AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO THE DELAWARE SOLID WASTE AUTHORITY AND DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL CONCERNING RESIDENTIAL CURBSIDE RECYCLING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 6450, Title 7 of the Delaware Code, by inserting after the phrase “program through use of recycling centers” as it appears in the fourth sentence, the following phrase “and curbside recycling.”

Section 2 Amend § 6452, Title 7 of the Delaware Code, by deleting the word “and” at the end of subparagraph (9) and by inserting after subparagraph (10) a semi-colon in lieu of the period and by adding new subsections as follows:

“(11) The development of a statewide curbside recycling program;

(12) The development, with the cooperation and assistance of the Department, of recycling centers for organic yard wastes at Authority, Department and State owned or controlled lands to supplement public and private yard waste recycling efforts;

(13) To participate, with the Department, in the administration of the Delaware Recycling Fund created under the provisions of Section 6457 hereof; and

(14) To develop and administer, in conjunction with the Department, a program to enforce the provisions of this Subchapter.

Section 3. Amend § 6454, Title 7 of the Delaware Code, by striking the entire section and by replacing in lieu thereof the following:

“§ 6454. Recycling Centers.
After incorporating the residential statewide curbside recycling program into the statewide solid waste management plan, the Authority with the cooperation and assistance of the Department shall establish recycling centers on lands owned or controlled by the Authority, Department and the State throughout the State for the purpose of receiving and processing organic yard waste. The recycling centers for organic yard waste shall be at locations convenient to the public which supplement and not replace public and private organic yard waste recycling facilities. The Authority shall be entitled to impose a tipping fee or other service charge to cover the capital and operating costs of recycling centers which handle organic yard waste.

The Authority shall establish and operate a recycling center to process a single stream of source separated recyclable materials comprised of paper materials, aluminum materials, steel materials and plastics. Additional materials may be accepted at the single stream-recycling center subject to the approval of the Authority. The Authority shall receive the source separated recyclable materials at locations designated by the Authority. The Authority shall not impose any tipping fee or other service charge for accepting or processing the source separated recyclable materials. Municipal and private collectors shall not be required to use the Authority’s recycling center. The revenues derived from the sale of source separated recyclable materials shall be used to offset the Authority’s costs of operating the single stream source separated recycling center and conducting the statewide residential curbside recycling program.”

Section 4. Amend § 6455, Title 7 of the Delaware Code, by striking the entire section and by replacing in lieu thereof the following:
“§ 6455. Public Education and Promotion of Recycling, Composting and other Waste
Reduction Programs. The Authority, in cooperation and consultation with the
Department, shall initiate and conduct a public education program to disseminate
information on the operation of the residential curbside recycling and composting
programs, as well as continuing education on the purposes and value of source separated
recycling and resources recovery. Such program may be conducted in conjunction with
similar efforts of private industry, municipalities and public interest groups. The program
may include the use of public advertising. The Recycling Public Advisory Council shall
be entitled to provide advice and recommendations regarding the program.

Section 5. Amend § 6457, Title 7 of the Delaware Code, by striking the entire section and
replacing in lieu thereof the following:

“§ 6457. Funding.

(a) Municipal Assistance Fund. There is hereby established a Municipal Assistance
Fund to assist municipalities which provide direct non-contracted collection services
for residential source separated recyclables in meeting start up costs to satisfy the
requirements of this Subchapter. The Municipal Assistance Fund shall be
administered by the Department and monies from the Fund shall be paid based on
approved grant requests. The Department shall be entitled to charge to the Fund an
administrative fee of 5% of grants made to cover the cost of managing the Fund. The
Department shall be entitled to disburse grant monies for documented start up costs
which involve additional capital costs for equipment and facilities directly related to
the collection or processing of residential source separated recyclable materials. The
Department shall be entitled to adopt guidelines and procedures for administering
The Municipal Assistance Fund. The Recycling Public Advisory Council shall be entitled to provide advice and recommendations regarding grant requests. There is hereby appropriated the sum of Five Million Dollars ($5,000,000.00). Any monies not disbursed from the Municipal Assessment Fund by June 30, 2008 shall revert to the General Fund.

(b) Delaware Recycling Fund.

(1) There is hereby established a Delaware Recycling Fund in the Division of Revenue of the Department of Finance for the exclusive purpose of funding the specific designated activities conducted under the residential curbside collection recycling program established pursuant to this Subchapter. Monies in the Delaware Recycling Fund may be expended only:

(i) To pay the Authority’s capital and operating costs to receive, transfer, process and market source separated single stream recyclables at the Authority’s recycling center established pursuant to Section 6454 (b) hereof so that the Authority can conduct the recycling activities without imposing a tipping fee or other service charge;

(ii) To pay the cost of establishing and conducting an outreach and public education program to promote curbside recycling and composting;

(iii) To pay the cost of establishing and conducting an effective enforcement program to assure compliance with the provisions of this Subchapter; and;

(iv) To pay the cost of studying and evaluating the status and potential for recycling the commercial component of municipal solid waste, and other
improvements to the residential curbside recycling program, including
the funding of initiatives undertaken by municipalities to enhance the
recovery rates of recyclable materials.

(2) The Division of Revenue, upon certification by the Authority and the
Department, shall to the extent that funds are available make payment to the
Authority and/or the Department for those requests for funding authorized
hereunder. The Authority and Department, in consultation with the Recycling
Public Advisory Council, shall adopt guidelines and procedures for reviewing
requests for funding, and the Recycling Public Advisory Council shall provide
advice to the Department and the Authority regarding all funding requests.

(3) The funding for the Delaware Recycling Fund shall be derived from an
assessment of $3.00 per ton for every ton of solid waste, excluding recyclable
materials actually recycled, collected by collectors subject to (i) the permit
requirements of the Department pursuant to Section 6001(c)(6) and Section
6025 of this Title; (ii) subject to the licensing requirements of the Authority
adopted pursuant to Section 6404 (6) of this Title.

(4) The Authority and the Department shall submit to the Division of Revenue the
names and addresses of the collectors subject to the provisions of Subparagraph
(3) above. The assessment shall become effective on October 1, 2005 and the
Division of Revenue shall collect the assessment on a quarterly basis utilizing
forms and procedures deemed appropriate by the Division of Revenue. Payment
of assessments shall be due within 30 days of the end of the quarter, and any late
payment shall bear interest at the rate of 1.5% per month. The Division of
Revenue shall provide a quarterly report to the Authority and the Department setting forth the amounts collected from each private collector and any delinquencies. The Authority and the Department shall cooperate and assist the Division of Revenue in maintaining an accurate list of active collectors subject to the assessment. The Authority shall be entitled to seek collection of any assessments due through civil action or may seek to impose on the collector the sanctions specified for violation of a license condition as set forth in Section 6417 of this Title.

Section 6. Amend Subchapter II, Chapter 64, Title 7 of the Delaware Code by adding new sections as follows:

“§ 6461. Residential Curbside Recycling.

(a) Establishment. The Authority shall establish and implement a statewide residential source separation and collection program for recyclable materials in accordance with this section.

(b) Minimum Program Contents. The source-separation and collection program shall include, along with such other elements deemed necessary by the Authority, the following minimum elements:

(1) Regulations, promulgated by the Department and the Authority, requiring at a minimum the following:

(i) Persons to separate at least paper materials (including boxes and cardboard), aluminum materials, steel materials and plastics deemed capable of being recycled from other municipal waste generated at their homes, apartments and other residential establishments and to store such materials until collection. Nothing in the regulations shall be deemed to impair the ownership of separated
materials by the person who generated them unless and until such materials are placed at curbside or similar location for collection by a municipality or other collector.

(ii) Persons to separate organic yard waste from other municipal waste generated at their homes, apartments and other residential establishments until collection except to the extent those persons have otherwise provided for the recycling of organic yard waste. The regulations shall allow an owner, landlord or agent of an owner or landlord of multifamily rental housing properties with four or more units to comply with its responsibilities under this section by establishing a collection system for recyclable materials at each property. The collection system shall include suitable containers for collecting and sorting materials, easily accessible locations for the containers and written instructions to the occupants concerning the use and availability of the collection system. Owners, landlords and agents of owners or landlords who comply with the provisions of this Subchapter II shall not be liable for the noncompliance of occupants of their buildings.

(iii) Persons who do not have municipal collection service or who do not self-haul their municipal solid waste to contract for or make other arrangements for the collection of their source separated recyclables.

(iv) Persons who self haul to deliver their source separated recyclables to designated Authority facilities or to make other arrangements for the recycling of their source separated recyclables.

(v) Public and private collectors to provide or arrange for providing for the collection of source separated recyclables from homes, apartments and other
residential establishments. The public and private collectors shall be entitled to collect additional recyclable materials in single or multiple streams, provided however, that the use of Authority facilities for the processing of recyclables shall be limited by conditions imposed by the Authority.

(vi) Persons, including public and private collectors, not utilizing Authority facilities, to report the quantity of source separated recyclables collected, the type of separation, the type of recycling used and the location of the recycling facilities used.

(vii) The prohibition of persons from co-mingling or mixing source separated recyclable materials with non-recyclable materials for collection or disposal.

(viii) The prohibition of persons from disposing of source separated recyclable materials which are marketable or capable of being put to beneficial use.

(2) Provisions encouraging and facilitating the development of flexible private and municipal systems for source separating recyclables, collecting source separated recyclables, processing source separated recyclables and marketing source-separated recyclables.

(3) Provisions for conducting a comprehensive study of the status and potential for recycling the commercial component of municipal solid waste, and determination of the level of recycling achievable for all solid waste generated in the state as a result of implementation of the program established under this Subchapter.

(c) Notice. The Authority shall establish a comprehensive and sustained public information and education program concerning recycling program features and requirements. As a part of this program, the Authority, or the governing body of a municipality in municipalities, shall at least 90 days prior to the initiation of the recycling program and thereafter, provide
notification of the requirements of any regulation or municipal ordinance adopted to implement
the residential curbside collection program. The Authority or governing body of a municipality
may, in its discretion as it deems necessary and appropriate, place an advertisement in a
newspaper circulating in the municipality, post a notice in public places where public notices are
customarily posted, include a notice with other official notifications periodically mailed to
residential taxpayers or utilize any combination of the foregoing.

(d) Implementation.

(1) In the absence of private or municipal participation, in whole or in part, in the
collection, transportation, processing, and marketing of source separated recyclable materials, the
Authority shall make such services available, directly or through contract with others. The
Authority may utilize its own personnel and resources.

(2) Nothing contained herein shall be construed to prevent any person from
collecting, transporting, processing, and marketing source separated recyclable materials in
competition with municipalities or the Authority, provided that the requirements of this
Subchapter are satisfied.

(3) The provisions of this Subchapter shall be implemented in New Castle County
upon adoption of the regulations under this Section and shall be implemented in Kent County
and Sussex County one year thereafter.

§ 6462. Reporting Requirements.

Every municipality, collector, or processor of recyclable materials shall report annually to the
Department and the Authority on the amount of such materials collected in the State in
categories designated by the Department and the Authority, irrespective of the location of the
recycling facility utilized. The data collected by the Department and the Authority shall be
reviewed by the Recycling Public Advisory Council and reported in its annual report to the Governor.

§ 6463. Enforcement.

The provisions of this Subchapter shall be jointly enforced by the Authority and the Department.

(a) The Authority’s enforcement responsibility shall include:

(1) Inspections to assure compliance;
(2) Review of complaints made regarding non-compliance;
(3) Issuance of written or oral notice of violation and request for voluntary compliance;
(4) For repeat violations written notice and demand for compliance served personally or sent by registered mail, return receipt requested; and
(5) For a repeated violation after written notice and demand for compliance, referral to the Department for formal enforcement action.

(b) The Department’s enforcement responsibility shall include follow up investigation based on referrals from the Authority and complaints made regarding non-compliance, and formal criminal enforcement action as warranted.

(c) Any person who violates the provisions of this Subchapter or any regulation promulgated thereunder shall be guilty of an environmental misdemeanor and subject to the sentence for an unclassified misdemeanor under the provisions of 11 Del. C. §4206. The Courts of the Justices of the Peace shall have jurisdiction of violations under this subsection.

§ 6464. Minimum Recovery Rates.
(a) It is the intent of the Legislature that the program implemented pursuant to this Subchapter reduce the amounts of municipal solid waste, which is comprised of residential solid waste and commercial solid waste, currently deposited or capable of being deposited in landfills in this State by recovering from such municipal solid waste recyclable materials at the recovery levels specified below. The Authority shall report annually on compliance with the provisions of this Subchapter to achieve the minimum recovery rates of municipal solid waste by identifying all recycling efforts which reduce the amounts of municipal solid waste generated. The minimum recovery rates of municipal solid waste shall be achieved according to the following schedule:

<table>
<thead>
<tr>
<th>Time in which Recovery Rate must be achieved</th>
<th>Total Residential Solid Waste Recovered</th>
<th>Total Commercial Solid Waste Recovered</th>
</tr>
</thead>
<tbody>
<tr>
<td>One year from date of adoption of regulations</td>
<td>20%</td>
<td>____</td>
</tr>
<tr>
<td>Two years from date of adoption of regulations</td>
<td>25%</td>
<td>____</td>
</tr>
<tr>
<td>Three years from date of adoption of regulations</td>
<td>30%</td>
<td>50%</td>
</tr>
</tbody>
</table>

(b) For municipalities and private entities engaging in the collection, transportation, processing, and marketing of source separated recyclable materials, and utilizing facilities other than those provided by the Authority, such activities shall be conducted in a manner to assure compliance with the minimum recovery rates and timetables set forth above, and such municipalities and private entities shall conduct their activities so that the source separated recyclable materials enter the marketplace as usable products or, in the event the recyclable materials are unmarketable, then put to other beneficial use. The Department and the Authority by regulation shall establish requirements which limit the amount of materials which can be
discarded as non-marketable or non-usable after the processing of source separated recyclable materials.

(c) Notwithstanding any provision or definition to the contrary contained in this chapter, the term “municipal solid waste” shall mean durable goods (excluding vehicles and other moving equipment), nondurable goods, containers and packaging, food scraps, yard trimmings and miscellaneous inorganic waste from residential (single- and multi-family households) and non-residential (commercial, institutional and industrial) sources. Municipal solid waste does not include construction and demolition debris, vehicle bodies, municipal sludges, combustion ash, industrial process wastes, and trees and brush from parks, streets or power line trimmings that might also be disposed in municipal solid waste landfills.

(d) Notwithstanding any provisions or definition to the contrary contained in this chapter, for purposes of satisfying the minimum recovery rates set forth in subsection (a) above recyclable materials shall be those identified pursuant to Section 6461 (b)(1)(i) and (ii) of this Subchapter and other municipal solid waste which is source separated and collected for recycling, and recycling for purposes of the program established hereunder shall mean the process by which discarded municipal solid waste materials are separated and used as raw materials for products or replacement of products, including the reuse of vegetative materials, but does not include the burning of materials for energy.

Section 7. The Department and the Authority shall develop and promulgate all rules and regulations necessary for the implementation of this Act within 12 months following the effective date of this Act.

Section 8. The Department in consultation with the Authority shall adopt regulations imposing a ban on the disposal of organic yard waste at landfills in the State. The Department’s
regulations shall be adopted at the same time that the regulations implementing the provisions of this Act are adopted.

Section 9. Effective Date. This Act shall be effective upon enactment and execution by the Governor.
This Act establishes a statewide residential curbside recycling program for residential solid waste generated in Delaware, and requires the diversion and recycling of materials capable of being recovered in accordance with minimum recovery rates and subject to a time table for achievement of the minimum recovery rates. The requirements of the program include source separation of recyclable materials, separate collection of source separated materials, and the recycling of source separated materials, which may include yard wastes. The collection of only recyclable materials is controlled, and other solid waste materials would continue to be collected separately and disposed in the current manner. The collection of recyclables would be undertaken by municipalities directly or through contracts with private collectors, and through the existing private collection system in unincorporated areas. Recyclable materials could be delivered to a DSWA recycling center or designated locations for transfer to the recycling center, at no tipping fee, otherwise the recyclable materials could be delivered to any recycling facility which converts the recyclable materials to products or beneficial use. DSWA is entitled to establish and operate recycling centers for organic yard waste. The establishment and operation of recycling facilities separately by municipalities and private parties is allowed consistent with achieving the minimum landfill diversion rates.

Regulations to implement the program are to be jointly adopted by DSWA and DNREC. The regulations are required to be adopted within twelve (12) months of enactment and include a requirement that the Department adopt a ban on landfilling organic yard wastes.

The cost of collection of recyclables incurred by municipalities conducting their own collection programs would be covered by the same means solid waste disposal is charged or some alternative method determined by the municipality. Private haulers operating outside municipal areas would charge their customers for the collection service. DSWA would be available to provide backup services. The costs incurred by DSWA in operating organic yard waste recycling centers would be covered through a service charge. The cost of operating a single stream material recovery facility would be paid from a Recycling Fund created through an assessment of solid waste, excluding recyclables, collected by private and municipal collectors in Delaware. DSWA would only be entitled to payment for services actually provided. Municipalities could choose to develop their own recycling program or utilize other recycling services if they did not desire to use the DSWA recycling services. A one-time appropriation of $5 Million is provided to cover startup costs incurred by municipalities. The monies would be distributed as grants administered by DNREC. The assessment used to establish the Recycling Fund is set at $3.00 per ton and would also fund education and promotion of the program, a comprehensive study of the potential of recycling commercial solid waste, recycling initiatives undertaken by municipalities, and enforcement costs for the residential program. The Recycling Public Advisory Council would give advice and recommendations to DNREC and DSWA regarding the public education program and administration of Municipal Assistance and Recycling Funds, and review the data collected by DSWA and DNREC regarding the level of recovery of recyclable materials.