconsin,
co-founder of Earth Day