



HANDBOOK

Ohio County Commissioners

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CHAPTER 32

SOLID WASTE MANAGEMENT

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32.01 EXECUTIVE SUMMARY

This Chapter, and specifically this Executive Summary section on solid waste management, provides a concise overview of Ohio's solid waste management system and accomplishments in the twenty years since the Ohio General Assembly overhauled Ohio's solid waste management law. More details about Ohio law and solid waste management are found in the sections following this Executive Summary.

In the late 1980's, several events occurred that brought significant attention to the management of solid waste.

- First, in 1987, the infamous garbage barge Mobro 4000 began a 6,000 mile journey along the east coast, Gulf of Mexico and Bahamas to find a port that would accept the 3,000 tons of Islip, New York garbage. The voyage of the Mobro brought significant attention to the issue of landfill capacity, interstate commerce and management of what is now called infectious waste. The Mobro story ended after numerous injunctions and court battles. The garbage was incinerated in Brooklyn.
- At approximately the same time the "garbage barge" was attracting attention, the Ohio Environmental Protection Agency (Ohio EPA) began to analyze data from in-state landfills that indicated significant quantities of solid waste was arriving



from out-of-state. Records for 1987 (Ohio EPA, 1992 Facility Data Report) showed that receipts for out-of-state waste increased by more than 66% over the previous year. In 1988, out-of-state waste totaled 2.8 million tons and by 1989 it totaled 3.7 million tons. Most of the out-of-state waste arriving at Ohio landfills at the time originated from New York, Pennsylvania and New Jersey. These states were struggling with landfill capacity and solid waste management issues.

- Another solid waste management issue impacting Ohio in the late 1980's was landfill capacity. The trend for much of Ohio was a decline in remaining landfill capacity. Twenty solid waste management districts with publicly available landfills reported less than five years remaining capacity.
- Inadequate landfill regulations and the need for Best Available Technology (BAT) to protect Ohio's groundwater was another important issue facing Ohioans in the late 1980's. Regulations regarding liner systems, groundwater protection, siting restrictions for facilities and other environmental issues were required under the new law.

With all of the attention solid waste was receiving at the time, the Ohio General Assembly began reviewing the solid waste management system in Ohio. The outcome was a comprehensive overhaul to Ohio's existing solid waste law. Ohio House Bill 592, effective June 24, 1988, became the guide for the Ohio EPA, local health departments, county commissioners, cities, villages, townships, solid waste facility operators (public and private), and newly formed solid waste districts/regional authorities.

Twenty years of evolving solid waste management has passed since House Bill 592 became effective in 1988. There have been a few modifications to the system with other legislation, but the basic solid waste system addressed twenty years ago remains intact.

KEY ELEMENTS OF OHIO'S SOLID WASTE MANAGEMENT SYSTEM

Ohio's Solid Waste Management Plan

Ohio EPA and the Ohio Solid Waste Management Advisory Council (SWAC) are required to prepare a solid waste management plan for Ohio and to periodically update that plan. The first plan was completed in 1989. Since then, the plan has been updated in 1995 and 2001. The SWAC and Ohio EPA are currently developing revisions to the 2001 State Plan. The state plan is required to:

- Reduce reliance on the use of landfills.
- Establish objectives for solid waste reduction, recycling reuse and minimization and schedules for implementing the objectives.

- Establish restrictions on the types of solid waste disposed of in landfills for which alternative management methods are available such as yard waste.
- Establish general criteria for the location of solid waste facilities.
- Examine alternative methods for disposal of fly ash and bottom ash from burning mixed municipal solid waste.
- Establish a statewide strategy for managing scrap tires.
- Establish a strategy for legislative and administrative actions taken to promote markets for recycled materials.
- Establish a program for proper separation and disposal of hazardous waste generated by households.

The 2001 State Plan in effect today includes the following broad goals:

Goal #1 – Ensure the availability of reduction, recycling and minimization alternatives for municipal solid waste (also known as the “Access Goal”).

Goal #2 – Reduce and/or recycle at least 25 percent of the residential/commercial solid waste and 66 percent of the industrial solid waste generated within each solid waste management district, and 50 percent of all solid waste generated statewide.

Goal #3 – Provide informational and technical assistance on source reduction.

Goal #4 – Provide informational and technical assistance on recycling, reuse and composting opportunities.

Goal #5 – Strategies for scrap tires and household hazardous waste.

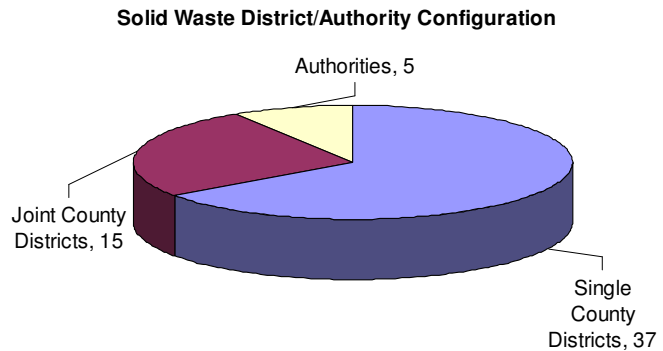
Goal #6 – Annual reporting of plan implementation.

Goal #7 – Market development strategy.

The 2001 State Plan which may be accessed at http://www.epa.state.oh.us/dsiwm/document/swmdclear/2001_state_plan.pdf, also directs solid waste districts to evaluate the feasibility of incorporating economic incentives into their source reduction and recycling programs.

Solid Waste Management Districts/Regional Authorities

Every Ohio county is required to form a solid waste management district or a regional solid waste management authority. There are currently 52 solid waste management districts or regional authorities (37 single county districts, 15 joint districts and 5 regional authorities) that represent all 88 counties in the State of Ohio. County Commissioners are responsible for maintaining and operating the District unless a joint district is established. If there are two or more counties in a District, the Boards of Commissioners collectively (called the Board of Directors) maintain and operate the District. If there is a Solid Waste Regional Authority (Authority) established, then a Board of Trustees established by resolution maintains and operates the Authority. Joint solid waste districts and Authorities are separate political subdivisions in Ohio.



A map of the districts may be seen at http://www.epa.state.oh.us/dsiwm/document/swmdclear/swmd_map.pdf and a directory is available at <http://www.oswdo.org/DesktopDefault.aspx?tabindex=5&tabid=98>.

Listed below is a summary of Board of Commissioner (single county district); Board of Directors (joint solid waste management district); or Board of Trustee (regional authority) responsibilities and authorities.

- Appoint and fix compensation of employees and take other actions necessary to control and manage the district.
- Make necessary appointments of the County Auditor/County Treasurer or other person to act as fiscal officer.
- Acquire (purchase or lease) construct, improve, enlarge, replace, maintain and operate solid waste collection systems within the district and solid waste facilities within or outside the district as necessary to protect public health.
- Use the County Prosecuting Attorney as legal advisor or employ other legal counsel to serve as legal advisor.
- Use the sanitary engineer to assist with the duties required in ORC Sections 3734.52 to 3734.57 or hire registered professional engineers to assist the sanitary engineer and/or employ financial advisors and any other professional services necessary to assist in the construction, financing and maintenance of

solid waste collection or solid waste facilities. Employment contracts shall not require certification of available funds as provided in ORC Section 5705.41.

- Issue bonds to pay for preparing general and detailed plans and other data required for the construction of solid waste facilities.
- Adopt, publish and enforce rules authorized in the solid waste management plan.
- Adopt a resolution proposing the formation of a regional authority.
- Designation of solid waste facilities where solid wastes generated within or transported into the district must be taken for disposal, transfer, resource recovery or recycling.
- Establish contracts for solid waste collection, storage, transfer, disposal, recycling, processing, or resource recovery services.
- Establish contracts for the collection of district generation or disposal fees.
- Prosecution or civil action against violators.
- Require county sanitary engineer to prepare a general solid waste facility plan.
- Issue bonds to pay for acquisition, construction, enlargement, modification or repair of any improvement.
- Establish rates or charges on premises to which solid waste collection, storage, transfer, disposal, recycling, processing or resource recovery is provided by the district.
- Prepare, adopt, submit for approval to the Ohio EPA and implement a solid waste management plan.
- Establish and convene a policy committee consisting of the following (note: Regional Authority uses the Board of Trustees as the Policy Committee):
 1. President of the Board of County Commissioners or designee;
 2. The CEO of the municipal corporation with the largest population within the boundaries of the district or designee;
 3. Township representative selected by the boards of township trustees within the County;
 4. The health commissioner, or designee, from the health district having the largest territorial jurisdiction or designee.

These four original members of the policy committee shall appoint three additional representatives:

5. One member representing industrial, commercial or institutional generators of solid waste within the district;
 6. One member representing the interest of citizens with no affiliation with a solid waste management company or significant generator of solid waste;
 7. One member representing the public.
- Multi-county districts with an even number of counties must select one at-large policy committee member.

Policy Committee responsibilities are as follows:

1. Prepare the solid waste management plan for the district.
2. Ensure the plan moves through the Ohio EPA review, public hearing and comment period, ratification and final Ohio EPA approval process.
3. Establish a technical advisory council as necessary.
4. Annually review plan implementation and report findings to the Board of Commissioners or Board of Directors.
5. Levy, adjust or eliminate disposal and generation fees.

Districts with a “body” (committee or group) that had solid waste management duties prior to June 24, 1988 could apply for a waiver to the Director to have that entity assume the responsibilities of the policy committee. Once approved, that entity operates as the Policy Committee.

“The Plan”

The Policy Committee is required to prepare a solid waste management plan (in a format prescribed by Ohio EPA, currently version 3.0) that meets the following:

- The objectives of the state solid waste plan.
- Demonstrates availability and access to solid waste management facility capacity to meet the districts needs for the planning period.

The plan must also include:

- Inventories of solid waste composition, sources and quantities generated.
- Inventories of solid waste facilities, collection systems and open dumps.
- Population projections.
- Solid waste projections, industrial activity projections, facility projections and recycling projections.
- Identification of additional solid waste facility and capacity needs.
- Strategies for siting new facilities.
- Analysis of capital and operating costs of solid waste facilities to meet the district needs.
- Analysis of expenses for district operations.
- Projection of solid waste transfer facility needs.
- Schedules for plan implementation, closure of facilities, and recycling activities and programs needed to meet state objectives.
- Identification of facilities where solid waste will be taken for disposal.
- Methods of financing.
- Programs for technical assistance on source reduction to solid waste generators.
- Establish fee schedules.
- Authority to adopt rules.
- An authorization to establish facility designations (“flow control”).
- A provision to include scrap tire management in the plan.

The district can decide on a ten-year or fifteen-year planning period. The ten-year planning period is updated every three years and the fifteen-year planning period is updated every five years.

Plan Approval

The Policy Committee submits the draft plan to Ohio EPA for a 45-day nonbinding advisory opinion. The Policy Committee makes any necessary changes to the plan in

regard to the Ohio EPA opinion. The Policy Committee holds a 30-day comment period and within 15 days after the comment period, a public hearing. The Policy Committee may make changes due to public comments received at the hearing. After the hearing, the Policy Committee votes to adopt or reject the plan. If adopted, the plan is sent to all political jurisdictions (within 30 days after adoption) and the County Commissioners for a 90-day ratification period. The Policy Committee determines the plan is ratified for a single county district when the county commissioners, the city with the largest population in the county, and a combination (including the largest city) of political jurisdictions comprising at least sixty percent of the total population of the district has approved the plan. Plan approval of 75% of total population is required for districts seeking increased generation fees over \$5.00 per ton. For joint districts, there are differences for ratification including approvals for the largest city and Boards of County Commissioners in the district.

- For districts with 2-3 counties, the plan is approved when the Boards of County Commissioners approve the plan and the largest city in each county approves the Plan. This must also include the three largest cities in the joint district. The plan must also be ratified by the legislative authorities representing 60 percent of the population.
- For districts with 4 or more counties, the draft plan is ratified when approved by (1) a majority of the Boards of County Commissioners in the joint district, and (2) each of a majority of the counties in the joint district by the municipality having the largest population within the county and the joint district. The plan must also be ratified by the legislative authorities representing 60 percent of the population of the joint district.

The plan is forwarded to Ohio EPA for a 90-day final review after the Policy Committee passes a resolution that the plan has been ratified.

District/Regional Authority Accomplishments

Since the inception of solid waste management districts and regional authorities, there have been many examples of successful facilities, programs and activities that are positive examples of government cooperation at the local and regional level. This includes the following:

- Fifteen districts where combinations of two to six counties work together to develop programming and facilities to manage solid waste, composting and recycling on a regional scale.
- Large urban districts that successfully develop and implement solid waste management programming for all political subdivisions.
- Joint programming efforts between one or more solid waste management districts.

- Cooperation between districts to solve solid waste issues and problems that cross county borders.

Each district tailors programs to fit the needs and demographic make-up of their district and political subdivisions. What works in an urban district may not work in a rural township. Highlights of district programs are provided below.

- Operation of solid waste landfills.
- Operation of solid waste transfer facilities.
- Material recovery facility processing mixed municipal solid waste to separate recyclables.
- Material recovery facilities processing source separated recyclables for both urban and rural districts.
- Collective marketing of recyclables.
- Joint collection of recyclable materials.
- Establishment of curbside and drop-off recycling programs.
- Volume based solid waste collection programs significantly increasing recycling.
- Operation of recycling collection programs for commercial businesses.
- Operation of yard waste, food waste and other organic material compost or processing facilities.
- Collection programs for tires, appliances, household hazardous waste.
- Political subdivision and district cooperatives for the collection of recycled materials and household hazardous waste.
- Industrial and commercial business waste assessments and audits.
- Comprehensive recycling education programs for schools and local civic groups.
- Disaster debris management programs for man-made or natural disasters.
- Revolving loan programs to stimulate the use of post-consumer recycling in product development.
- Incentive grant programs to increase recycling and composting.

- Funding of health department enforcement programs.
- Funding of road repair projects associated with solid waste facilities.
- Funding of litter collection projects.
- Funding of cleanups for open dumps and waste tire dumps.

Expenditure of the Fees (Ten Allowable Uses)

Solid waste districts may collect fees to fund the implementation of their plans as well as other purposes. The 52 districts collected approximately \$48 million dollars in 2004 from generation and disposal fees. The expenditure of disposal fees and generation fees are limited to the following ten purposes:

1. Preparation of the solid waste plan, monitoring implementation and conducting periodic review and amendment of the plan.
2. Implementation of the approved plan including without limitation, the development and implementation of solid waste recycling or reduction programs.
3. Financial assistance to boards of health within the district for enforcement of solid waste rules, orders, permits, terms and conditions of permits and licenses for solid waste facilities located within the district.
4. Financial assistance to each county in the district for maintaining roads and other public facilities and emergency services due to the location of solid waste facilities.
5. Paying boards of health for costs incurred for collecting and analyzing samples from public or private water wells adjacent to the solid waste facility.
6. Out-of-state waste inspection program.
7. Funding to boards of health or other law enforcement agencies for anti-littering laws and ordinances.
8. Funding to boards of health to pay for training or certification programs as required by rules adopted under 3734.02 (L).
9. Funding to municipal corporations or townships maintaining roads and other public facilities and emergency services due to the location of a composting, energy or resource recovery, incineration, or recycling facility that is owned by the district or the facility is furnishing services to the district pursuant to a contract or agreement.

- 10. Payment of expenses agreed to or awarded to communities that are affected by the siting of a publicly owned landfill or modification to the facility.

CURRENT SOLID WASTE STATISTICS IN OHIO

How much solid waste is disposed in landfills?

Preliminary statistics for 2006, the most recent year with solid waste data, includes the following:

- Approximately 21 million tons of solid waste was received by Ohio solid waste landfills. The types of waste disposed are 16,000 tons of asbestos, 12 million tons of general solid waste, 7.5 million tons of industrial waste, and 1 million tons of exempt waste.
- Ohio EPA recently began tracking construction and demolition debris (C&DD) disposal at Ohio landfills. There was 1.6 million tons of C&DD disposed in 2006.
- The seven districts that received the most solid waste for disposal are shown in the following table. These seven districts manage 68% of the solid waste disposed in Ohio. (Note: Gallia, Jackson, Meigs, and Vinton Joint District and the Coshocton Fairfield, Licking and Perry Joint District managed significant amounts of Flue Gas Desulfurization (FGD) sludge at special industrial landfills. GJMV was 2.8 million tons and CFLP was 758,000 tons.)

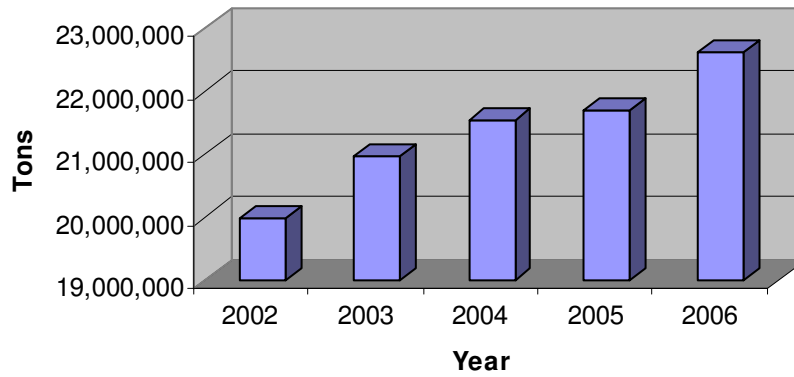
Solid Waste Districts with Landfills Accepting the Largest Tonnages of Solid Waste in 2006	
Solid Waste District	Solid Waste Tonnage
Stark-Tuscarawas-Wayne Joint Solid Waste Management District	3,483,223
Gallia-Jackson-Meigs-Vinton Joint Solid Waste Management District	3,151,265
Hamilton County	1,953,966
Mahoning County	1,826,998
Coshocton-Fairfield-Licking-Perry Joint Solid Waste Management District	1,765,122
Lorain County	1,168,427
Solid Waste Authority of Central Ohio	862,871
Total	14,211,872

How many solid waste facilities are there and how much capacity remains?

- In 1971, there were 360 landfills operating in Ohio. There are 41 municipal solid waste landfills operating in Ohio today.

- Total disposal of solid waste and C&DD has increased by 13% from 2002-2006.

Historical Solid Waste Tonnage



- Ohio has 59 transfer facilities. These facilities receive solid waste from residential and commercial haulers. The waste is tipped out of their smaller trucks and placed into transfer trailers to transport to the landfill. The transfer facilities managed 4.5 million tons in 2006.
- At the end of 2006, Ohio landfills reported having an average of 28 years remaining capacity. Seven landfills had less than 6 years remaining capacity. Thirty landfills reported greater than 10 years remaining capacity.

What is in the solid waste stream?

The Ohio Department of Natural Resources conducted a waste characterization study at 11 landfills located around Ohio. The three major components of the waste stream identified during the characterization study were paper fibers, plastics and metals. The 2003 Waste Characterization Study found that the three major components comprise more than 60%, by weight, of Ohio's total waste stream. Paper fiber was the number one component statewide (41% by weight and 44% by volume). About 31% of the fiber weight measured was mixed paper, newsprint, office paper and corrugated paper.

Plastic was second, comprising 16% by weight and 25% by volume. HDPE#2 (commonly used to produce food containers such as milk and juice jugs, liquid detergent bottles, trash bags and cereal box liners) accounted for approximately 38% of the plastics component weight and 40% of the total by volume.

Metals were third (4% by weight and 7% by volume).

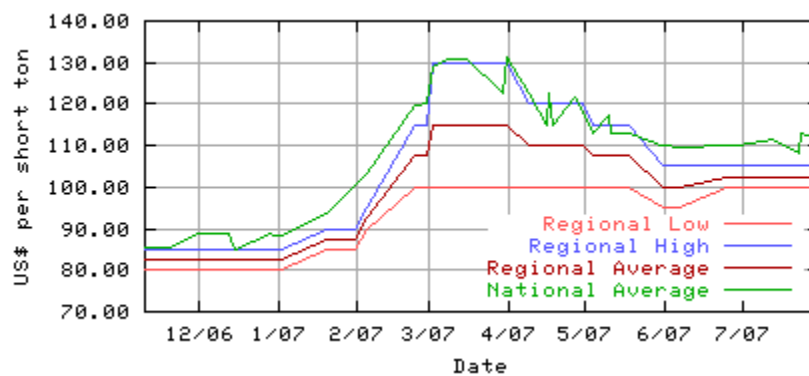
Overall, food and yard waste also were present in notable weights and volumes. Food comprised 15% by weight and 6% by volume. Yard waste comprised 9% by weight and 8% by volume.

How much does solid waste disposal and recycling impact each solid waste district and Ohio's economy?

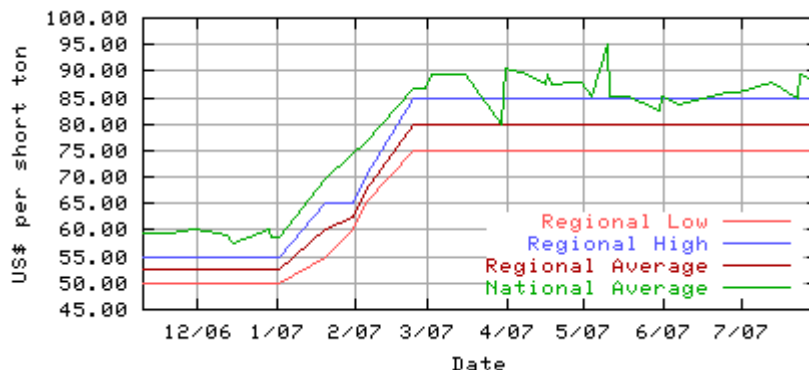
With the cost of disposal at landfills at \$30 to \$40 per ton, the tipping fee revenues from disposal of solid waste in 2006 ranged from \$630 million to \$840 million. This does not include the costs for collection of solid waste, the cost of collection and processing of yard waste and recycling. The composting and recycling industry also produce significant revenues.

The recycling programs in Ohio are impacted by the changing recycling markets. Looking at the following graphs of fiber market shows the volatility of the market over a short period of time. In all three of the following examples, the market pricing shifted by more than \$40 per ton in less than a year's time. Districts decision-makers must be cognizant of market changes when planning for facilities and programs.

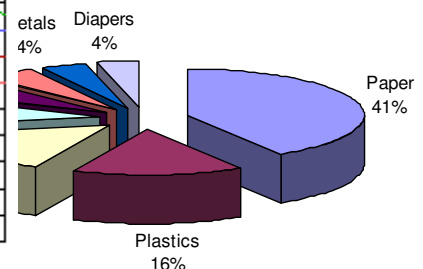
**Midwest / Central
PS 8 Special De-ink Quality news**



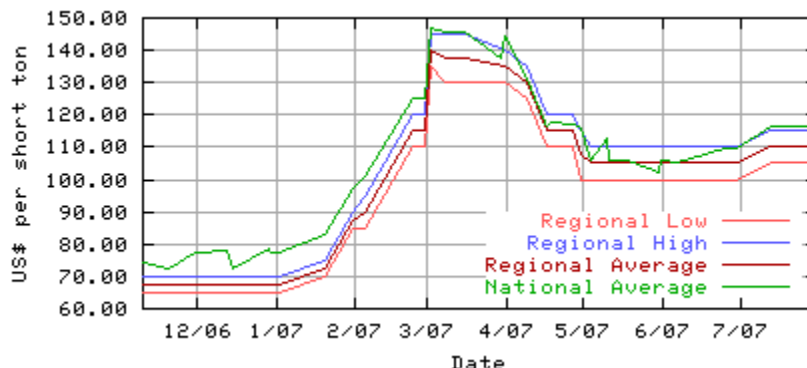
**Midwest / Central
PS 6 News**



Nationwide Distribution of Major Wastestream Components



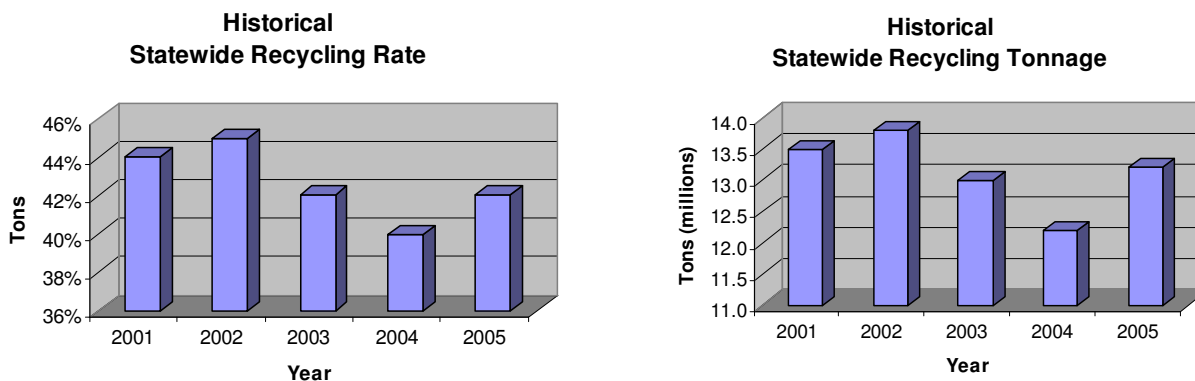
Midwest / Central PS 11 Corrugated Containers



Source: Secondary Fiber Online

The Ohio Department of Natural Resources recently published data estimating 100,000 jobs in Ohio were directly dependent on recycling; and recycling resulted in \$22.5 billion in sales and an annual payroll of \$3.6 billion.

Ohio's reported recycling statistics from solid waste districts between 2001 and 2005 are as follows:



OTHER KEY ELEMENTS OF THE SOLID WASTE MANAGEMENT SYSTEM

What is flow control of solid waste and other materials?

Flow control is the ability to direct solid waste to a specific facility for transfer, disposal, resource recovery, or recycling. In Ohio, the flow control powers are called designation powers. All solid waste management plans must include a statement that either approves the authorization or declines the authorization for the County Commissioners, Board of Directors or Board of Trustees to designate facilities. If the plan authorizes flow control authority, the specific disposal, transfer, resource recovery or recycling facilities are designated where solid waste must be delivered.

The United States Supreme Court (April 30, 2007) issued a decision on a flow control case, "United Haulers Association, Inc., et al v. Oneida-Herkimer Solid Waste Management Authority, et al, that allows solid waste management districts to allow for a

distinction that benefits public, as opposed to private facilities. Ohio's solid waste management districts can designate public facilities for the disposal, transfer, resource recovery or recycling of solid waste within their plans.

Ohio law has specific requirements for districts that intend to utilize flow control and designate facilities funded with and without public debt. Districts should consult their prosecuting attorney or legal counsel if there are questions about plans to designate facilities in their plan.

How does a district meet the state goals for recycling?

A district may receive plan approval for planning to achieve one or both state recycling goals. The current recycling rate goals are to meet or exceed a 25% residential/commercial recycling goal and a 66% industrial recycling rate. The alternative for districts that cannot demonstrate actual data that meets the percentage goals is to provide "access" to recycling programs to 90% of the population in the district. Curbside recycling programs that provide recycling to all single family households (the resident must subscribe to the service) in a community is considered 100% access for that community. Communities that offer subscription services to households that subscribe to a service receive 25% population credit. Likewise, there are credits for both full-time and part-time drop-off recycling locations. Full-time urban locations receive a credit of 5,000 population. Part-time rural locations receive 2,500 population credit. Districts pursuing the access goal must show that 90 percent of the population has access to the recycling programs. Most of the large urban districts in Ohio have qualified under the percentage goal. Many of the joint districts in rural areas have pursued the access requirements.

What happens if a district fails to submit a ratified plan?

In the event a district fails to submit a timely plan, the Ohio EPA becomes responsible for writing the plan. This is not an outcome that is desirable from both the state and local perspective. From the districts' perspective, there is a loss of control of programming. More importantly, the district loses designation authority, rule-making and control of the fees. Once Ohio EPA completes the plan, the district is ordered to implement it.

What happens if a district fails to implement the plan?

At the conclusion of the plan approval process the Director of the Ohio Environmental Protection Agency issues Findings and Orders. The District is directed to implement the activities, programs and facilities that are presented in the Plan. A district or Authority that fails to implement the plan could be found in violation of the Director's findings and orders by either the public submitting a verified complaint or the Agency issuing a Notice of Violation. Specific penalties for violating the Ohio Revised Code are outlined in ORC Section 3734.99.

What entity approves disposal fee and generation fee increases and decreases?

The Policy Committee is responsible for disposal and generation fee increases and decreases. The Policy Committee must adopt a resolution which then must be ratified and approved in the same manner as a solid waste plan. Proposed fee changes can be incorporated into the ratification process under solid waste plan approval.

What is a contract fee?

A contract fee is authorized by contract or an agreement by the County Commissioners, Board of Directors or Board of Trustees with the owner or operator of a landfill or transfer facility. The solid waste landfill or transfer facility collects the disposal or generation fee on behalf of the district. The fees must be used for purposes outlined by the Ohio Revised Code (the ten allowable uses) or to provide other remuneration or services to or on behalf of the district or its residents.

What are host community agreements, host community fees and community agreements with new landfills?

Host community agreements are contracts or agreements between political subdivisions and a solid waste management facility. Host community agreements between the political subdivisions and the solid waste facility may cover many issues and criteria determined by the parties.

Ohio law allows municipalities and townships to charge a \$0.25 per ton fee to defray the cost of road repairs, emergency and other public services. Also, ORC Section 3734.35 allows political subdivisions meeting appropriate location requirements to negotiate with a landfill regarding road improvements and maintenance, emergency services, litter prevention and reduction, collection and analysis of samples from public or private water wells, enforcement of public health codes, and enforcement of environmental laws.

What about rates and charges?

Rates and charges can be established by the Board of Commissioners, Board of Directors or Board of Trustees. Rates and charges are to be paid by every person, municipal corporation, township or other political subdivision that owns premises to which solid waste collection, storage, transfer, disposal, recycling, processing or resource recovery service is provided by the district. Rates and charges can be established by holding at least three public hearings and publishing a public notice once a week for three consecutive weeks.

What about bids for products from solid waste facilities?

The products of any solid waste collection or other solid waste facility shall be sold through competitive bidding with the exception of when a Board of County

Commissioners or directors determines by resolution that it is in the public interest to sell those products in a commercially reasonable manner without competitive bidding.

32.02 STATE SOLID WASTE MANAGEMENT ADVISORY COUNCIL

The state Solid Waste Management Advisory Council is charged with the responsibility to advise and assist Ohio EPA in state solid waste management planning activities. The council has the following specific responsibilities:

1. To advise and assist with the preparation of the state solid waste management plan and with revisions to the plan.
2. To approve or disapprove the draft state plan and plan revisions before adoption by EPA.
3. To annually review implementation of the state plan and solid waste district plans or amendments and to report its findings to EPA.

The council must meet at least four times a year and is composed of the following voting members:

1. One senator appointed by the President of the Senate and one representative appointed by the Speaker of the House.
2. Fourteen other members appointed by the Governor with the advice and consent of the Senate. The following interests must be included on the council:
 - a. One employee of a health district who is certified to enforce solid waste laws.
 - b. Two county representatives.
 - c. Two municipal representatives.
 - d. Two township representatives.
 - e. One representative of single county solid waste districts.
 - f. One representative of joint solid waste districts.
 - g. One representative of industrial waste generators.
 - h. One representative of the private recycling industry.
 - i. One representative of the private solid waste industry.

- j. One representative of a statewide environmental advocacy organization.
- k. One representative of the public.

These members serve staggered two year terms. In addition to these regular members, the Directors of EPA, the Department of Development (DOD) and the Department of Natural Resources (DNR) are ex-officio members. The EPA Director is chair of the council.

32.03 STATE SOLID WASTE MANAGEMENT PLAN

Ohio EPA, with the advice of the Solid Waste Management Advisory Council, must prepare a state solid waste management plan. The purpose of the state plan is:

1. To reduce reliance on landfills.
2. To establish objectives for solid waste reduction, recycling, reuse and minimization, and a schedule for implementing these objectives.
3. To establish restrictions on the types of solid wastes that can be disposed of at landfills where alternatives are available.
4. To establish a schedule for implementing these landfill restrictions.
5. To establish general locational criteria for solid waste facilities.
6. To examine alternative methods for the disposal of fly ash and bottom ash that result from the burning of mixed municipal solid waste.
7. To establish a strategy to promote markets for products containing recycled materials and to promote the use of recycled products by state government.
8. To establish a program for the proper separation and disposal of household hazardous waste.

The state plan, which may be accessed at <http://www.oswdo.org/DesktopDefault.aspx?tabindex=0&tabid=1>, must be approved by the Solid Waste Management Advisory Council before EPA may adopt the plan. The plan is reviewed every three years, at which time revisions may be made.

32.04 PURPOSE OF SOLID WASTE MANAGEMENT DISTRICTS

The primary purpose of a solid waste district is to prepare, adopt, submit to EPA for approval, and to implement a solid waste management plan. Another major purpose of the district is to provide or cause to be provided the safe and sanitary management of

solid wastes within both the incorporated and the unincorporated area of the district for a period of at least 10 years.

32.05 BASIC REQUIREMENTS FOR SOLID WASTE MANAGEMENT DISTRICTS

All counties must form or be part of either a single county or a joint county district. After the establishment of a district, a regional solid waste management authority may be established. There are 52 solid waste districts and/or regional authorities in Ohio that encompass all 88 Ohio counties. A map of the districts may be seen at http://www.epa.state.oh.us/dsiwm/document/swmdclear/2001_state_plan.pdf and a directory of districts is available at http://www.epa.state.oh.us/dsiwm/document/swmdclear/swmd_map.pdf.

The district must include all of the incorporated and unincorporated territory in the county. If a municipality is located in more than one district, the municipality is placed in the district where a majority of the population resides.

32.06 FORMATION OF REGIONAL SOLID WASTE MANAGEMENT AUTHORITY

Another organizational option is a regional solid waste management authority. Belmont-Jefferson, Brown, Franklin, Richland and Summit counties have exercised the option to form a regional authority. Establishment of such an authority may be initiated in the following ways:

1. By resolution of the county commissioners of a single county district.
2. By resolution of the board of directors of a joint district.
3. By adoption of a resolution, in a county or joint district, upon the request of any municipality or township.

A regional authority may not be established until either a county or joint district has first been formed. After the adoption of such a resolution, a copy must be sent to the legislative authority of each municipality and township located in the county or joint district. Each township and municipality must then vote on the question of the formation of the regional authority.

The authority is established when it is determined that:

1. The proposal has been approved by the largest municipality in each county.
2. The proposal has been approved by the legislative authorities in municipalities and townships representing at least 60 percent of the total population of the district.

An agreement between the county commissioners and municipalities and townships is then executed. It must include procedures for the appointment of a board of trustees. The board of trustees for a regional authority must be composed of at least the following persons:

1. President of the board of county commissioners of each county.
2. Chief executive officer of the largest municipality by population from each county.
3. A member representing townships from each county selected by a majority of boards of township trustees within each county.
4. The health commissioner from the health district with the largest territorial jurisdiction from each county.
5. One representative of the public selected by the first four board members.
6. One member representing industrial, commercial or institutional generators of solid wastes within the district to be appointed in the same manner as the public member.
7. One member representing the general interests of citizens, who has no conflict of interest through affiliation with a waste management company or with any entity that is a significant solid waste generator, to be appointed in the same manner as the public member.

The member of the board of trustees representing industrial, commercial or institutional generators and the member representing the general interests of citizens are appointed in the same manner as the public member. Their terms of office are for the same length as the other members as provided in the agreement.

The agreement must be adopted in the same manner as the original proposal to form the authority. Within 30 days after the adoption of the agreement, the new board of trustees must mail a copy of the agreement to EPA.

Upon formation of a regional authority, all the powers vested in or granted to the county commissioners or board of directors of a joint district are vested in the new board of trustees. These duties include:

1. To appoint employees including an executive director and sanitary engineer.
2. To acquire, construct, improve, enlarge and operate solid waste facilities.
3. To issue bonds and notes.

4. To adopt bylaws, maintain an office, pay employee benefits, purchase insurance, sue and be sued, and enter into contracts.
5. To perform all the duties of a solid waste management policy committee.

32.07 RECONFIGURATION OF SOLID WASTE MANAGEMENT DISTRICT BOUNDARIES

Once a district is established, any modification of district boundaries must comply with a series of statutory requirements. These requirements apply to any change in district composition including:

1. The withdrawal of a county from a joint solid waste management district.
2. The establishment of a new county or joint district.
3. The joinder of a county to an existing joint district.
4. The union of two or more joint districts.
5. Any combination of the above.

32.08 WITHDRAWAL OF A COUNTY FROM A JOINT DISTRICT

County commissioners of any county within a joint district that desire to withdraw from the district must proceed according to the following requirements:

1. Adopt a resolution requesting to withdraw and deliver a copy of the resolution to the board of directors of the joint district.
2. The board of directors must deliver written notice of the proposed withdrawal to the other counties comprising the joint district.
3. The county commissioners of the other counties in the joint district must adopt a resolution approving or disapproving the proposed withdrawal and deliver a copy of the resolution to the board of directors within 60 days.
4. If any of the counties adopt a resolution of disapproval, the withdrawal is disapproved. The county commissioners of all the counties in the district must be notified in writing within 30 days by the board of directors.
5. If all of the counties approve the withdrawal, the proposed withdrawal is approved. All affected counties must be notified in writing within 30 days.

If the proposed withdrawal of a county from a joint district is approved, then the policy committee of each district resulting from the proposed change must prepare a

preliminary demonstration of available facility capacity. This preliminary demonstration of capacity must be submitted to EPA no later than 20 months before one of the districts is required to submit an amended solid waste plan or 20 months before the triennial anniversary of an EPA order to implement an EPA prepared plan. A preliminary demonstration of capacity may be accomplished by one of two methods:

1. Submit to EPA a certification and demonstration of availability or access to sufficient facility capacity to provide for disposal of solid wastes generated within the district for 10 years.
2. If a proposed district does not have sufficient capacity or access to capacity for a 10 year period, the policy committee of a proposed district must submit to EPA a statement and financial feasibility study showing how the district will provide for sufficient capacity to dispose of all solid waste generated within the district for 10 years. The statement and financial feasibility study must contain:
 - a. An inventory of all existing disposal, transfer and resource recovery facilities and recycling activities within the proposed district and estimates of remaining capacity at each facility.
 - b. An estimate of solid waste generated within the proposed district for each year of the subsequent 10 year period.
 - c. An identification of additional facilities and capacity that the district intends to provide.
 - d. A schedule for implementation of the measures contained in the statement.
 - e. If appropriate, estimates of capital and operating costs of additional facilities and rates to be charged.

The EPA has 60 days to approve or disapprove a preliminary demonstration of capacity or a statement and financial feasibility study. A demonstration must be approved by EPA if it meets the requirements of the law. A statement and financial feasibility study is only approved if it demonstrates a technically feasible and economically reasonable means to provide for the environmentally sound management of waste for 10 years. Notice of approval or disapproval must be made in writing.

If EPA disapproves a preliminary demonstration of capacity for any of the proposed districts, then the proposed change in district boundaries does not occur. The policy committee of each existing district operating under an approved plan or amended plan must then proceed to adopt and obtain approval of an amended plan. If any of the existing districts is operating under a plan ordered to be implemented by EPA, then EPA must proceed to prepare an amended plan for the district and order implementation of

that plan. Any existing district operating under an EPA ordered plan may still proceed under ORC Section 3734.56(C) to prepare a plan to replace an EPA ordered plan.

If EPA approves the preliminary demonstration of capacity for each of the proposed districts resulting from a change in boundaries, the policy committee of any new district and the policy committee of any remaining joint district must prepare either an initial draft plan or an amended plan. This plan must comply with the provisions of the law relative to the contents of a plan.

Each plan must then be ratified by the communities within the proposed districts. Each plan must also be submitted at the same time, and not later than 20 months after the proposed districts submitted their preliminary demonstrations of capacity. If any of the proposed districts fails to submit its plan or amended plan by the required date, the proposed change in district boundaries does not occur. EPA must then prepare a plan for each of the existing districts and order plan implementation.

If any proposed district resulting from a change in boundaries fails to get its plan approved within 38 months after it submitted its preliminary demonstration of capacity, EPA must determine what action is necessary to ensure that each county involved in a proposed change has or will have access to 10 years capacity. EPA must do one of the following as the agency determines appropriate:

1. Prepare initial or amended plans for the proposed districts and order the plans implemented without modifying the proposed district boundaries. In order for the proposed boundaries to be maintained, EPA must find that the solid waste management needs of each of the counties involved in the proposed change of boundaries can be met.
2. If EPA determines that the solid waste needs of each county could not be met if the original proposed change in district boundaries were to occur, EPA may reconfigure the counties involved in the proposed change into one or more districts, prepare a plan for each resulting district and order the plan implemented.

In either case where EPA prepares and orders a plan to be implemented, the district may not adopt any rules that may otherwise be adopted by a district. If a plan prepared by EPA provides for the establishment of any new district or districts that had not previously been established by county commissioners of the affected counties, EPA must order the county commissioners of the affected counties to adopt resolutions and enter into necessary agreements to implement the EPA prepared plan within the new district or districts.

The withdrawal of a county from a joint district does not become final until January 1 of the year after one of the following actions has occurred:

1. EPA has approved the plan of each newly formed district.

2. EPA has prepared a plan for each district that has failed to approve its plan within 38 months of submitting its preliminary demonstration of capacity and EPA has ordered each affected district to implement an EPA prepared plan.

On January 1 of the year following one of the actions mentioned above, the county commissioners of the county withdrawing from a joint district ceases to be a member of the board of directors of the joint district. The power of the withdrawing board of county commissioners to levy property taxes to support the district ceases with the effective date of the withdrawal. Any taxes previously levied to support district debt, however, must continue until the debt is retired. Upon withdrawal of a county from a joint district, the board of directors must divide district funds, credits and property on an equitable basis consistent with the agreement establishing the district.

32.09 ESTABLISHMENT OF A NEW JOINT DISTRICT

County commissioners of a county seeking to establish a new joint district with one or more other counties must proceed according to the following requirements:

1. Adopt a resolution proposing the establishment of the joint district and deliver a copy to the affected county commissioners.
2. If the county proposing the new joint district has begun proceedings to withdraw from an existing joint district, it can not adopt a resolution proposing a new joint district until withdrawal from the existing joint district has been approved. A copy of the notice declaring the withdrawal was approved must accompany the resolution proposing establishment of a new joint district.
3. County commissioners of the counties comprising the existing joint district have 60 days from receipt of the resolution proposing to establish a new joint district to adopt a resolution approving or disapproving the new joint district and must deliver a copy of the resolution to the county commissioners proposing the new district. Counties comprising the existing joint district include the following:
 - a. Counties that were members of the existing joint district at the time the joinder proceeding was initiated and that have not initiated proceedings to withdraw.
 - b. Any county that was a member of the existing joint district that initiated a withdrawal proceeding that was not approved.
 - c. Any county added to the existing joint district after the plan for the existing joint district was last approved or ordered to be implemented.
4. If any affected county commissioners adopt a resolution of disapproval, then the establishment of the proposed new joint district is disapproved.

5. If any county in a proposed new joint district has separately initiated withdrawal proceedings from an existing joint district and their withdrawal has either not yet been approved or was disapproved, then the county commissioners proposing the withdrawal must notify the commissioners proposing the new joint district that their withdrawal has not been acted upon or that it was disapproved.

If the county commissioners had initiated a withdrawal that was approved, then they must send notice that the withdrawal has been approved along with a resolution approving or disapproving the proposed new joint district.

6. If any of the boards of county commissioners adopt a resolution of disapproval, or if any county had initiated a withdrawal which was disapproved or not yet acted upon, then the county commissioners proposing the new joint district must declare the proposed new joint district disapproved.
7. When it can be determined that the establishment of the proposed new joint district is approved or disapproved, the county commissioners proposing the new joint district must, within 30 days, notify the other county commissioners in writing of their approval or disapproval.

If establishment of the proposed district is approved, then the affected county commissioners must enter into and ratify an agreement forming the new joint district.

The actions which must be taken by a policy committee of a newly formed joint district are essentially the same regardless of whether the new joint district results from the union of two county districts, the union of two or more joint districts or the union of a county to an existing joint district. The policy committee of any joint district established by any of the combinations described above must do the following:

1. Prepare an initial draft or amended plan that complies with all the requirements of the law.
2. Adopt and ratify the plan for the proposed joint district within 18 months after the date for the submission of the initial or draft plan.
3. Submit the plan for the proposed joint district to EPA no earlier than 180 days and no later than 90 days before one of the existing districts is required to submit a plan to EPA for approval.

If the policy committee of a proposed new joint district fails to submit the plan or get the plan ratified by the statutory deadlines, then the proposed change does not occur. When a plan is not submitted or ratified by the statutory deadlines, EPA prepares an amended plan for each of the existing districts and orders implementation of the amended plans.

32.10 UNION OF TWO OR MORE JOINT DISTRICTS

The board of directors of a joint district seeking to unite their district with another joint district must proceed according to the following requirements:

1. Adopt a resolution requesting union of the districts.
2. If the joint district that is requesting the union is affected by a withdrawal proceeding involving one of its counties, the joint district can not adopt a resolution proposing the union of joint districts until the withdrawal has been approved or disapproved.
3. Deliver a copy of the resolution proposing the union to the board of directors of the other joint district.
4. The board of directors of the joint district that receives the resolution requesting the union must, within 30 days, deliver written notice to the board of directors requesting the union as to whether the joint district is affected by a withdrawal proceeding.
5. The board of directors of the joint district that receives the resolution requesting the union must act on a withdrawal request within 60 days after receiving a resolution requesting a union. The board of directors must deliver written notice of the approval or disapproval to the board of directors that requested the union.
6. Within 30 days after receiving notice from the board of directors of the joint district that receives a resolution requesting the union as to whether the district is affected by a withdrawal proceeding, the board of directors requesting the union must deliver a resolution requesting the union to the county commissioners of all the counties forming both existing joint districts.
7. Within 60 days of receiving a resolution requesting a union, the county commissioners of each county comprising each existing joint district must adopt a resolution of approval or disapproval and deliver a copy to the board of directors requesting the union.

The board of directors requesting the union must declare the union to be disapproved and deliver written notice of disapproval to all boards of county commissioners within 30 days if either of the following occur:

1. Any of the counties comprising both joint districts adopts a resolution of disapproval.
2. Any of the joint districts is affected by a withdrawal that has not been approved or disapproved at the time the county commissioners proposing the withdrawal

delivered a resolution approving or disapproving the union to the board of directors.

The law defines "counties forming the existing joint districts" to include the following:

1. Counties that were members of either of the joint districts affected by the proposed union that have not initiated proceedings to withdraw.
2. Any county that was named in the plan as a member of a joint district affected by the proposed union that initiated a withdrawal proceeding that was disapproved.
3. Any county whose joinder to a joint district affected by the proposed union has been approved.

If all the affected county commissioners approve the union and there is no withdrawal proceeding pending that has not been approved or disapproved, then the union of the joint districts is approved. Notice of the approval must be provided to all the affected county commissioners within 30 days.

The county commissioners of the affected counties must enter into an agreement to unite the districts. As previously explained, the policy committee of the new joint district must prepare an initial draft or amended plan, adopt and ratify that plan and submit the plan to EPA within the required deadlines for adoption, ratification and submission of a plan. If the district fails to ratify and submit a plan by the required deadlines, then EPA prepares an amended plan for each of the original joint districts and orders implementation of the amended plans.

The union becomes final when EPA approves the joint district plan. At that point the board of directors of the new joint district includes the county commissioners of all the counties forming the new joint district except for any counties that successfully withdrew from the former joint districts.

32.11 GENERAL POWERS OF DISTRICTS

Solid waste management districts have the following general powers:

1. To acquire, construct, improve, enlarge, replace, maintain, and operate solid waste collection systems within the district.
2. To acquire, construct, improve, enlarge, replace, maintain and operate solid waste facilities either within or outside of the district.
3. To acquire real property by eminent domain or any other means. This power is given to each board of county commissioners in a joint district, not to the board of directors of a joint district.

4. To provide that a county sanitary engineer provide services to either a single or joint district.
5. To employ engineers to assist a county sanitary engineer with solid waste related duties.
6. To employ financial advisors and the services of other professionals to assist in the construction, financing and maintenance of solid waste facilities. Payment for these services may be made from any county general fund or from the solid waste district fund. Such expenditures may be reimbursed to these funds from bond proceeds when an improvement is constructed.
7. To contract with any person or other political subdivision for the operation and maintenance of solid waste facilities that are owned or leased by the county, a district, or a private entity.
8. To contract with any person or political subdivision for furnishing solid waste collection, storage, transfer, disposal, recycling, processing or resource recovery services.
9. To contract with the owner or operator of any solid waste facility or any hauler for disposal or generation fees or to provide other remuneration or services.
10. To enter into agreements with other districts authorizing the joint use of facilities. Such joint use agreements must be consistent with the solid waste management plan of both districts and may be upon such terms and for such lengths of time as the two districts deem appropriate.

In addition to these general powers that apply to both single county and joint districts, the following provisions apply only to joint districts:

1. Any county participating in a joint district may contribute lands, money, personal property or services to the district. The agreement establishing the district must specify such contributions and the rights to such contributions by participating counties. Amendments to the agreement may not divest a county from any right specified in an original agreement without its consent.
2. To appoint and fix the compensation of employees.
3. To accept gifts and bequests.
4. To use the employees of participating counties instead of hiring its own employees and to share in the compensation of these county employees.
5. To take other action necessary to control and manage the district.

32.12 AUTHORITY TO ADOPT AND ENFORCE RULES

Solid waste districts have the authority to adopt certain rules, but only to the extent authorized under an approved solid waste management plan. These rules may pertain to:

1. CONTROL OF SOLID WASTE RECEIPT FROM OUTSIDE THE DISTRICT - Once the solid waste management plan is approved, a district may adopt rules to prohibit or limit the receipt of solid wastes generated outside the district, outside a service area specified in the plan, and at facilities covered by the plan. The following conditions apply to such prohibitions:

a. This prohibition can apply to all public and private facilities in the county with the exception of:

(1) A solid waste facility owned by a generator of wastes when the facility exclusively disposes of waste generated at one or more premises owned by the generator regardless of whether the facility is located at the same location where the waste is generated.

(2) A facility that exclusively disposes of wastes that are generated from the combustion of coal, or the combustion of coal in combination with scrap tires that is not combined with garbage at one or more locations owned by the generator.

These two exemptions generally apply to facilities owned by industries and coal fired power plants for the disposal of their own wastes. They are commonly referred to as "captive sites."

b. This prohibition must be consistent with, and justified by, the projections contained in the solid waste management plan. The plan is required to project, for each year, aggregate quantities of waste considering the following factors:

(1) The amounts and composition of solid wastes that will be generated within the district.

(2) The amounts of solid wastes originating outside the district that will be brought into the district.

(3) The nature of industrial activities within the district.

(4) The effect of newly regulated waste streams, solid waste minimization activities, and recycling activities on waste generation rates.

- c. In addition, the prohibition must be justified in relation to the required identification of additional solid waste facilities and additional capacity needed to dispose of the total quantities of wastes projected to be generated.
- d. EPA has the authority to modify a district rule prohibiting the disposal of waste generated in another county or district if all of the following conditions are met:
 - (1) The district where the waste is generated does not have sufficient capacity to manage its wastes within the next six months;
 - (2) No new disposal facilities will be in operation in that district during this six month period and it is impossible, because of high population density, to site new facilities;
 - (3) The district with inadequate capacity has negotiated in good faith with other districts, including efforts to develop joint facilities, and those efforts have been unsuccessful; and
 - (4) The district generating the wastes has located a facility willing to accept its wastes in the receiving district.

If these conditions are found to exist, EPA may order the local rule to be modified. The rule can only be modified, however, if it is found that the order will be consistent with the state solid waste management plan and that the receipt of out-of-district waste will not limit the district's capacity for in-district wastes to less than eight years. Such an order must be sent to the receiving district by EPA and is appealable to the Environmental Review Appeals Commission (ERAC). The notice must be sent by certified mail.

- 2. **RULES ON MAINTENANCE, PROTECTION AND USE OF FACILITIES** - Rules may be adopted governing the maintenance, protection, and use of solid waste collection, storage, disposal, transfer, recycling, processing and resource recovery facilities in a district. These rules may not establish design standards for facilities and must be consistent with ORC Sections 3734.01-3734.13. The rules must also be consistent with EPA rules promulgated pursuant to these sections.

District rules may not, however, limit the construction, operation, use, repair or maintenance of a facility. The rules also may not limit establishment of rates or charges for the use of the facility, if the facility has been financed by general obligation bonds, revenue bonds, or an OWDA loan. If such financing is finalized prior to the effective date of the plan, the rules can not apply to such facilities until the debt or loan is paid or until the owner abandons the facility.

District rules may, however, prohibit any new facilities from being established in the district until plans and specifications are submitted to and approved by the district as complying with the solid waste management plan of the district. These rules may not apply to "captive sites".

3. INSPECTION OF OUT-OF-STATE WASTE - Rules may also be adopted concerning the development and implementation of a program for the inspection of wastes generated from outside Ohio. Captive sites are exempt from these rules.
4. EXEMPTION FROM COUNTY OR TOWNSHIP ZONING - Rules may also be adopted to exempt the owner or operator of any solid waste facility that is included in a plan from compliance with any county or township zoning amendment that rezoned land where the facility is to be constructed or modified. This authority, however, only applies if the rezoning occurred within two years of the date of filing an application for a permit to install a new facility or modify an existing facility with EPA.

The statute does not specify definitive procedures that must be used in adopting rules. Many feel that some type of public notice and comment is advisable, and it has been suggested that the following options could be used:

1. The procedures specified in ORC Section 343.08, dealing with changing solid waste rates and charges;
2. The procedure in Chapter 119 of the Revised Code dealing with state administrative rules;
3. The plan approval process as specified in Section 3734.55(A)(13) of the Revised Code as detailed elsewhere in this chapter, or
4. The district could develop its own procedure.

32.13 PROVISIONS RELATING TO DESIGNATION OF FACILITIES AND FLOW CONTROL

Ohio law requires a district to identify the solid waste facilities where solid waste generated within or transported into the district will be taken for disposal, transfer, resource recovery or recycling. Identification of facilities carries with it no authority to control the flow of wastes.

A county or joint district also has the authority to designate facilities based on the type of solid waste facility to be designated. The law distinguishes between publicly owned facilities with current public debt, and other publicly owned and privately owned facilities. County commissioners or a board of directors of a county or joint district may

designate solid waste facilities which are publicly owned and which have outstanding debt where waste generated within or transported into the district must be taken.

Under a separate procedure, that requires a series of affirmative actions by the county commissioners or board of directors, a district may also designate publicly owned facilities without debt and privately owned facilities where waste must be delivered. In order to designate publicly owned facilities without debt and privately owned facilities, the plan must clearly authorize facility designations.

32.14 AUTHORIZATION TO DESIGNATE FACILITIES AND DISTRICT OPTIONS

Initial and amended plans of a district must contain a clear statement as to whether the county commissioners or board of directors is authorized to or precluded from establishing facility designations. A policy committee preparing a draft or revised draft plan may include only one of the following options with respect to designation of facilities:

1. Designation of facilities as required under the original law prior to passage of SB 153 (effective 10-29-93).
2. Identification of facilities and a clear statement precluding facility designations.
3. Designation of publicly owned facilities with current debt and identification of privately owned facilities and publicly owned facilities without current debt. If this option is selected, the policy committee must include a clear statement precluding facility designations for privately owned facilities and publicly owned facilities without current debt.

32.15 AUTHORIZATION TO AMEND DISTRICT POLICY ON DESIGNATION

County commissioners or a board of directors of a district may at any time, and without approval from EPA, request a policy committee to prepare and adopt an amendment with respect to the district policy on facility designation. The procedure for the adoption and ratification of such a plan amendment is the same as the procedure for adoption and ratification of a plan except that such an amendment need not be submitted to EPA for approval.

32.16 DESIGNATION OF FACILITIES WITH PUBLIC DEBT

The law preserves the designations made in original district plans of publicly owned facilities with debt incurred under Chapters 133, 343 or 6123 of the Revised Code until such time as the designation is terminated by the county commissioners or board of directors or the debt is retired. County commissioners or a board of directors may, at any time by resolution, designate additional facilities that are publicly owned and which are financed by debt where solid wastes generated within or transported into the district must be taken.

This authorization applies to solid waste disposal, transfer, and resource recovery facilities and recycling activities owned by a municipality, county, solid waste district, township, or township waste disposal district which is financed in whole or in part by debt issued under ORC Chapters 133, 343 or 6123.

32.17 DESIGNATION PROCEDURE

The law establishes the circumstances and procedures by which county commissioners or a board of directors may exercise designation authority under ORC Section 343.014. County commissioners may designate solid waste facilities, where solid wastes generated within or transported into the district must be taken, regardless of whether those facilities are publicly or privately owned, where there is a clear statement that the commissioners are authorized to establish facility designations in:

1. The initial plan.
2. The initial or amended plan of a district involved in a change in district boundaries.
3. An amendment to a plan.

County commissioners wishing to designate facilities must initiate the proceedings by adopting a resolution of intent to designate. After adopting the resolution of intent to designate, the commissioners must do all of the following:

1. Publish notice of the proposed adoption of the resolution and of the date, time and location of a public hearing. The notice must also include a description of the type and scope of services subject to the proposed designation.
2. Mail notice of the proposed adoption of the resolution and the date, time, and location of the public hearing including a description of the types and scope of the services subject to the proposed designation to:
 - a. The 50 largest industrial, commercial and institutional solid waste generators in the district and to their local trade associations. Identification and notice to these generators is on a "good faith efforts" basis and failure to notify a particular generator does not invalidate the proceedings.
 - b. The legislative authority of each municipality, county and township located in the district.
 - c. The Director of EPA.
3. Hold a public hearing on the proposed designation.

4. After holding the hearing and considering the comments, the county commissioners or directors must determine whether to proceed with the proposed designation.

If it decides to proceed, the second official step is for the commissioners to adopt a resolution of preliminary designation. This may include criteria or procedures for selecting the facilities that are to be ultimately designated.

After completing the procedures for selecting facilities to be designated, which were included in the resolution of preliminary designation and compiling a list of the facilities to be designated, the third official step is for the commissioners or board of directors to adopt a resolution declaring its intent to establish designation. This resolution must contain the list of the facilities and activities that are proposed to be designated.

After adopting the third resolution the commissioners or directors must:

1. Establish a reasonable period for receiving comments from the public.
2. Publish notice of the adoption of the third resolution.
3. Mail notice of the adoption of the resolution, the dates when the comment period begins and ends, and the list of facilities and activities contained in the third resolution to:
 - a. The 50 largest industrial, commercial and institutional solid waste generators within the district and their local trade associations. Identification and notice to these generators is on a "good faith efforts" basis and failure to provide notice to a particular generator does not invalidate the proceedings.
 - b. The legislative authority of each municipality, county and township located in the district.
 - c. The Director of EPA.

After considering the comments submitted by the public during the comment period, the commissioners or directors may revise the list of designated facilities and activities. The fourth and final step is for the commissioners or directors to adopt a resolution of final designation. Designations made in a final designation resolution take effect 60 days after the adoption of the final resolution. The list of designated facilities may be modified by repeating the designation procedure or by issuing a waiver.

32.18 ENFORCEMENT OF DESIGNATION

If the county commissioners or directors have established facility designations or if EPA has established facility designations in an EPA ordered plan, the law prohibits any

person or political subdivision from delivering or causing the delivery of any solid wastes generated within the district to any solid waste facility other than the facility designated in the solid waste plan.

At the request of any person or political subdivision, a district may grant a waiver. The waiver may authorize all or any portion of the waste generated within the district to be delivered to a facility that is not designated in the plan. The commissioners or directors must act on a waiver request within 90 days after receiving the request. If a waiver is granted, the district must notify EPA and indicate to whom the waiver was granted.

Waivers must be conditioned upon a finding that the delivery of solid waste to a facility other than one designated in the plan is not inconsistent with the projections contained in the district's plan and will not adversely affect the implementation and financing of the plan.

The law provides that if a district, prior to October 29, 1993, has entered into a contract or agreement to designate a facility, then that designation must remain in effect and is enforceable in accordance with the terms of the contract. Such designation agreements entered into prior to October 29, 1993 remain in effect and are enforceable according to the terms of the contract even if the district chooses not to designate facilities under the designation procedure established by SB 153.

At the request of the commissioners or directors, the county prosecutor is authorized to prosecute to termination or bring a civil action against any person who delivers solid wastes to a facility not designated in the plan or to whom a waiver has not been granted. The penalty for such a violation is up to \$5,000 with each day considered a separate violation.

32.19 ISSUANCE OF DEBT FOR SOLID WASTE MANAGEMENT

Counties and solid waste districts have the authority to issue debt for the following general purposes:

1. To issue bonds or notes for the cost of preparing general and detailed plans for the construction of solid waste facilities (ORC 343.01(E)). Bonds or notes for these purposes must mature in not more than 10 years.
2. To issue bonds for the cost of acquiring, constructing, enlarging, modifying, or repairing any solid waste disposal facility and for the expense of a sanitary engineer, and other incidental expenses. The bonds may also be issued for land and equipment (ORC 343.07(A)). Bonds for these purposes must mature in not more than 40 years.

County commissioners may issue bonds for a county district and the board of directors may issue the bonds for a joint district. The board of directors of a joint district is defined as both a subdivision and a taxing authority under the Uniform Bond Law.

Bonds or notes issued for an improvement, including any scrap tire collection, storage, monocell, monofill or recovery facility, are exempt from the county statutory debt limit (ORC 133.07).

Authority is granted to issue general obligation and revenue bonds as follows:

1. A county may issue revenue bonds to be paid solely from rates and charges for services established under ORC Section 343.14. In this event the county must agree to fix rates at a level sufficient to retire the debt after adequate operational funds are set aside. Joint districts that establish rates and charges may also pay the county that issues the debt for debt retirement.
2. A county or joint district may issue general obligation bonds to pay all or any part of an improvement in a county or joint district. The general obligation bonds, however, may be payable primarily from the net revenues of a facility which may be pledged for the issue.

32.20 DESIGNATION OF FISCAL OFFICER AND TREASURER

In the case of a single county district the county auditor serves as the fiscal officer of the district and the county treasurer is the treasurer of the district.

In the case of a joint district the law provides two options for designating who will serve as fiscal officer and treasurer of the district as follows:

1. The board of directors of the joint district may designate the county auditor and treasurer of one of the participating counties. The auditor and treasurer then perform the duties for the district that they normally perform for the county, except as otherwise provided by resolution of the board of directors or as specified in the bylaws. In addition, the district may reimburse the county for the services of these officials.
2. The board of directors of the joint district may appoint any other person to serve as fiscal officer and treasurer of the district. This option specifically allows the district to designate any employee of the district to serve as either the fiscal officer, treasurer, or both.

This option was requested by some solid waste districts that wanted interest on the funds of the district to accrue to the district, and not to the general fund of the county of the designated treasurer.

32.21 LEGAL COUNSEL TO DISTRICTS

The county prosecutor serves as legal advisor to a single county district unless the county commissioners employ other legal counsel, on an annual basis, to serve as legal advisor.

When the prosecutor is serving as legal advisor, the county commissioners may also retain other counsel to represent the commissioners on any particular issue. In both cases, the appointment of outside counsel is not subject to approval by the common pleas court and there are no limitations on the amount of funds that can be spent on outside counsel.

Even when the commissioners have employed outside counsel for the district, the prosecutor must still give written opinions or instructions on matters connected with the commissioners' official duties just as if the prosecutor was legal advisor to the district.

In the case of a joint district, the board of directors may designate the prosecutor of one of the counties as legal advisor. The joint district may pay the county an amount agreed to between the district and the commissioners of the county whose prosecutor has been designated as the legal counsel of the joint district. When a prosecutor is designated as legal counsel to the district, the board of directors may also appoint other legal counsel to advise the board on any specific issue instead of the prosecutor.

A joint district may, instead of designating the prosecutor from one of the counties, employ other legal counsel on an annual basis. Even if this is done, however, the board of directors may still require written opinions and instructions from the prosecutor of any of the counties comprising the district in matters connected with the board's official duties. These same provisions apply to regional solid waste management authorities.

32.22 PROSECUTION OF VIOLATIONS

County prosecutors are responsible to bring civil actions where a violation of certain rules of a district has occurred or may occur and for certain other violations (ORC 343.03). The prosecutor is required to bring actions upon the request of the county commissioners or board of directors of a joint district for:

1. Violation of rules governing the maintenance, protection and use of solid waste facilities adopted pursuant to Division G(2) of ORC Section 343.01.
2. Violation of rules relating to an out-of-state waste inspection program adopted pursuant to Division G(3) of this same section.
3. Violations of the provisions of Division I of ORC Section 343.01 which includes:
 - a. Tampering with or damaging solid waste disposal facilities and equipment.
 - b. Failure to comply with any rules adopted by the district under ORC Section 343.01(G)(1)-(4).
 - c. Failure to allow for the inspection of facilities by the sanitary engineer or the inspection of out-of-state waste by the county commissioners, board of directors or an authorized representative.

- d. Failure to deliver wastes to facilities designated in an approved solid waste management plan.

The common pleas court may grant a temporary restraining order or a preliminary or permanent injunction if the court finds there is a violation, or a person is threatening to violate any of these provisions. The court may also fine violators not more than \$5,000 for such violations and each day of the violation is a separate offense. Any fines collected are credited to the special fund established for the solid waste management district.

32.23 ESTABLISHMENT OF SOLID WASTE RATES AND CHARGES

Solid waste districts may levy rates and charges to pay for certain solid waste management services, for the administration of collecting the charges, and for the same purposes that disposal fee revenue may be used by a district. Two basic types of rates and charges are authorized:

1. Rates and charges paid by every person, municipality, township or other political subdivision that owns premises to which solid waste collection, storage, transfer, disposal, recycling, processing or resource recovery service is provided by the district. These charges, however, can only be made against lots or parcels that are improved or are in the process of being improved with at least one permanent, portable, or temporary building. Such charges resemble special assessments. These rates and charges will be explained in more detail in the next section.
2. Rates and charges for the use of solid waste facilities owned or operated by a district, by any person, municipality, township or other political subdivision. In this regard, the district may contract with any public authority or private entity for solid waste collection, storage, transfer, disposal, recycling, processing or resource recovery services, and may lease any district owned facility. In such situations rates or charges for the use of the facilities may be set by the district or may be fixed under contracts.

In all instances when districts establish rates or charges directly or by contract it must be done at a meeting held in accordance with the Sunshine Law.

In addition, before the rates are established or the contract is approved, the district must hold at least three public hearings on the rates or contract. Notice of the hearings must be published prior to the first hearing once a week for three consecutive weeks in a newspaper of general circulation in the county or counties affected. This notice must include a listing of the proposed rates and the dates, time and place of the hearings.

32.24 COLLECTION OF RATES AND CHARGES

The rates and charges specified in Section 32.23 (1) may be collected by three methods:

1. The district may bill the owner for the rates and charges by separate bill.
2. The rates and charges may be included with the bills for other public utility services such as county, municipal or other political subdivision water, sewer or similar bills.
3. The rates and charges may be certified to the county auditor who will place the charge on the real property tax bills of the owners of lots or parcels.

If the charge is to be collected as a utility bill and is not paid, the unpaid charge can then be certified to the county auditor for collection with real property taxes, and constitutes a lien on the property.

These charges can be made for the following solid waste related services, but only if provided by the district:

1. Solid waste collection.
2. Solid waste storage, transfer, disposal, recycling and processing.
3. Resource recovery services.

In addition, prior to the approval of the solid waste management plan, these charges can be used for the following purposes:

1. Preparation of the solid waste plan, monitoring implementation of the plan, and conducting the periodic review and amendment of the plan by the policy committee.
2. Providing funds to boards of health, if solid waste facilities are located in the district, for administration and enforcement of the state solid waste law.

After the approval of the district plan or for districts ordered to implement a state ordered plan, the charges may then be used for any of the eligible purposes for which disposal fees may be used. In all cases, however, these charges may only be imposed in districts that provide solid waste services other than solid waste management planning.

In addition to these eligible purposes, the rates or charges may be used to pay for the cost of collecting the charge where the charge is collected using the utility billing mechanism or the property tax collection method.

32.25 LIABILITY AND IMMUNITY OF DISTRICTS

The Political Subdivision Tort Liability Law (also known as the Sovereign Immunity Law) defines a political subdivision to include a county or joint solid waste management district or a regional authority established under ORC Sections 343.01 or 343.012.

The Sovereign Immunity Law applies to county commissioners, any board selected under an alternative form of county government, the legislative authority of a charter county, county employees, and solid waste district employees. The Sovereign Immunity Law also applies to members serving on a solid waste management policy committee of a county or joint district.

The Sovereign Immunity Law classifies the functions of political subdivisions as governmental and proprietary functions. The law specifically defines collection and disposal of solid wastes, the operation of solid waste disposal facilities and the collection and management of household hazardous waste by a political subdivision as governmental functions (ORC 2744.01(C)(2)(k)). The solid waste law defines facilities for incineration, composting, landfilling and transferring of solid waste as solid waste disposal facilities (ORC 3734.01(N)). Consequently, collection and disposal services, the operation of solid waste facilities and the collection and management of household hazardous waste by districts and counties are governmental functions and these functions enjoy the limited immunity from liability provided by law.

32.26 ETHICS AND CONFLICT OF INTEREST PROVISIONS

The Ohio Ethics Law prohibits any public official or employee from using the authority or influence of his office or employment to secure anything of value that will have a substantial and improper influence upon him with respect to his duties (ORC 102.03(D)). The law applies to any county commissioner or the board of directors of a district and to any member of a board of trustees of a regional solid waste management authority. The law also applies to any person serving as a member of a solid waste management policy committee.

The Offenses Against Justice and Public Administration Law generally prohibits any public official from entering into a public contract in which the public official, a member of the public officials family or a business associate has a direct or indirect financial interest (ORC 2921.42(A)(1)&(4)). This law also applies to all elected and appointed officials of a district including any person serving as a member of the solid waste management policy committee (ORC 3734.54(C)).

County commissioners, municipal officials, township trustees, and health commissioners representing their respective political subdivision or public agencies may also serve important roles in the solid waste management process. For example, some may serve, by statute or agreement, on the board of directors of a joint district, on the

board of trustees of a regional authority, or on a solid waste management policy committee.

The governing boards of solid waste districts have broad authority to contract with public and private entities for the provision of solid waste services. This includes contracts with the political subdivisions they otherwise represent. The law also authorizes solid waste districts to provide financial assistance to any county, municipality, township or health district for certain purposes related to the use and inspection of solid waste facilities and the enforcement and implementation of the solid waste law.

The Ohio Ethics Commission has held that an officer or a board member of a public body has a fiduciary interest in contracts of that entity, and that a fiduciary interest alone, absent a direct financial interest, may violate criminal prohibitions applicable to public officials or their business associates that have an interest in a public contract.

In response to concerns over potential violations of the Ohio Ethics Law and the Offenses Against Justice and Public Administration Law for members, officers and employees of a joint district and a regional authority, the law has been amended for these public officials (ORC 343.01(K)). As of April 16, 1993 when HB 723 became effective, the law did not address potential conflicts of interest for the members, officers and employees of a single county district that has not exercised the option to become a regional authority.

The law provides that a member of a board of directors of a joint district or a member of a board of trustees of a regional authority or an officer or employee of either is not considered to be directly or indirectly interested in any of the following:

1. A contract entered into under ORC Chapter 343 or ORC Sections 307.15 or 3734.52 to 3734.572 between the district and any county, municipality, township or health district where a member, officer or employee of the district is also an officer or employee.
2. A contract entered into under ORC Chapter 343 or ORC Sections 307.15 or 3734.52 to 3734.572 between a district and a county or regional planning commission within the district where a member of a district is also a member, officer or employee of the planning commission.
3. An expenditure of money by a district for the benefit of any county, municipality, township health district, county or regional planning commission where a member of a district is also a member, officer or employee of the other contracting authority.
4. An expenditure of money for the benefit of the district by any county, municipality, township, health district or county or regional planning commission where a

member of the district is also a member, officer or employee of the other contracting authority.

The law provides that a solid waste district, county, municipality, township, health district or planning commission is not a business associate of a person that is concurrently serving as a member, officer or employee of the district and an officer or employee of the other contracting authority for purposes of the Ohio Ethics Law (ORC 102.03) and the Offenses Against Justice and Public Administration Law (ORC 2921.42).

Any person who is concurrently serving as a member, officer or employee of a district and as an officer or employee of a county, municipality, township, health district or planning commission may participate in deliberations and the approval or disapproval of any contract or expenditure of funds for the benefit of the district or any of the aforementioned contracting authorities within the district.

The law provides that a member of a board of directors of a joint district or board of trustees of a regional authority or officer or employee of such district is not disqualified from holding any other public office or position of employment by reason of having served as a member, officer or employee of a solid waste district.

The law separately provides that, while policy committee members are subject to the Ohio Ethics Law and the Offenses Against Justice and Public Administration Law, serving as a member of a policy committee does not constitute holding a public office or position of employment and does not constitute grounds for removal from public office or employment.

32.27 SCHEDULE FOR SUBMISSION OF SOLID WASTE MANAGEMENT PLANS

All solid waste management districts must prepare, adopt, and submit to EPA for approval a solid waste management plan for the district. The schedule is dependent upon the prior submittal and approval of the solid waste management plan. Policy committees shall begin preparation of the plan not later than 15 months before the required date of submission. Plans with less than a 15 year planning period must submit every three years from the anniversary date of the approval of the last Plan Update. Plans with 15 year or more planning periods must submit every five years from the anniversary of the last Plan Update.

32.28 EXTENSION OF TIME LIMITS

The solid waste management policy committee of the district may obtain an extension of up to 6 months for submission of the draft plan by submitting a request to EPA showing:

1. That the extension will not adversely affect the ability of the district to provide for the environmentally sound management of solid waste generated within the district during the 6 month period.

2. A specific schedule of action that will lead to the preparation, adoption, and submission of the plan by the date proposed in the request for extension.

32.29 ESTABLISHMENT OF SOLID WASTE MANAGEMENT POLICY COMMITTEE

All districts are required to appoint a solid waste management policy committee unless a regional solid waste management authority is established. If a regional authority is established the board of trustees of the authority performs these duties. It is the responsibility of this committee to prepare the solid waste management plan of the district.

In the case of a single county district, the committee is composed of:

1. The president of the board of county commissioners.
2. The chief executive officer of the largest municipality by population.
3. A township representative chosen by a majority of boards of township trustees from the county.
4. The health commissioner of the health district having the largest territory in the county.
5. A public member appointed by the first four members for a two year term.
6. One member representing industrial, commercial or institutional solid waste generators in the district to be appointed in the same manner as the public member.
7. One member representing the general interests of citizens who must have no conflict of interest through affiliation with a waste management company or with any entity that is a significant generator of solid wastes. This member is appointed in the same manner as the public member.

All members except the township, public, generator and citizen members may be represented by a designee.

For a joint district, the members are as specified above from each county comprising the joint district. For joint districts, the public, generator and citizen members are selected by the other four members of the committee from each county. In addition, if a joint district is composed of an even number of counties, there is one additional public member appointed by all other members.

Any county or district in which an existing body has been involved in planning for solid waste may request a waiver from this structure and request the utilization of the existing body.

Any action taken by a policy committee after January 27, 1994 that does not include the additional generator and citizen members is void. Any action taken by a policy committee on or after October 29, 1993 involving enforcement of facility designations, designations of solid waste facilities or levying of disposal or generation fees that does not include the additional generator and citizen members is also void.

32.30 APPOINTMENT OF TECHNICAL ADVISORY COUNCIL

The solid waste management policy committee may appoint a technical advisory council to assist in the preparation of the solid waste management plan, amendments to the plan, and in the annual review of implementation. The state solid waste plan encourages all districts to establish such a council.

Membership on this council must include at least one person representing the solid waste hauling and disposal industry, and may consist of any number of other members the policy committee deems appropriate including representatives of:

1. Health districts that are not represented on the policy committee.
2. Other political subdivisions.
3. Environmental advocacy organizations.
4. The private recycling industry.
5. Individual waste generators.

32.31 CONTENT OF SOLID WASTE MANAGEMENT PLANS

The solid waste management plan of each district must be prepared according to the format prescribed by EPA. The general requirements for the plan include:

1. Provision for compliance with the objectives of the state solid waste management plan.
2. Provision for compliance with the EPA rules relating to the objectives and restrictions of the state plan, and a schedule for meeting objectives for:
 - a. Waste reduction
 - b. Recycling
 - c. Reuse
 - d. Minimization

In addition, the plan must comply with rules adopted by EPA restricting types of wastes that may be disposed of by landfilling for which alternative methods are available. The state plan initially places restrictions on yard wastes, lead acid batteries, waste tires, and used oil. The restriction on used oil, however, is contingent upon the enactment of new state legislation on used oil.

The law provides that, in certain instances, each solid waste district must be given credit toward meeting the 25 percent waste reduction goal because of changes to the state plan or amendments of the law. Specifically, if such changes establish a restriction on the landfilling, burning or thermal processing of solid waste, or prescribes an alternative management method for any type of solid waste after April 16, 1993, the credit must be given.

3. It must provide for facilities or access to facilities of sufficient capacity to meet the needs of the district for at least 10 years.

A solid waste management plan contains certain mandatory elements and other optional elements. Following are the elements that must be included in all plans:

1. An inventory of sources, composition, and quantities of wastes generated in the district during the current year.
2. An inventory of existing disposal facilities, resource recovery facilities, and recycling activities. The inventory must estimate remaining disposal capacity, and include captive sites. The plan must provide for the "maximum feasible utilization" of solid waste facilities that were in operation in the district or for which permits were issued on or before the effective date of the plan that comply with EPA requirements. In addition, the plan must incorporate all recycling activities in operation on the effective date of the plan.
3. A map showing the location of the facilities or activities.
4. An inventory of existing solid waste collection systems, routes, and transfer facilities. This inventory must identify entities engaging in solid waste collection.
5. An inventory of open dumping sites, and facilities for the disposal of fly ash and bottom ash, foundry sand, and slag. It must identify the location of each site on a map. This inventory must include captive sites.
6. A 10 year population projection.
7. A projection of the aggregate amount and composition of solid wastes that will be generated within the district during each year of the forecast period, which must be at least 10 years. This projection must also include all captive sites.

8. The amounts of solid waste generated outside the district that will be imported into the district for disposal or resource recovery.
9. A description of the nature of industrial activities within the district.
10. The effect that newly regulated waste streams, solid waste minimization activities and recycling and reuse activities will have on waste generation rates.
11. An identification of additional facilities and additional capacity needed to dispose of the aggregate amount of wastes projected to be generated.
12. A strategy for identification of sites for additional facilities to meet additional capacity needs.
13. An analysis and comparison of capital and operating costs of disposal, resource recovery, and of recycling and reuse activities necessary to meet district needs. These must be projected in five and 10 year increments.
14. A projection of transfer facilities that will be needed in conjunction with existing and projected facilities.
15. A schedule for plan implementation which must include:
 - a. An identification of disposal, transfer, resource recovery and recycling facilities included in the plan where solid wastes generated in the district or imported from outside the district will be taken.

An initial or amended plan prepared by EPA may designate facilities or activities owned by a municipality, county, solid waste district, township or township waste disposal district for which debt is outstanding where solid wastes generated or transported into the district will be taken.

An initial or amended plan prepared by EPA may not, however, designate privately owned solid waste facilities or publicly owned solid waste facilities for which no debt has been issued.

Any district with a locally ratified and approved plan that includes a clear statement authorizing facility designations may establish facility designations for privately owned solid waste facilities and publicly owned solid waste facilities without debt under ORC Section 343.014.

- b. A schedule for closure of existing facilities.
- c. A schedule for the establishment of new facilities or expansion of existing facilities. This schedule must include the approximate dates by which permit applications will be filed with EPA.

- d. A schedule for the implementation of recycling, reuse, and reduction programs needed to meet the objectives of the state plan and the waste reduction, recycling, reuse and minimization objectives contained in EPA rules.
 - e. A description of methods to be used to finance implementation of the plan which must show the availability of financial resources.
16. A program to provide information or technical assistance to solid waste generators regarding source reduction. This program must describe the types of assistance to be provided and specific categories of generators to be serviced.
17. A schedule of fees, if any, to be levied on wastes disposed of in the district and wastes disposed of within the state. The statute provides for differing levels of fees for waste generated within the district; for waste generated from another district, but within Ohio; and, for waste generated outside of Ohio.

The schedule of fees must also contain provisions for the allocation of these monies to insure that adequate funds will be available to prepare, monitor implementation and to conduct the periodic review and amendment of the plan by the policy committee. The plan must also contain provisions concerning the allocation of funds for the other activities to be funded by the fees including:

- a. Preparation of the solid waste plan, monitoring implementation of the plan, and periodic review and amendment of the plan by the policy committee.
- b. Implementation of an approved plan or an amended plan including the development and implementation of recycling and reduction programs.
- c. Funds for health departments located within the district that are certified to administer solid waste programs for enforcement of the state solid waste law.
- d. Funds for defraying county road maintenance costs and costs for maintaining other public facilities, and for providing emergency and other public services that result from the location of a facility.
- e. Funds for health department well testing activities if facilities contained in the district's approved plan are located in the district.
- f. Funds to develop and implement a program for the inspection of solid waste generated outside Ohio.
- g. Funds to assist boards of health or law enforcement agencies in enforcing anti-littering laws and ordinances.

- h. Funds to assist boards of health that are certified to administer the solid waste law in training and certification programs required by the state.
- i. Funds to assist municipalities and townships to defray the added costs of maintaining roads and public facilities and to provide emergency and other public services resulting from the operation of composting, energy or resource recovery, incineration or recycling facilities.
- j. Payment of expenses that are agreed to, awarded or ordered to be paid under ORC Section 3734.35 to a "Community affected by new public landfill or modification may request compensation agreement".

Except for the inventories of existing disposal facilities and the projections of solid waste that will be generated within the district during each year of the planning period, the solid waste plan does not apply to the construction, operation, use, repair or maintenance of captive facilities.

The scrap tire law permits policy committees preparing an initial solid waste management plan to choose whether the plan will include the management of scrap tires. If the policy committee chooses to include the management of scrap tires within the plan, the county commissioners or directors must execute the duties and may exercise any rights granted to them for the purpose of managing scrap tires and scrap tire facilities.

Beginning with the triennial revision of solid waste plans, however, all amended plans must include the management of scrap tires and scrap tire facilities.

In addition to these required elements, the plan may allow for the adoption of rules under ORC Section 343.01(G) after the plan is approved by EPA:

- 1. To prohibit or limit wastes generated outside the district or outside a prescribed service area from being imported into the district.
- 2. To require the submission of plans and specifications for the construction, enlargement, or modification of any solid waste facility to ensure compliance with the plan.

The plan may also authorize rules governing the maintenance, protection, and use of solid waste collection, storage, disposal, transfer, recycling and resource recovery facilities.

- 3. To govern the development and implementation of a program for the inspection of solid wastes generated outside Ohio.

4. To exempt the owner or operator of any solid waste facility that is included in the plan from compliance with any county or township zoning amendment that rezoned land where the facility is to be constructed or modified. This authority, however, only applies if the rezoning occurred within two years of the date of filing an application for a permit to install a new facility or to modify an existing facility with EPA.

It is important to note that before the board of directors has the authority to adopt rules governing these areas, they must be authorized in the plan.

32.32 PROCEDURE FOR APPROVAL OF PLAN

The act provides for a detailed process to obtain approval of a solid waste management plan. When a draft plan is completed, a copy must be sent to EPA. Upon receipt by EPA, the following procedures must be completed within 18 months:

1. Ohio EPA has 45 days from receipt to provide the solid waste management policy committee with a non-binding advisory opinion regarding the plan and recommended changes.
2. The committee may then revise the plan.
3. The committee then publishes, in at least one newspaper of general circulation, a public notice that:
 - a. Describes the draft plan.
 - b. Specifies where it is available for review.
 - c. Establishes a 30 day comment period.
4. The committee must provide written notice of the draft plan to adjacent single and joint county districts. It must also make the plan available to adjacent districts, county commissioners, and all municipalities and townships within the district, and to the public.

The committee must also send written notice of the plan to EPA and the 50 largest industrial, commercial and institutional solid waste generators in the district and their local trade associations. Identification of these generators must be made on a "good faith efforts" basis, but failure to notify any particular generator or local trade association does not invalidate the proceedings.

All written notices must include the date, time and location of the public hearing; the dates when the comment period begins and ends; a description of the plan that includes the proposed amount of any generation and disposal fees; and, an

indication as to whether the plan authorizes or precludes the commissioners or directors from establishing facility designations under ORC Section 343.014.

5. Within 15 days after the comment period ends, the committee must hold a public hearing on the draft plan. At least 15 days before the hearing the committee must publish a notice in at least one newspaper of general circulation within the district of the time and place of the hearing and the place where the draft plan is available for review.
6. After the public hearing the committee may modify the plan and must vote to adopt or reject the plan.
7. If the plan is adopted, a copy must be delivered to each board of county commissioners and to each municipality and township having territory within the district.
8. Within 90 days of receiving a copy of the plan, each jurisdiction must by ordinance or resolution approve or disapprove the plan and deliver a copy to the committee. In the event no action is taken by a jurisdiction, or if the ordinance or resolution is not received within 90 days, the plan is presumed disapproved by the jurisdiction not responding.
9. The committee declares the plan ratified when:
 - a. In a single county district or a joint district containing two or three counties:
 - (1) It is approved by each board of county commissioners within the district.
 - (2) It is approved by the largest municipality in each county and in the district and by other municipalities and townships representing 60 percent of the total population of the district.
 - b. In a joint district containing four or more counties:
 - (1) It is approved by a majority of the boards of county commissioners within the district.
 - (2) It is approved by the largest municipality located in a majority of the counties in the district, the largest municipality in the district, and by other municipalities and townships representing 60 percent of the total district population.
10. Upon ratification, the plan is submitted to EPA that must approve or disapprove the plan within 90 days. If the EPA disapproves the plan, the order must include a list of deficiencies and direct that the plan be revised and resubmitted within 90

days. The committee may request an additional 60 days for resubmission of the revised plan.

11. The committee must revise and adopt the plan within 60 days after EPA's order disapproving the plan.
12. Upon adoption of the revised plan, the committee must send a copy of the new plan to the entities previously specified.
13. The jurisdictions then have 21 days to approve or disapprove the plan. In the event no action is taken by a jurisdiction, the plan is presumed disapproved by the jurisdiction not responding.
14. If ratified, the plan is submitted to EPA which has 30 days to approve or disapprove the plan.
15. If approved, the plan must be implemented as specified in the implementation schedule.
16. The disapproval of the plan by EPA, since it is done by order of the Director, is appealable to the Environmental Review Appeals Commission (ERAC).
17. Annually thereafter, the committee has the responsibility to review implementation of the plan, and to report its findings and recommendations to the county commissioners or board of directors of a joint district and to EPA.

32.33 GENERAL FACILITIES PLAN

Solid waste districts may also prepare a general plan for solid waste transfer, disposal, recycling or resource recovery facilities prepared by or under the direction of the district's sanitary engineer. This general facilities plan is different from the solid waste management plan of the district, but must be consistent with it. In addition, the approval process specified above does not apply to the general facilities plan.

A general facilities plan must be approved by the district board of directors before the district can acquire, construct, enlarge, equip, maintain and operate facilities.

The district may also enter into agreements they deem necessary for the acquisition, construction, improvement, enlargement, equipment, maintenance, or operation of any facilities included in the general facilities plan. Such agreements may include provisions on the ownership and control of facilities by any political subdivision or private entity. The agreement may also provide for the operation, leasing or subleasing of facilities, and the final sale of facilities.

32.34 AUTHORITY OF OHIO EPA TO PREPARE DISTRICT PLAN

In the event any district has not obtained EPA approval of its plan within 18 months after the date the district is required to submit it, or within 24 months if a district has been granted a 6 month extension, EPA must prepare a solid waste management plan for the district and issue an order to the district to implement the plan. A plan prepared by EPA and imposed on a district may not include the following provisions that are required in a locally prepared plan:

1. Designation of how disposal fees will be utilized, unless a publicly owned and publicly financed facility is involved.
2. Permissive elements of a locally prepared plan which authorize the adoption of rules by the board of directors as described in Section 32.12.
3. Authorization for the county commissioners or directors to establish facility designations under ORC Section 343.014.

After the order to implement a state mandated plan, the district must then determine, within 30 days, whether it wants to abolish the solid waste management policy committee or to continue the committee. The purpose of maintaining the committee is to monitor the implementation of the EPA mandated plan or to levy disposal or generation fees under ORC Section 3734.574.

If the district abolishes the policy committee and subsequently decides to levy a disposal or generation fee, it must first re-establish the policy committee before levying the fees. The policy committee must exist for as long as the fees are levied.

If EPA finds that the county commissioners or directors have materially failed to implement the district's locally approved or EPA prepared and ordered plan in compliance with the implementation schedule contained in the plan, EPA must issue an enforcement order directing the district to comply with the implementation schedule within a specified, reasonable time.

If EPA finds that county commissioners or directors of a district have initiated proceedings to establish facility designations when the district's plan precludes facility designations, EPA must issue an enforcement order directing the district to either abandon the proceedings or suspend them until after the district has adopted and obtained ratification of a plan amendment clearly authorizing the district to establish facility designations.

Likewise, if EPA finds that county commissioners or directors of a district have initiated proceedings to terminate facility designations that were previously authorized by the district under ORC Section 343.014 or that were continued by the district under ORC Section 343.015, EPA must issue an enforcement order directing the district to either

abandon the proceedings or adopt and obtain ratification of an amendment precluding the district from establishing facility designations.

32.35 AMENDMENTS OF DISTRICT SOLID WASTE MANAGEMENT PLANS

The law requires periodic review and amendment of the plan in conformance with the following standards:

1. If the initial plan covers a period of 10 years, it must be amended every three years from the date of approval.
2. If the initial plan covers a period of 15 or more years, it must be amended every 5 years from the date of approval.
3. Plans prepared and ordered implemented by EPA must be amended every three years from the date the district is ordered to implement the plan.

A district operating under a plan mandated by EPA may establish a solid waste management policy committee and prepare its own plan to take the place of the EPA mandated plan. Such a plan, however, may only be submitted within a 180 day period preceding the triennial anniversary of the effective date of the EPA mandated plan.

4. When a district determines that circumstances have materially changed since the adoption of the initial plan, and prior to the required periodic amendment date, the committee may amend the initial plan.

The procedure for the amendment of the plan is the same as for the local adoption of the initial plan. If, however, the only amendment to the plan is a change in the fees to be collected or in the allocation of these fees among the eligible uses, no EPA approval is required, except when amendment is required by statute.

The county commissioners or directors of the district may also, at any time and without the approval of EPA, request the policy committee to prepare and adopt an amendment either authorizing the district to establish facility designations or precluding the district from establishing facility designations.

In addition, for required plan amendments, the solid waste management policy committee must begin the preparation of the amendment at least 15 months before the date required for submission of the amended plan to EPA.

Finally, if the amended plan is not approved by EPA, the agency must impose a state-prepared, amended plan on the district.

32.36 STATE AND LOCAL DISPOSAL FEES

HB 592 established a statewide disposal fee to be collected on each ton of solid waste disposed of in the state. Districts were also authorized to establish disposal fees.

After the enactment of HB 592, districts were authorized to levy fees by contract and pursuant to a joint use agreement. Districts were also authorized to levy a planning assessment fee, a 50 cent per ton export fee, and a generation fee.

Finally, all municipalities and townships within which solid waste disposal facilities are located are given authority to establish other disposal charges for the sole use of the municipality or township.

It should be stressed that state and district disposal charges do not affect the rates or tipping fees that public or private landfill operators may charge for the actual disposal of solid waste. These state and local disposal and generation fees are in addition to other fees and taxes and must be added to amounts landfill owners and haulers include in contracts for disposal or collection services. State, district and municipal and township disposal fees do not apply to disposal at captive sites.

The state fees through June 30, 2008 are \$3.50 per ton.

32.37 UTILIZATION OF STATE DISPOSAL FEES

State law provides that 50 percent of the first dollar collected from the state disposal fees will be credited to the Hazardous Waste Facility Management Fund (ORC 3734.18). The other 50 percent will go to the Hazardous Waste Cleanup Fund (ORC 3434.28). State disposal fees credited to these two funds may be used for the following purposes:

1. To pay the long term operational costs or matching share for actions taken under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA).
2. To pay for measures for proper cleanup of sites where PCB's and equipment containing PCB's have been stored or disposed.
3. To pay for surveys or investigations of solid waste facilities or other locations where it is deemed that significant quantities of hazardous waste were disposed in solid waste facilities, and for related enforcement actions.
4. To pay to acquire, clean up or provide financial assistance in cleaning up any hazardous or solid waste facility that contains significant quantities of hazardous waste that is a threat to the public health, safety, or the environment.

The second \$1.00 per ton state fee is to be credited to the Solid Waste Fund to be used solely for EPA administration of programs for solid and infectious wastes and demolition debris.

The third \$1.50 per ton state fee is to be credited to the environmental protection fund. The revenues in this fund can be used for administering, enforcing or conducting activities for Ohio EPA environmental programs.

32.38 ESTABLISHMENT OF DISTRICT DISPOSAL FEES

Districts may levy disposal fees at all landfills located within the district. These fees can be established prior to the approval of a solid waste management plan by resolution of the solid waste management policy committee. This fee schedule, or a revised fee schedule, must also be included as a part of the plan when it is prepared.

The law requires all district disposal fees to be within the following ranges:

1. For waste generated within the district the disposal fee range is \$1.00 to \$2.00. This is the "tier-one fee."
2. For waste generated outside the district, but within the state, the disposal fee range is \$2.00 to \$4.00 per ton. This is a "tier-two fee."
3. For waste generated outside the state, the disposal fee can be no more than the "in-district" or tier-one fee of \$1.00 to \$2.00.

It is important to note that the law does not require the maintenance of any ratio between in-district (tier-one) and out-of-district but in-state waste (tier-two). The out-of-state waste fee can be equal to or less than the in-district fee, but in no case can the fee for out-of-state waste exceed the in-district rate.

32.39 PROCEDURE FOR RATIFYING AND COLLECTING DISTRICT DISPOSAL FEES

In establishing district disposal fees, the policy committee and the plan must specify whether the fees are being levied on the basis of tons or cubic yards. While the state-levied fees are levied on the basis of tons, if a district levies the fees on the basis of cubic yards, the committee may provide that the state fees will be levied on the basis of cubic yards also. In this situation, the statute provides that a conversion factor of three cubic yards per ton will apply to all wastes except for baled wastes where the factor is one cubic yard per ton.

The policy committee may levy these fees prior to the approval of the plan if the following procedure is followed:

1. Adopt a resolution establishing the proposed amount of the fees and send a copy to each board of county commissioners and to each municipality and township in the district.
2. Schedule a public hearing on the proposed fee schedule.
3. Publish the resolution and a notice of the time and place of the public hearing in local newspapers at least 30 days before the hearing.
4. Send written notice of the adoption of the resolution, the amount of the proposed fees and the date, time and location of the public hearing to:
 - a. The Ohio EPA Director,
 - b. The 50 largest industrial, commercial or institutional solid waste generators in the district, and to,
 - c. Their local trade associations.

Identification and notice to the generators must be made on a "good faith effort" basis but failure to provide notice does not invalidate the proceedings.

5. After the public hearing, the committee may revise the schedule and adopts a resolution establishing a revised fee schedule. Even if no changes are made from the original fee schedule, it appears that a new resolution must be adopted by the committee.
6. Deliver the final fee schedule (revised or not) to each board of county commissioners, municipality, and township within the district.
7. These jurisdictions have 60 days to approve or disapprove the revised fee schedule by ordinance or resolution. Upon action by these jurisdictions a copy must be delivered to the committee. In the event no action is taken by these jurisdictions or if the ordinance or resolution is not received within 60 days, the fee schedule is presumed approved by the jurisdiction not responding.
8. The committee declares the revised fee schedule ratified when:
 - a. In a single county district or a joint district containing two or three counties:
 - (1) It is approved by each board of county commissioners within the district.
 - (2) It is approved by the largest municipality in each county and in the district and by other municipalities and townships representing 60 percent of the total population of the district.

- b. In a joint district containing four or more counties:
- (1) It is approved by a majority of the boards of county commissioners within the district.
 - (2) It is approved by the largest municipality located in a majority of the counties in the district, the largest municipality in the district, and by other municipalities and townships representing 60 percent of the total population of the district.

Within fourteen days after the fees are ratified the district must notify facility operators of the fees by certified mail. Collection of the fees commences on the first day of the second month after notification is sent to the facility operator, except in the case of a change in fees that occurs as a result of a county withdrawing from a joint district.

Each of the districts resulting from a withdrawal that was approved by EPA 45 days or more before the start of the calendar year must, within 14 days, notify by certified mail the facility operators of any change in fees to take effect January 1 of the following year.

If the withdrawal is approved by EPA less than 45 days before the start of the calendar year, then EPA must notify facility operators of any change in fees by certified mail and the change in fees commences on the first day of the second month after notification is sent to the facility operators.

The fees are collected by the owner or operator of all disposal facilities, as a trustee for the district, and are remitted to the district and placed in a special fund. In addition to fee revenue, this fund will receive any fines collected in civil actions commenced under ORC Section 343.99 for violations of the law. Following are some additional restrictions on the fees:

1. The fees are not collected by owners or operators of captive sites.
2. The tier-two fees applicable to wastes generated outside the district but within the state do not apply if an agreement exists for the joint use of facilities between districts.
3. The disposal fees do not apply to sewage sludge generated by a waste water treatment plant holding a NPDES permit and which is disposed by incineration, land application, composting or other non-landfill facility.
4. In the case where wastes, including scrap tires, are burned at an incinerator or energy recovery facility, the fee is levied on the fly ash or bottom ash when the residue is landfilled. The fees also do not apply to compost facilities unless the compost is landfilled after composting.

5. The disposal fees do not apply when wastes are delivered to a transfer facility, but only upon the ultimate disposal when transported away from the transfer facility.

32.40 GENERATION FEE

A policy committee of any county or joint district may levy a generation fee on solid waste generated within the district and disposed of within Ohio. A policy committee may include a generation fee within a solid waste plan when that plan is being prepared for ratification and approved under the following circumstances:

1. A change in district boundaries.
2. Periodic submission of an amended plan (i.e. triennial plan amendment).
3. County commissioners or directors request an amended plan involving a change in fees.
4. County commissioners or directors request a plan amendment prior to the mandatory triennial plan amendment.
5. Amendment of a plan pending before EPA for approval.

A policy committee may adopt and obtain ratification of a generation fee and include that generation fee within the reauthorization of the plan without obtaining a separate ratification of the proposed generation fee.

A policy committee may propose to levy a generation fee and may propose to amend the district disposal fee schedule with one resolution. Finally, a district may not levy a generation fee and a 50 cent per ton export fee at the same time. Collection of an export fee must cease when collection of a generation fee commences.

The procedures for adopting, amending and repealing a generation fee, for ratifying a resolution authorizing a generation fee and for notifying owners and operators of solid waste facilities required to collect a generation fee are essentially the same as the procedures for levying a district disposal fee with one exception. With respect to the ratification process, if a policy committee proposes to levy a generation fee in excess of \$5.00 per ton, then the fee must be approved by a combination of municipalities and townships representing at least 75 percent of the population of the district, instead of at least 60 percent as otherwise required by law.

A generation fee is collected by the owner or operator of a transfer facility or disposal facility. It must also be collected by the operator of an incinerator or energy recovery facility if the solid waste is delivered to such a facility without first having been delivered to a transfer facility.

The owner or operator of a transfer facility or disposal facility acts as a trustee for the district in collecting a generation fee and must forward the fee to the district under the rules established by EPA.

Monies received by a district levying a generation fee must be credited to the special fund of the district and may be used for any of the ten purposes authorized by law. Prior to the approval of any plan amendment, generation fees levied by a policy committee are to be expended in a manner prescribed by resolution of the policy committee.

If the owner or operator of a transfer facility or disposal facility does not receive notice of the levying of a generation fee but receives solid wastes generated in the district, then the owner or operator must provide written notice to the county commissioners or directors of that fact within 30 days after receiving the solid wastes. Within 30 days of receiving such a notice, the county commissioners or directors must provide written notice to the owner or operator indicating whether the district is levying a generation fee and, if so, the amount of the fee.

Following are some additional restrictions on the levying of a generation fee:

1. A generation fee is not collected by the owners or operators of captive sites.
2. A generation fee does not apply to sewage sludge generated by a waste water treatment plant holding a NPDES permit and which is disposed of by incineration, land application, composting or other non-landfill facility.
3. A generation fee does not apply to yard waste delivered to a composting facility for processing or to a transfer facility.
4. A generation fee does not apply to materials separated from a mixed waste stream for recycling by the generator.

32.41 CONTRACTING AUTHORITY OF DISTRICTS FOR ADDITIONAL FEES

County commissioners or directors may contract with the owner or operator of any solid waste facility or solid waste collection company or hauler to establish and collect generation and disposal fees on behalf of the district. The contract may provide other remuneration or services to or on behalf of the district.

The authority of the commissioners or directors to enter into contracts for disposal fees and other remuneration or services is in addition to their authority to levy fees and enter into contracts under other provisions of the law. The authority of the commissioners or directors to exercise this authority to collect additional fees or to provide other services is not contingent in any way on the district having exercised any of its other powers.

32.42 FUNDING FOR DISTRICTS WITH EPA PREPARED PLANS

The law precludes an EPA prepared and ordered plan from providing for the levying of fees, the law authorizes a district that is levying fees pursuant to a resolution and that is or will be operating under an EPA prepared plan to continue to levy the fees until one of the following occurs:

1. The policy committee adopts and the district ratifies a resolution abolishing the fees.
2. Ohio EPA issues an order requiring the district to cease levying the fees as described later in this chapter.
3. The district obtains approval of its own plan. In this case, the collection of the fees commence as otherwise provided by law.

A district that is levying disposal or generation fees under an approved initial or amended plan may continue to do so if a change in district boundaries causes EPA to issue an order requiring the district to implement an EPA prepared plan.

The law permits a district that is levying fees and that is or will be operating under an EPA prepared plan to levy a generation fee by adopting and obtaining ratification of a resolution establishing the fee. A district may adopt and ratify one resolution amending its disposal fees and levying a generation fee. The requirements and procedures governing the adoption, notice, hearing, ratification, approval and collection of such disposal and generation fees are the same as the requirements and procedures for disposal fees.

The law allows the commissioners or directors to abolish the policy committee if they determine that the policy committee is not necessary to monitor implementation of an EPA prepared plan. If the commissioners or directors determine that it is necessary to consider levying disposal or generation fees, they must re-establish and reconvene the policy committee for the purpose of levying the fees. If the fees are levied, the policy committee must exist for as long as the fees are levied.

The law requires the commissioners or directors that are levying fees under an EPA prepared plan to submit to EPA 30 days before the beginning of each calendar quarter a proposed budget for the expenditure of district funds. The budget must be submitted on a form prescribed by EPA. Ohio EPA may disapprove a proposed budget in whole or in part for any of the following reasons:

1. The proposed budget includes expenditures for any unauthorized purpose.
2. Ohio EPA estimates that there will be insufficient monies in the district's special fund to meet the proposed expenditures.

3. The district failed to submit the proposed budget to EPA by the specified deadline.
4. The district failed to submit the latest report of quarterly expenditures within 30 days after the end of each calendar quarter.
5. The district is materially failing to comply with the implementation schedule contained in the district's EPA prepared plan.
6. There are repeated inconsistencies between expenditures projected in the proposed budgets and actual expenditures.

If EPA does not disapprove a proposed quarterly budget prior to the first day of the calendar quarter to which it pertains, then it is presumed that the budget has been approved.

Commissioners or directors may make necessary expenditures to meet unforeseen circumstances that occur during a calendar quarter and that were not included in the quarterly budget, but they must notify EPA of the nature, amount and need for the expenditures. The nature, amount and necessity for the expenditures must also be included in the quarterly expenditure report.

If EPA finds that a district that is levying fees under an EPA prepared plan is in material and continued non-compliance with the implementation schedule contained in the plan or if there have been repeated disapprovals of the district's quarterly budgets, then the agency may issue an order terminating the collection of all fees.

32.43 REIMBURSEMENT TO EPA FOR PLAN PREPARATION COSTS

Any district that is operating under an EPA prepared plan and that is levying generation or disposal fees must reimburse EPA for expenses incurred in preparing a plan or amended plan. Reimbursement must be made for the following purposes:

1. Postage.
2. Copying and duplication.
3. Notices published in newspapers.
4. A court reporter to record testimony at public hearings and to transcribe the record of those hearings.
5. Facility rental for holding public information sessions or hearings.

6. Conducting a survey of industrial solid waste generators and other primary data collection activities when data is not available from the district. This includes the cost of conducting the survey or data collection by contract.
7. Fuel, meals and lodging for EPA staff when travel to the district is necessary.
8. Necessary long distance phone calls.

Upon ordering a district to implement a plan, EPA must send the commissioners or directors an itemized demand for the expenses. The district has 60 days from receipt to make payment. Monies received by EPA are credited to the State Solid Waste Fund for EPA administration of the law.

32.44 UTILIZATION OF DISTRICT DISPOSAL FEES AND GENERATION FEES

Prior to the approval of the district solid waste management plan, monies arising from the fees are expended for such purposes and as specified by resolution of the solid waste management policy committee. It must also be consistent with preparation of the plan, health department enforcement, enforcement of anti-littering laws and enforcement, training and certification of health department employees, or financial assistance to municipalities and townships to defray costs of providing emergency and other public services resulting from the location of solid waste facilities. The plan must specify the purposes for which the fees will be used.

32.45 PAYMENT OF FEES AND REPORTS TO STATE

As has previously been noted, owners or operators of solid waste disposal facilities collect the fees as a trustee for the district. Monthly returns must be filed with the district. These returns must be filed not later than 30 days after the end of the month, and must be notarized. The form of the return is prescribed by EPA. Owners and operators may request a 30 day extension for the filing of returns and remitting of fees. If fees are not remitted within 60 days a penalty of 50 percent is imposed.

Solid waste districts are required to report to EPA on a quarterly basis on the amount of fees collected and on fee expenditures on forms prescribed by EPA. The quarterly reports are due as follows and must be notarized:

REPORTING MONTHS	DUE DATE
January, February, March	May 1
April, May, June	August 1
July, August, September	November 1
October, November, December	February 1

Any district that is levying a disposal fee, a disposal fee under a joint use agreement, a fifty cent per ton export fee or a generation fee is required to submit a written report of

the revenues received from the applicable fees within 30 days after the end of each calendar quarter.

If a district is operating under an EPA prepared plan and is levying a disposal or a generation fee, then the district's revenue report must be accompanied by an expenditure report for the preceding quarter.

In addition to the quarterly reports, each District is required to submit an annual report to EPA by June 1 for the preceding calendar year. The report must contain:

1. Disposal fees levied by the district.
2. Annual revenues received from the fees.
3. All district planning account balances.
4. The amount and use of revenues spent.
5. A certification statement that the information in the report is true and accurate.

These district reports must be compiled by EPA and submitted to the legislative leadership by April 1 of each year.

32.46 FIFTY CENT PER TON EXPORT FEE IN DISTRICTS WITH NO FACILITIES

In districts that have no solid waste disposal facilities, the solid waste management policy committee may levy an export fee of not more than 50 cents per ton on solid waste generated in the district that is disposed in any other district.

This 50 cent export fee is collected by the receiving district and returned to the generating district. It may be used for the following purposes:

1. Preparing, adopting, submitting, and implementing either an initial or an amended plan.
2. Paying for the costs of boards of health for inspection of transfer facilities in the district.
3. Eligible costs incurred before this 50 cent export fee was levied.

In order to levy the export fee, the policy committee must adopt a resolution establishing the proposed fee. This resolution must contain a budget showing by major expenditure categories how the money will be used. The following provisions apply to this fee:

1. Approval of the export fee must follow the normal approval and ratification process as detailed in Section 32.39 of this chapter.

2. After the export fee is ratified, the district must notify, by certified mail, solid waste disposal facility operators in other districts that the fee is being levied. Only those so notified must collect the export fee.
3. The district that levies the 50 cent export fee must notify all districts where facilities are located that they have ratified the fee.
4. The owner of a facility so notified must collect the export fee from waste generated by the district and remit it to the generating district. Collection of the export fee must commence no sooner than 15 days after notification.
5. The facility operator can retain one percent of the money as an administrative expense and must notify the district where the facility is located that such an amount is being retained.

Finally, it needs to be stressed that this export fee ceases and can not be collected if any solid waste disposal facility commences operation in the district that has previously levied the export fee or if a district that is levying the export fee subsequently adopts a generation fee. Collection of the 50 cent per ton export fee ceases on the date that collection of the generation fee begins.

32.47 RETURN OF FEES PURSUANT TO A JOINT USE AGREEMENT

Districts that have no disposal facilities may receive fee revenue from a receiving district under certain circumstances. If a district that has no facilities enters into a joint use agreement (ORC 343.02) or proposes to enter into such an agreement, certain fees can be returned to the generating district by the receiving district pursuant to ORC Section 3734.571.

The return of the fees is entirely up to the receiving district. The amount to be returned to the generating district is one-half of the tier two fee being collected by the receiving district. In the case of the receiving district, it would essentially retain the equivalent of a tier one fee from the out-of-district waste generated by the other district.

Such fees that are returned to the generating district can only be used for the following two purposes:

1. To prepare, monitor implementation, and to conduct the periodic review and amendment of the plan by the policy committee.
2. To implement an approved or an amended plan including the development and implementation of recycling and reduction programs.

Joint use agreements between districts must also include the following elements:

1. Specify responsibility for monitoring the amount of solid waste disposed of in the receiving district that was generated in the district without facilities.
2. The levy and collection of tier two fees.
3. A schedule for the remission of the fees to the generating district.
4. Interest to be paid to the generating district if the receiving district fails to remit the fees pursuant to the schedule.
5. A periodic review of the monies collected and provisions of the joint use agreement to determine their adequacy.

32.48 MUNICIPAL AND TOWNSHIP DISPOSAL FEE

In addition to the disposal fees levied by the state and fees which districts are authorized to levy, municipalities and townships are also given the authority to levy a "host" fee. This fee can not exceed 25¢ per ton if a facility is located within the township or municipality. The following standards apply to these "host" fees:

1. They may be deposited into the general fund of the township or municipality.
2. The fees are levied to defray added costs of maintaining roads and other public facilities, providing emergency and other public services, and for compensation for lost property tax revenue that result from reductions in real property tax valuations.
3. The fee may not exceed 25 cents per ton regardless of the origin of the waste.
4. Copies of an ordinance or resolution levying the fees must be certified to EPA, the solid waste district, and to solid waste disposal facilities.

The municipality or township must notify facility operators of the enactment of such fees within five days after the passage of the municipal ordinance or township resolution by certified mail. Collection of the fee commences on the first day of the second month after this notification is sent to facility operators.

32.49 SCRAP TIRE REGULATIONS

Scrap tire laws and regulations have undergone extensive changes since this Chapter was originally written. Regulations have been developed for scrap tire collection facilities and scrap tire storage facilities. The rules prohibit the owner or operator of a scrap tire collection facility from arranging the transportation or delivery to or receipt of scrap tires by any facilities or premises other than the following:

1. Scrap tire recovery facility

2. Scrap tire monocell or monofill facility
3. Scrap tire storage facility
4. Solid waste incineration or energy recovery facility
5. A facility that will beneficially use the scrap tires collected at the facility
6. A facility in another state that is authorized to receive scrap tires, is operating in compliance with their state laws and will beneficially use the scrap tires

Scrap tire storage facility regulations establish standards governing the location, design, construction, operation and closure of the scrap tire facility. The regulations specify the criteria for owners and operators to apply for permits or registration certificates. The criteria include the number or quantity in weight or volume of scrap tires stored or to be stored. Rules also limit the land area of a scrap tire storage facility. Rules also require the submission of surety bond, letter of credit or other acceptable financial assurance for the proper removal or disposal of scrap tires.

Regulations also include the following:

1. Annual fee for scrap tire recovery facility, mono-fill or mono-cell license.
2. Special provision for the cleanup funding for the Kirby Tire Site in Wyandot County.
3. Two \$0.50 fees for a total of \$1.00 per tire sale. Both fees expire on June 30, 2011. The first \$0.50 fee is to fund administering and enforcing rules, terms and conditions, orders etc. and to make grants to promote tire research regarding alternative methods of recycling scrap tires and loans to promote the recycling or recovery of energy from scrap tires. The second \$0.50 fee is to expend not more than three million dollars in 2002 and 2003 to conduct removal actions and make grants to boards of health. In subsequent fiscal years expend not more than \$4.5 million dollars to conduct removal actions and make grants to boards of health.
4. If during a fiscal year more than seven million dollars are credited to the scrap tire management fund the director of budget and management shall transfer one half of the excess funds to the scrap tire grant fund. The remaining excess shall be spent by the Director on removal actions.
5. Registration of transporters.
6. Notification requirements for beneficial users.
7. Priorities for enforcement and removal actions.

32.50 HAZARDOUS AND INFECTIOUS WASTE REGULATIONS

In addition to solid waste, ORC Chapter 3734 provides for the regulation of hazardous and infectious waste. From a programmatic standpoint, Ohio's hazardous waste laws are enforced by the Division of Hazardous Waste Management within OEPA. In addition to ORC Chapter 3734, the Division of Hazardous Waste Management derives its authority from Subtitle C of the Resource, Conservation and Recovery Act of 1976, the Hazardous Solid Waste Amendments to RCRA of 1984 and Chapters 3745-50 through 59 and 3745-65 through 69 of the Ohio Administrative Code (OAC). These laws and rules collectively provide authority to regulate facilities that generate, transport, treat, store, and dispose of hazardous waste.

Regulation of infectious wastes is the responsibility of the Division of Solid and Infectious Waste Management. Authority to regulate the generation, treatment and transportation of infectious wastes may be found in ORC Sections 3734.021 – 3734.029 and OAC 3745-27.

32.51 CONSTRUCTION AND DEMOLITION DEBRIS REGULATIONS

Regulation of construction and demolition debris is the responsibility of the Division of Solid and Infectious Waste Management. Authority to regulate construction and demolition debris landfills was first provided with the enactment of HB 366, effective 7-24-90. This law created ORC Chapter 3714 and authorized the adoption of regulations under OAC 3745-400. The law defines construction and demolition debris differently than solid waste and the requirements for construction and demolition debris landfills are different than the regulatory requirements for solid waste landfills.

32.52 ACKNOWLEDGEMENT

The County Commissioners Association of Ohio expresses its gratitude to the *Organization of Solid Waste Districts of Ohio* (OSWDO) who prepared this Chapter of the Handbook. OSWDO is a CCAO Affiliate and their website is located at <http://www.oswdo.org>.

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