

History of the Fees

Counties, waste authorities and municipalities have levied administrative and/or licensing fees for a number of years. These fees have helped provide funding for administrative program costs, related staff and waste and recycling programs. The licensing programs have additionally facilitated record-keeping and compliance efforts. These licensing programs have been especially helpful in communities that still have private, individual subscription collection systems, rather than municipal or contracted collection.

About three dozen counties charged administrative fees and a comparable number also had licensing programs for haulers doing business within their borders. Administrative fees ranged from \$.25 to \$7.00 per ton. License fees were generally modest, though the details of each county's program varied considerably. Some charge flat fees, others charge by the truck and others have base fees and per truck charges.

Legal Challenges to County Fees

The Pennsylvania Waste Industries Association (PWIA) and the Pennsylvania Independent Waste Haulers Association (PIWHA) challenged these fees in a number of Pennsylvania counties.

- **Lycoming County** - In 2004, PIWHA contested administrative fees collected by the Lycoming County Landfill for the Snyder County Solid Waste Authority and four north central counties, Union, Columbia, Northumberland, and Montour. Lycoming County Judge Dudley Anderson concluded that, "the Defendant Counties may impose the administrative fee only if expressly authorized to do so by the Act" in February 2005. Since he perceived no explicit authorization in any of the acts, the fees were declared illegal. The case was appealed but the original ruling was upheld by Commonwealth Court in an October 14, 2005 decision. Being a solid waste authority that is authorized to collect fees by the Municipal Authorities Act, Snyder County SWA appealed the decision to the State Supreme Court. The Supreme Court has not yet decided if it will hear the case.
- **Lehigh County** - PWIA and PIWHA jointly filed suit against Lehigh County, challenging both licensing and administrative fees. In May 2005, Lehigh County Court of Common Pleas Judge John LaValle found that both Lehigh County's Administrative Fee and Waste Hauler Licensing Scheme to be "a valid exercise of Lehigh County's legislative authority." But an appeal by PWIA and PIWHA was upheld in December, ruling that the administrative fee and licensing program were both illegal. The decision concluded that fees and licensing do not have any specific legal authorization in Act 101, Act 97 or Act 90, the three state acts that spell out solid waste and recycling related regulations, planning and funding. The county initially appealed the ruling but, fearing that the waste industry might ask for repayment of past fees, Lehigh dropped their appeal earlier this summer.

Many counties impose such administrative fees to help fund recycling, special programs, local grant matches, or staffing of recycling and waste management offices. A list of fees and projected income to counties shows that the funds generated for counties appear to be in excess of \$6 million annually.

In both of these cases, the counties contended that Section 303 of Act 101 grants to counties "the power and duty to implement its approved plan". That section allows implementation of the plan "as it relates to the processing and disposal of municipal waste". But the Lycoming County judge contended that "recycling is not included in the definition of either 'processing' or 'disposal'" and the subsequent appeal appears to have further supported this contention.

Licensing Confusion

While the Lehigh County decision stated that the Commonwealth's statewide licensing program is the only one allowed to license large trucks, it appears that licensing of other vehicles may be legal in other situations.

- **Lebanon County** - A case was also filed in Federal Court contesting, among other things, the licensing program of the Greater Lebanon Refuse Authority. In this case, the court found that the authority's program was legal. Some have speculated that vehicles under the weight limit (17,000 GVW) regulated by Act 90, the Waste Transportation Safety Act, may be licensed locally since they are not licensed under the state's program. Since these smaller vehicles and businesses can be a source of local problems with dumping and improper handling of waste, this may be of some value to counties and municipalities.

Meanwhile, the Department of Environmental Protection (DEP) hopes to streamline their statewide licensing program to allow easier access to the data. DEP now makes the state-wide list available to local governments. This would at least allow municipalities and counties to better monitor activities within their borders.

Every Situation is Unique

It is important to remember, however, that every situation is different. Some counties are still collecting administrative fees and some communities still license collection vehicles. The two issues remain clouded in uncertainty and nuances of recent rulings may change as time passes. Counties and municipalities should proceed carefully and your solicitor should carefully review every aspect of contracts, ordinances, regulations and all related documents connected with the process. This fact sheet is only a general guide to provide background for administrators contemplating alterations to their existing program in response to these recent developments.

For More Information

If you wish to discuss this or related issues, please contact the Professional Recyclers of Pennsylvania (PROP), P.O. Box 25, Bellwood, PA 16617. Call us toll free (800-769-PROP) or e-mail us (jfrederick@proprecycles.org). More information and the actual decisions are available on our website (www.proprecycles.org).