

State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER
CN 402
TRENTON, N.J. 08625
609-292-2885

(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 15, 1988 AND JUNE 14, 1988
AMENDMENTS TO THE ATLANTIC COUNTY
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.) establishes a comprehensive system for the management of solid waste in New Jersey. The Act designates all twenty-one (21) of the state's counties, and the Hackensack Meadowlands District, as Solid Waste Management Districts, and mandates that the Boards of Chosen Freeholders and the Hackensack Meadowlands Development Commission develop comprehensive plans for waste management in their respective districts.

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 the 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 procedures. In addition to this strategy, the plan must designate sufficient available suitable sites for the disposal of the district's waste for the ten-year period, which sites may be in the district or, if none are available, in another district. (The Act provides procedures for reaching any necessary interdistrict agreements.)

The Act further provides that a district may review its plan at any time and, if found inadequate, a new plan must be adopted. Amendments to the Act found at N.J.S.A. 13:1E-136 et seq. require that, among other things, counties amend their District Solid Waste Management plans to include an outline of the proposed uses of the moneys in the District Resource Recovery Investment Tax Fund, as well as establish a schedule for disbursement of the moneys in that fund.

On June 24, 1982, the Department approved, with modifications, the Atlantic County District Solid Waste Management Plan. The Atlantic County Board of Chosen Freeholders, on March 15, 1988, adopted an amendment to its approved District Solid Waste Management Plan to satisfy the requirements of N.J.S.A. 13:1E-150. The amendment proposed, among other things, a plan for the use

and disbursement of moneys in the Atlantic County District Resource Recovery Investment Tax Fund, designation of the site of the recycling facility, authorization for the Atlantic County Utilities Authority to receive and administer Resource Recovery Investment Tax Fund moneys, and designation of the Atlantic County Utilities Authority as the implementing agency for the Recycling Plan and the Solid Waste Management Plan.

On June 14, 1988, the Atlantic County Board of Chosen Freeholders adopted an amendment to its approved district solid waste management plan which deleted the March 15, 1988 proposed recycling center site and redesignated that site in Egg Harbor Township.

The March 15, 1988 amendment was received and accepted by the Department of Environmental Protection on April 18, 1988 and copies were distributed to various state level agencies for review and comment, as required by law. The June 14, 1988 amendment was received by the Department of Environmental Protection on July 14, 1988 and copies were distributed to various state level agencies for review and comment, as required by law. The Department has reviewed the March 15, and June 14, 1988 amendments, and has determined that components of the March 15, 1988 amendment adopted by the Atlantic County Board of Chosen Freeholders concerning designation of the Atlantic County Utilities Authority (ACUA) as the implementing agency for the Solid Waste Management and Recycling Plans, authorization of the ACUA to receive and administer Resource Recovery Investment Tax Fund moneys, and proposed uses and disbursement schedule for Fund moneys are approved as provided in N.J.S.A. 13:1E-136. The March 15, 1988 recycling site designation has been deleted by the June 14, 1988 recycling site redesignation. The June 14, 1988 recycling site redesignation is approved as provided in N.J.S.A. 13:1E-24. With regard to the entire district plan, while the requirement of N.J.S.A. 13:1E-136 et seq. have been satisfied, the district's plan remains deficient in some important ways.

B. Findings and Conclusions with Respect to the March 15 and June 14, 1988 Atlantic County Solid Waste Management Plan Amendments

Pursuant to N.J.S.A. 13:1E-24a(1) and N.J.S.A. 13:1E-150, I, Christopher J. Daggett, Acting Commissioner of the Department of Environmental Protection, have studied and reviewed the March 15, 1988 and June 14, 1988 amendments to the approved Atlantic County District Solid Waste Management Plan according to the objectives, criteria and standards developed in the Statewide Solid Waste Management Plan and N.J.S.A. 13:1E-150. I find and conclude that these plan amendments are consistent with the Statewide Solid Waste Management Plan and N.J.S.A. 13:1E-150 in proposing acceptable uses of moneys from the Atlantic County District Resource Recovery Investment Tax Fund, a suitable disbursement schedule for these moneys, in designation of a site for the recycling facility, in authorizing the Atlantic County Utilities Authority to receive and administer Fund moneys, and in designation of the Atlantic County Utilities Authority as the implementing agency for the Recycling Plan and the Solid Waste Management Plan. The component of the March 15, 1988 amendment concerning amendment of the designation of the location of the resource recovery facility was approved by the Department on August 3, 1988. The March 15, 1988 adoption of the

Recycling Plan is not addressed in this certification. However, that portion of the amendment will be the subject of a subsequent certification.

1. The March 15, 1988 Amendment

The Division of Solid Waste Management circulated the March 15, 1988 plan amendment to seventeen review agencies and solicited their review and recommendations. Pursuant to N.J.S.A. 13:1E-24a(2) and (3), these agencies included various agencies, bureaus and divisions within the Department of Environmental Protection, as well as the Board of Public Utilities. Also among these agencies were the Department of Community Affairs, the Public Advocate, the Department of Health, the Office of Recycling, the Department of Agriculture, the Department of Transportation and the New Jersey Turnpike Authority. Of these agencies, the following did not object to the elements of the proposed March 15, 1988 plan amendment: the N.J.D.E.P. Divisions of Environmental Quality, Fish, Game, and Wildlife, Coastal Resources and Water Resources; the Board of Public Utilities; the New Jersey Advisory Council on Solid Waste; the Green Acres Program; the New Jersey Turnpike Authority; and the State Department of Agriculture.

The following agencies failed to respond to our requests for comment on the March 15, 1988 amendment: the State Departments of Transportation, and Health; the Public Advocate; and the United States Environmental Protection Agency, Region II. The NJDEP Division of Solid Waste Management had substantive comment which is addressed further below.

The Department of Community Affairs commented on the March 15, 1988 amendment that, given the lack of detailed financial specificity in the submitted plan, the Division of Local Government Services must necessarily defer any comment at this time. In response, the Department shares the concerns of the Department of Community Affairs with respect to the level of detail which outlines proposed uses of and disbursement schedules for the fund. However, the Department is satisfied that the proposed uses for reducing the total bond issue to finance construction costs of the recycling facility is in conformance with the requirements of N.J.S.A. 13:1E-150. Similarly, the disbursement schedule calls for a one time disbursement of funds as a down payment on the bond issue at the time the county is prepared to issue bonds to finance said construction. The schedule is in conformance with the intent of N.J.S.A. 13:1E-150 and meets reasonable content criteria by providing projections of fund balances under assumed waste flows and tax rates.

The Division of Solid Waste Management commented on the March 15, 1988 amendment that the provisions of the "McEnroe" legislation (N.J.S.A. 13:1E-136 et seq.) which establish District Resource Recovery Investment Tax Fund accounts for the state's 21 counties, set out a clear state policy objective to generate revenues in order to subsidize anticipated resource recovery tipping fees to a level which is competitive with disposal costs at landfills utilized by the counties.

The subsidies created by this legislation also were designed as incentives to make the transition from landfill disposal to capital

intensive resource recovery technologies. Thus, the purposes of the Act are to provide financial assistance to counties in order to expedite resource recovery technology implementation and to provide user benefits through a reduction in the tipping fees at resource recovery facilities. If a county can demonstrate to the satisfaction of the department that utilization of a resource recovery facility is not feasible for the disposal of solid waste generated in the county, then the District Resource Recovery Investment Tax Fund may be used to design, finance, construct, operate or maintain environmentally sound state-of-the-art sanitary landfill facilities.

Prior to disbursement from its District Resource Recovery Investment Tax Fund, however, a county must prepare a plan amendment which outlines the proposed uses of the moneys in its District Fund and establishes a disbursement schedule for those moneys in the Fund. Thus, two tests must be met: an eligible use test, which uses are limited to those identified in N.J.S.A. 13:1E-150b. and a disbursement schedule test, which test criteria are not specifically provided in the Act.

Eligible uses of the fund are provided in Attachment 1, Part I, of this certification. In consideration of the intent and objectives of the Act outlined above and the specific limitations upon eligible uses of the fund provided in N.J.S.A. 13:1E-150, projects not formally identified in the approved district solid waste management plan shall not be funded with Resource Recovery Investment Tax Fund moneys. Therefore, in order to ensure user rate reduction and facilitate timely project implementation, disbursements from a District Resource Recovery Investment Tax Fund shall be made only to projects formally identified in the approved district solid waste management plan. Section C of this amendment approves the recycling facility site designation.

Pursuant to law, in order to provide safeguards as to how the investment tax funds are to be spent, a schedule for the disbursement of the moneys must be provided through the plan amendment process established under the New Jersey Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.). In this way, a formal procedure for quantifying contributions to and withdrawals from the fund is established. Such a procedure may be followed using a variety of specific steps and methods of data presentation. In order to evaluate the adequacy of financial disbursement procedures, the Department has established content criteria (see Attachment 1, Part II). Since the disbursement schedule submitted by Atlantic County provided a specific use of fund moneys and other critical information such as fund balance, timing and amount of disbursements, projected recipients of disbursements and other critical disbursement information, it met reasonable criteria for adequacy.

On March 15, 1988, the Atlantic County Board of Chosen Freeholders adopted an amendment to their approved district plan which, among other things, outlined the proposed uses of the District Resource Recovery Investment Tax Fund, provided a schedule for disbursement of those moneys, designated a location for the recycling facility, authorized the Atlantic County Utilities Authority to receive and administer Fund moneys, and designated the Atlantic County Utilities Authority as the

implementing agency for the Recycling Plan and Solid Waste Management Plan. The amendment proposed use of the Fund, in the amount of \$599,819.09, plus accrued interest, for the direct costs of the development of the recycling facility, or as a down payment for such costs to the extent funded through the issuance of debt as specifically set forth in Atlantic County Bond Ordinance #1, 1988.

The March 15, 1988 amendment established a disbursement schedule for the moneys in the Fund. Moneys were to be disbursed as a down payment on an \$11,400,000 bond issue and proceed concurrent with the Bond issue.

The Department has determined that the March 15, 1988 proposed use of moneys from the Atlantic County District Resource Recovery Investment Tax Fund for a down payment on a bond issue to finance construction of the recycling facility is in conformance with the requirements of N.J.S.A. 13:1E-150b. Disbursement for a down payment on a bond issue as specifically set forth in Atlantic County Bond Ordinance #1, 1988 will reduce debt service costs and total project cost for the recycling facility and thus reduce rates to all users of the resource recovery facility. Additionally, the operation of the recycling facility will result in a reduction in the amount of solid waste to be disposed of at the mass burn resource recovery facility and landfill and will enhance the operational efficiencies of the mass burn resource recovery facility. Enhanced efficiencies will thus reduce rates paid for solid waste disposal by all users of the mass burn resource recovery facility and landfill. Empirical demonstration of the reduction in rates to users of the resource recovery facility shall be responsibility of the county.

2. The June 14, 1988 Amendment

The Division of Solid Waste Management circulated the June 14, 1988 plan amendment to sixteen (16) review agencies and solicited their review and recommendations. Pursuant to N.J.S.A. 13:1E-24a (2) and (3), these agencies included various agencies, bureaus, and divisions within the Department of Environmental Protection, as well as the Board of Public Utilities. Also among these agencies were the Department of Community Affairs, the Department of the Public Advocate, the Department of Health, the Department of Agriculture, the Department of Transportation, and the New Jersey Turnpike Authority. Of these agencies, the following did not object to the proposed plan amendment: N.J.D.E.P., Division of Water Resources, and Parks and Forestry; the Pinelands Commission; the State Department of Agriculture; and the New Jersey Advisory Council on Solid Waste Management.

The following agencies failed to respond to our requests for comments: N.J.D.E.P. Division of Fish, Game and Wildlife, and Coastal Resources, the State Departments of Health, Community Affairs, Transportation, and the Public Advocate; the Board of Public Utilities, the Green Acres Program, the New Jersey Turnpike Authority, and the U.S. Environmental Protection Agency. The N.J.D.E.P. Division of Environmental Quality submitted substantive comments which are further addressed below.

The Division of Environmental Quality commented that recycling centers are subject to the provisions of N.J.A.C. 7:27-5, "Prohibition of Air Pollution". This regulation prohibits odors and other air contaminants which interfere with the enjoyment of life or property. Also, recycling centers are considered solid waste facilities, which are subjected to N.J.A.C. 7:27-8.2(a)16 which requires air pollution control permits for any equipment which vents a solid waste facility directly or indirectly into the outdoor atmosphere. Such vents may require devices to control odors and other air contaminants. Finally, the combustion of used oil, and mixtures of used oil and other oil are subject to the provisions of N.J.A.C. 7:27-8.2(a)13 which requires the combustion of such oil only be done in controlled devices with air pollution control permits specific to the combustion of used waste oil. In response, by copy of this certification, the county is informed of these comments by the Division of Environmental Quality.

C. Certification of the March 15, 1988 and June 14, 1988 Atlantic County District Solid Waste Management Plan Amendments

I, Christopher J. Daggett, Acting Commissioner of the Department of Environmental Protection, in accordance with N.J.S.A. 13:1E-1 et seq., which establishes specific requirements regarding the contents of the district solid waste management plans and N.J.S.A. 13:1E-150 which establishes eligible uses and disbursement schedule requirements for a district's Resource Recovery Investment Tax Fund, have reviewed the March 15, 1988 and June 14, 1988 amendments to the approved Atlantic County District Solid Waste Management Plan and certify to the Atlantic County Board of Chosen Freeholders that the component of the March 15, 1988 amendment that outlines uses of and a disbursement schedule for the Atlantic County Resource Recovery Investment Tax Fund is approved.

1. The March 15, 1988 Amendment

Atlantic County is hereby authorized to disburse up to \$599,819.09 plus accrued interest for the purpose of a down payment on Atlantic County Bond Ordinance #1, 1988. All accrued Fund interest may only be disbursed for approved purposes. Disbursement of future allocations to the Atlantic Fund shall not be authorized unless and until the Department approves of a plan which outlines proposed uses and provides a disbursement schedule for those funds.

That portion of the March 15, 1988 amendment which proposed the location of the recycling facility in Egg Harbor Township has been superseded by the designation specified in the June 14, 1988 amendment.

The March 15, 1988 designation of the Atlantic County Utilities Authority as the implementing agency for the Recycling Plan and the Solid Waste Management Plan is hereby approved. The March 15, 1988 authorization of the Atlantic County Utilities Authority to receive and disburse Fund moneys is also approved.

The component of the March 15, 1988 amendment concerning the amendment of the designation of the location of the resource recovery facility was approved on August 3, 1988. Adoption of the Recycling Plan is not

addressed in this certification and will be the subject of a subsequent certification.

2. The June 14, 1988 Amendment

The inclusion within the district plan of a county recycling center on Block 399A, Lots 6,7,8,9 and 10 located with Egg Harbor Township, as indicated on the revised map, and the deletion of Block 22A, Lots 2,3 and 4 located within Egg Harbor Township, as indicated on the original map are approved.

The Department reviewed the entire Atlantic County District Solid Waste Management Plan, including this amendment, to determine whether the plan fulfills the requirements set forth in N.J.S.A. 13:1E-21. The result of that review is as follows:

- a. N.J.S.A. 13:1E-21b(3) requires "A site plan which shall include all existing solid waste facilities located within the solid waste management district ... and sufficient additional available suitable sites to provide solid waste facilities to treat and dispose of the actual and projected amounts of solid waste contained in the report accompanying the plan."

Atlantic County, by selecting a resource recovery site on Doughty Road, Egg Harbor Township, has achieved a large step toward providing sufficient solid waste management and disposal capacity. However, the county has not formally adopted into the Atlantic County plan any strategy to provide interim landfill capacity until the resource recovery facility commences operation. In addition, the county has still not identified a residual ash landfill site. Therefore, I find that Atlantic County has not complied with N.J.S.A. 13:1E-21b(3) and that this section of the Atlantic County District Solid Waste Management Plan is deficient.

- b. N.J.S.A. 13:1E-21b(4) requires a survey of proposed collection districts and transportation routes with projected transportation costs from collection district to existing or available sites for solid waste facilities.

The Department has previously determined in a April 23, 1985 Certification to a November 20, 1984 Amendment of the Atlantic County District Solid Waste Management Plan that Atlantic County has complied with N.J.S.A. 13:1E-21b(4) with the completion of transportation surveys to two resource recovery sites under consideration and four sites considered for a landfill. However, none of these sites were selected as either a resource recovery facility or a landfill. With the selection of a resource recovery site in Egg Harbor Township and the preparation of a Preliminary Environmental and Health Impact Statement for this site, the county has completed a transportation survey to this new resource recovery site. However, since a landfill site has not been selected, I find that the Atlantic County District Solid Waste Management Plan is once again deficient with respect to N.J.S.A. 13:1E-21b(4).

- c. N.J.S.A. 13-1E-21b(6) requires a method or methods of financing solid waste management in the Solid Waste Management District pursuant to the Solid Waste Management Plan.

Atlantic County has not submitted to the Department a specific plan for financing solid waste management within the district. Therefore, I find that Atlantic County has not complied with N.J.S.A. 13:1E-21b(6) and that this section of the Atlantic County District Solid Waste Management Plan is deficient.

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 the amendment to the Atlantic County District Solid Waste Management Plan herein certified, which was executed prior to the approval of this amendment and subsequent to the effective date of the Solid Waste Management Act 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 of Environmental Protection and operating pursuant to a contract as herein described, shall be deemed to be in violation of this amendment and of the Atlantic County District Solid Waste Management 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 of Environmental Protection, and for good cause shown, obtain an extension of time to complete such renegotiation.

2. Compliance

All solid waste facility operators and collector/haulers registered with the Department of Environmental Protection and operating within Atlantic County and affected by the portion of the amendment certified herein shall operate in compliance with this amendment and all other approved provisions of the Atlantic County District Solid Waste Management Plan. Any facility operator or collector/hauler 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 of Environmental Protection and shall be subject to the provisions and penalties of N.J.S.A. 13:1E-9 and 12 and all other applicable laws and regulations.

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

The provisions of the Atlantic County District Solid Waste Management Plan shall apply to all solid wastes as defined in N.J.S.A. 13:1E-3 and N.J.A.C. 7:26-2.13 and shall not apply to liquid wastes, sewage sludge, septage and hazardous wastes. Also, all non-hazardous materials separated at the point of generation for sale or reuse are excluded from the waste flows designated in the Interdistrict and Intradistrict Solid Waste Flow Rules (N.J.A.C. 7:26-6).

4. Certification to Proceed with the Implementation of Plan Amendment

This document shall serve as the certification of the Commissioner of the Department of Environmental Protection to the Atlantic County Board of Chosen Freeholders and pursuant to N.J.S.A. 13:1E-24c. and f., the county shall proceed with the implementation of the approved amendment contained 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, N.J.A.C. 7:26-1.4, N.J.A.C. 7:26-2.13, and N.J.S.A. 13:1E-137.

6. Effective Date of Amendment

The amendment to the Atlantic County District Solid Waste Management Plan certified herein shall take effect immediately.

7. Audit Requirements

Atlantic County shall, by October 31 of each year in which moneys remain in its District Resource Recovery Investment Tax Fund, file a financial and compliance audit of the Fund and any expenditures therefrom with the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs. The audit shall be conducted by an independent public accountant. A copy of the audit shall be provided to: Chief, Bureau of Solid Waste and Resource Recovery Financing, Division of Solid Waste Management, 401 East State Street, Trenton, New Jersey 08625.

8. Reservation of Authority

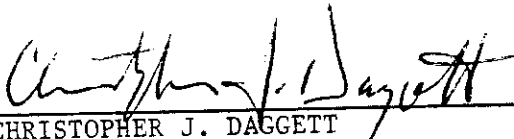
Nothing contained herein shall be construed as a limitation on any other action taken by the Department of Environmental Protection pursuant to its authority under the law. The Atlantic County District Solid Waste Management Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan. The Department has published a Statewide Solid Waste Management Plan with

appendices which includes the Department's planning guidelines, rules, regulations, orders of the Department, including the interdistrict and intradistrict waste flow rules, and also includes the compilation of individual district plans and amendments as they are approved.

E. Certification of Approval of 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 outline of proposed uses and disbursement schedule for the Atlantic County Resource Recovery Investment Tax Fund, designation of the location of the recycling facility, authorization for the Atlantic County Utilities Authority to receive and disburse Fund moneys, and designation of the Atlantic County Utilities Authority as the implementing agency for the Recycling Plan and the Solid Waste Management Plan as outlined in Section c. of this certification to the Atlantic County District Solid Waste Management Plan, as adopted by the Atlantic County Board of Chosen Freeholders on March 15, 1988 and June 14, 1988. I hereby further direct the Atlantic County Board of Chosen Freeholders to remedy these deficiencies indicated in Section C. of this certification as expeditiously as possible.

¹⁴
September 12, 1988
DATE



CHRISTOPHER J. DAGGETT
ACTING COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION