



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection

Robert C. Shinn, Jr.
Commissioner

Office of the Commissioner
P.O. Box 402
Trenton, NJ 08625-0402
Tel. # 609-292-2885
Fax. # 609-292-7695

IN THE MATTER OF CERTAIN AMENDMENTS
TO THE ADOPTED AND APPROVED SOLID
WASTE MANAGEMENT PLAN OF THE
ATLANTIC COUNTY SOLID WASTE
MANAGEMENT DISTRICT

CERTIFICATION
OF THE MARCH 10, 1998
AMENDMENT TO THE ATLANTIC COUNTY
DISTRICT SOLID WASTE MANAGEMENT PLAN

BY ORDER OF THE COMMISSIONER:

A. Introduction

The New Jersey Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.) established a comprehensive system for the management of solid waste in New Jersey. The Act designated all twenty-one (21) of the state's counties, and the Hackensack Meadowlands District, as Solid Waste Management Districts, and mandated that the Boards of Chosen Freeholders and the Hackensack Meadowlands Development Commission develop comprehensive plans for waste management in their respective districts. On June 24, 1982, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Atlantic County District Solid Waste Management Plan (County Plan).

The Act requires that all district plans be based on and accompanied by a report detailing the existing waste disposal situation in the district, and a plan which includes the strategy to be followed by the district in meeting the solid waste management needs of the district for a ten-year planning period. The report must detail the current and projected waste generation for the district, inventory and appraise all facilities in the district, and analyze the waste collection and transportation systems which serve the district. The disposal strategy must include the maximum practicable use of resource recovery techniques. In addition to this strategy, the plan must designate sufficient available suitable sites for the disposal of the district's waste for a ten-year period.

The Act further provides that a district may review its County Plan at any time and, if found inadequate, a new County Plan must be adopted. The Atlantic County Board of Chosen Freeholders (County Freeholders) completed such a review and on March 10, 1998, adopted

an amendment to its approved County Plan.

The amendment represents the County's response to the May 1, 1997 decision of the United States Court of Appeals for the Third Circuit which declared unconstitutional New Jersey's historic system of solid waste flow control. [See Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County et al. 112 F.3d 652 3d Cir. 1997, cert. den. November 10, 1997]. Specifically, each solid waste management district must reevaluate its solid waste disposal strategy in light of this recent court decision and, if necessary, initiate appropriate amendments thereto.

In general, the Department refers the County to the solid waste regulations at N.J.A.C. 7:26-1 et seq. to the extent they relate to specific procedural and substantive issues addressed in this and subsequent plan amendments. In addition, this certification is in no way intended by the DEP to represent a legal determination regarding the effect of the Atlantic Coast decision on any specific contract between public and/or private parties.

The March 10, 1998 amendment proposes an economic flow control strategy encompassing imposition of an Environmental Investment Charge (EIC), based upon historic solid waste generation, to be assessed against all solid waste generators in the County. The amendment also provides for the deletion of any reference to mandatory curbside residential recycling collection by the Atlantic County Utilities Authority (ACUA) except in those municipalities which have entered into contracts for the continuation of this service on a fee-for-service basis, and for the imposition of a per ton processing fee for the processing of recyclables delivered to the ACUA recycling center by others.

The amendment was circulated to various administrative review agencies for review and comment, as required by law, on March 17, 1998. The DEP has reviewed this amendment on an expedited basis and has determined that the amendment adopted by the County Freeholders on March 10, 1998 is approved as provided in N.J.S.A. 13:1E-24.

B. Findings and Conclusions with Respect to the Atlantic County District Solid Waste Management Plan Amendment

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the March 10, 1998 amendment to the County Plan according to the objectives, criteria, and standards developed in the Statewide Solid Waste Management Plan and I find and conclude that this plan amendment is consistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the issues of concern relative to the March 10, 1998 amendment which are included in Section B.2. below.

In conjunction with the review of the amendment, the Department circulated copies to sixteen administrative review agencies and solicited their review and comment. Pursuant to N.J.S.A. 13:1E-24a(2) and (3), these agencies included various bureaus, divisions, and agencies within the DEP. All agencies contacted are as follows:

Office of Air Quality Management, DEP
Division of Water Quality, DEP
Division of Parks and Forestry, DEP
Division of Fish, Game and Wildlife, DEP
Division of Compliance and Enforcement, DEP
Division of Solid and Hazardous Waste, DEP
Green Acres Program, DEP
Land Use Regulation Element, DEP
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
Pinelands Commission
Department of Agriculture
Department of Health
Department of Transportation
Department of Community Affairs
U.S. Environmental Protection Agency

1. Agency Participation in the Review of the March 10, 1998 Amendment

The following agencies did not object to the proposed amendment:

Division of Parks and Forestry, DEP
Division of Compliance and Enforcement, DEP
Division of Water Quality, DEP
Green Acres Program, DEP
Pinelands Commission
New Jersey Turnpike Authority
Department of Agriculture
Department of Transportation

The following agencies did not respond to our requests for comment:

Division of Fish, Game and Wildlife, DEP
Office of Air Quality Management, DEP
Land Use Regulation Element, DEP
New Jersey Advisory Council on Solid Waste Management
Department of Health
U.S. Environmental Protection Agency

The following agencies provided substantive comments as shown in Section B. of the certification document:

Division of Solid and Hazardous Waste
Department of Community Affairs

2. Issues of Concern Regarding the March 10, 1998 Amendment

Issue: Previously Adopted Atlantic Coast Administrative Action

On October 23, 1997, the Department received an October 20, 1997 ACUA request for administrative action pursuant to the provisions of N.J.A.C. 7:26-6.11(b), 9. The October 20, 1997 ACUA request petitioned the Department to reaffirm without modification the solid waste disposal system that had been in effect in Atlantic County for a number of years. That system included:

- * The June 8, 1990 ACUA contract with Waste Management of Pennsylvania for out-of-state landfill disposal;
- * The direction of type 13 waste to the ACUA landfill located within Atlantic County;
- * The site selection of the transfer station at the ACUA Environmental Park in Atlantic County;
- * The operations of the ACUA transfer station; and,
- * The transportation of the solid waste to the out-of-state landfill facility.

On November 21, 1997, the Department certified the October 20, 1997 administrative action by approving: the reaffirmation of the out-of-state disposal arrangement for waste other than type 13; the selection of the transfer station site; and the award of the contract for the transportation of waste to the out-of-state disposal facility. The other portions of the request for administrative action, specifically the portions of the plan that direct type 13 waste to the in-county ACUA landfill and direct waste to the transfer station operated by the ACUA, were remanded for further consideration and evaluation by Atlantic County.

Issue: Imposition of an EIC

The March 10, 1998 amendment proposes that an EIC be charged to all Atlantic County properties generating solid waste. The EIC consists of the ACUA annual solid waste debt service of \$8,131,602 divided by the 1995 solid waste tonnage figure of 261,303 tons (the last full calendar year before the courts modified flow control), resulting in an EIC of \$31.12 per ton of solid waste.

The amendment notes that the Department of Community Affairs (DCA) Local Finance Board (LFB) pursuant to the provisions of N.J.S.A. 40A:5A-19, convened a public hearing on January 14, 1998 and determined that conditions of financial difficulty exist for the ACUA and so ordered the imposition of an EIC to be assessed beginning March 1, 1998 for the provision of debt service. The LFB, in a resolution dated January 14, 1998, ordered that the EIC

shall be assessed, billed, and collected on the basis of 1995 solid waste generation within Atlantic County at a rate not to exceed \$31.12 per ton per calendar year.

Although sufficient historic data exists at the municipal level for residential waste generation, the Department is concerned that similar data does not exist for commercial waste generators. Therefore, in the absence of such data, within Section C. of this certification the DEP only approves the direct EIC assessment upon commercial generators for a 90 day period from the date of this certification. Within this period the County must submit through an Administrative Action (N.J.A.C. 7:26-6.11(b)10.) the specific method for determining the assessment of an EIC upon commercial waste generators. The Department specifically reserves its jurisdiction to examine the calculation and continuing application of this EIC. Should the DEP approve of this Administrative Action, the County may continue to impose an EIC upon commercial waste generators for the balance of calendar year 1998.

Finally, the Department considers it prudent for the County to re-evaluate the EIC assessment for 1998 and to modify its projected 1999 EIC accordingly. Therefore, within Section C. of this certification, the DEP approves the imposition of an EIC of \$31.12 per ton for calendar year 1998 only. Should the County opt to reinstitute an EIC in 1999 for all waste generators, this may be accomplished via an Administrative Action (N.J.A.C. 7:26-6.11(b)10.), unless an alternative collection method is selected which would require adoption of a subsequent amendment.

Issue: Curbside Collection of Recyclables

Prior to the Atlantic Coast decision, the ACUA provided curbside collection of recyclables to all 23 municipalities comprising the County. This service was subsidized by tipping fees paid at the ACUA transfer station/landfill. With the demise of flow control and the need of the ACUA to develop a competitive tipping fee at its facilities, this subsidized recycling collection program was terminated. In its place, the ACUA has developed a curbside collection recycling program which is offered to all 23 municipalities on a fee-for-service basis. To date, 20 of the 23 municipalities have chosen to participate in this program on a contract basis. Also, the ACUA will offer the processing services of its recycling center to the remaining three Atlantic County municipalities as well as out-of-county entities on a per ton processing fee. Within Section C. of this certification, both the fee-for-service and per ton processing recycling programs are approved.

C. Certification of the Atlantic County District Solid Waste Management Plan Amendment

In accordance with N.J.S.A. 13:1E-1 et seq., specifically N.J.S.A.

13:1E-21, which establishes specific requirements regarding the contents of the district solid waste management plans, I have reviewed March 10, 1998 amendment to the approved County Plan and certify to the County Freeholders that the March 10, 1998 amendment is approved as further specified below.

The County Plan inclusion of an economic flow control strategy encompassing imposition of an EIC of \$31.12 per ton per calendar year, based upon historic solid waste generation, is approved for 90 days from the date of this certification for all commercial generators of solid waste and for the balance of calendar year 1998 for all residential waste generators. As noted within Section B., within the 90 day period the County must submit through an Administrative Action the specific method for determining the assessment of an EIC upon commercial waste generators. Should DEP approve this Administrative Action, the County may continue to assess an EIC against commercial waste generators for the balance of calendar year 1998. Should the County opt to reinstitute an EIC in 1999 for all waste generators, this may be accomplished via an Administrative Action unless an alternative collection method is selected which would require adoption of a subsequent amendment.

The County Plan deletion of all reference to mandatory curbside residential recycling collection by the ACUA except in those communities which have entered into contracts for the continuation of this service on a fee-for-service basis, and the County Plan inclusion of the imposition of a per ton processing fee for the processing of recyclables brought to the ACUA by others is approved.

D. Other Provisions Affecting the Plan Amendment

1. Contracts

Any contract renewal or new contract for solid waste collection or disposal which is inconsistent with this amendment to the County Plan and which was executed prior to the approval of this amendment and subsequent to the effective date of the Solid Waste Management Act (July 29, 1977), and which shall further be for a term in excess of one year, shall immediately be renegotiated in order to bring same into conformance with the terms and provisions herein set forth. Any solid waste collection operation or disposal facility registered by the Department and operating pursuant to a contract as herein described, shall be deemed to be in violation of this amendment and of the County Plan if such renegotiation is not completed within ninety (90) days of the effective date of this amendment provided, however, that any such registrant may, upon application to the Department, and for good cause shown, obtain an extension of time to complete such renegotiation.

2. Compliance

All solid waste facility operators and transporters registered with the Department and operating within the County and affected by the amendment contained herein shall operate in compliance with this amendment and all other approved provisions of the County Plan. Any facility operator or transporter who fails to comply with the provisions contained herein shall be deemed to be in violation of N.J.S.A. 13:1E-1 et seq., in violation of N.J.A.C. 7:26-1 et seq., and in violation of their registration to operate a solid waste facility or a collection system issued thereunder by the Department and shall be subject to the provisions and penalties of N.J.S.A. 13:1E-9 and 12 and all other applicable laws.

3. Types of Solid Wastes Covered by the District Solid Waste Management Plan

The provisions of the District Plan shall apply to all solid wastes defined in N.J.S.A. 13:1E-3 and N.J.A.C. 7:26-2.13 including waste types 10, 13, 23, 25, and 27 and all applicable subcategories and shall not apply to liquid and hazardous waste. All nonhazardous materials separated at the point of generation for sale or reuse are subject to regulation in accordance with N.J.A.C. 7:26A-1 et seq.

4. Certification to Proceed with the Implementation of the Plan Amendment

This document shall serve as the certification of the Commissioner of the Department to the County Freeholders and pursuant to N.J.S.A. 13:1E-24c. and f., the County shall proceed with the implementation of the approved amendment certified herein.

5. Definitions

For the purpose of this amendment and unless the context clearly requires a different meaning, the definitions of terms shall be the same as those found at N.J.S.A. 13:1E-3 and -99.12, N.J.A.C. 7:26-1.4, -2.13, and N.J.A.C. 7:26A-1.3.

6. Effective Date of the Amendment

The amendment to the County Plan contained herein shall take effect immediately.

7. Reservation of Authority

Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's planning

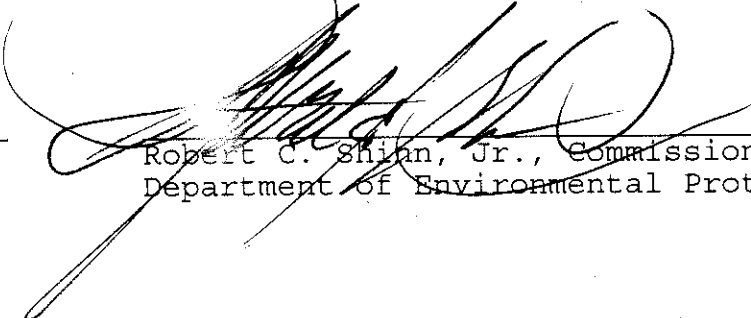
guidelines, rules, regulations, orders of the Department, and also includes the compilation of individual district plans and amendments as they are approved.

E. Certification of Approval of the Amendment by the Commissioner of the Department of Environmental Protection

In accordance with the requirements of N.J.S.A. 13:1E-1 et seq., I hereby approve the amendment, as outlined in Section C. of this certification, to the Atlantic County District Solid Waste Management Plan which was adopted by the Atlantic County Board of Chosen Freeholders on March 10, 1998.

Date

4/29/98


Robert C. Shinn, Jr., Commissioner
Department of Environmental Protection