



State of New Jersey

Christine Todd Whitman
Governor

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

Robert C. Shinn, Jr.
Commissioner

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 JULY 2, 1999
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 July 2, 1999, adopted an amendment to its approved County Plan.

The July 2, 1999 amendment provides for continued nighttime landfilling of municipal solid waste at the Atlantic County Utilities Authority (ACUA) Landfill located in Egg Harbor Township, Atlantic County.

The amendment was considered administratively complete for review by the Department on August 3, 1999 and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed this amendment and has determined that the amendment adopted by the County Freeholders on July 2, 1999 is approved with modification 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 July 2, 1999 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, as modified, 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 July 2, 1999 amendment which are included in Section B.2. below.

In conjunction with the review of the amendment, the Department circulated copies to seventeen 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 Department. All agencies contacted are as follows:

Division of Water Quality Management, 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
Office of Air Quality Management, DEP
Green Acres Program, DEP
Land Use Regulation Element, DEP
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
Department of Agriculture
Department of Health and Senior Services
Department of Transportation
Department of Community Affairs
U.S. Environmental Protection Agency
Pinelands Commission
Federal Aviation Administration

1. Agency Participation in the Review of the July 2, 1999 Amendment

The following agencies did not object to the proposed amendment:

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

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

Division of Water Quality, DEP
New Jersey Advisory Council on Solid Waste Management
Department of Health
Department of Community Affairs
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, DEP
Land Use Regulation Element, DEP
Federal Aviation Administration (FAA)

2. Issues of Concern Regarding the July 2, 1999 Amendment

Issue: History of ACUA Landfill Research Project

On December 13, 1988 the County Freeholders adopted an amendment which proposed an interim/bypass landfill at the site of the ACUA Environmental Park in Egg Harbor Township. On May 26, 1989 the DEP approved with modification this amendment requiring the submission of a viable bird deterrent plan for the proposed landfill. On July 25, 1989 the County adopted a subsequent amendment which outlined a bird deterrent plan for the proposed interim/bypass landfill. On September 5, 1989 the Department rejected the July 25, 1989 amendment due to the determination that the bird deterrent plan was not viable. The DEP did, however, state that a limited use landfill may be appropriate for the site. On November 14, 1989 the County adopted a subsequent amendment which designated a limited use landfill for waste types 13 and 27 (bulky waste and dry industrial waste respectively) at the ACUA Environmental Park. The DEP approved the limited use landfill designation on April 30, 1990.

On March 8, 1997 and May 8, 1997, the Department received

requests, with accompanying documentation, from the ACUA for a research, development, and demonstration project for the nighttime landfilling of municipal (type 10) solid waste at the ACUA limited use landfill. On October 8, 1997 the DEP issued to the ACUA a Certificate of Authority to Operate (CAO) a research, development, and demonstration project at the limited use landfill. The CAO authorized the ACUA to landfill 100 tons per day of municipal waste at night for research purposes to demonstrate that birds will not be attracted to this nighttime activity. On December 16, 1997 the Department issued a subsequent CAO which allowed the ACUA to increase the daily tonnage to 300 tons. Both of these CAO's expired on October 7, 1998. On September 17, 1998 the Department issued another CAO which extended the research, development, and demonstration project until September 16, 1999 and increased the maximum amount of type 10 solid waste that may be landfilled to 800 tons per day and not to exceed 3,600 tons per week.

On July 30, 1998 the County adopted an amendment which memorialized the noted research, development, and demonstration project time extension and tonnage increase. The Department approved this amendment on January 4, 1999. Prior to adopting the July 30, 1998 amendment, the County Freeholders were considering a long-term proposal for nighttime landfilling at the ACUA landfill. However, after receiving substantive adverse comments concerning the long-term proposal at the amendment public hearing held on July 28, 1998, the County Freeholders decided to only extend the research project for another year until September 16, 1999 so that more information concerning the viability of the bird deterrent plan could be compiled. The January 4, 1999 certification noted that if the County opted to continue nighttime landfilling beyond the September 16, 1999 termination date, a subsequent amendment to the County Plan providing for same would be required. The July 2, 1999 amendment responds to this directive.

Issue: FAA Comments

At the County Freeholders' public hearing of June 29, 1999, the FAA testified that "the Authority [ACUA] has done a pretty good job of keeping bird counts down. The reason we oppose it [the continued nighttime landfilling of putrescible waste] is we don't know whether it's sustainable or not. Our wildlife biologists tell us sometimes it takes up to five years to develop a feeding area for birds." The FAA in a letter dated May 18, 1999 to the ACUA stated that "If the NJDEP does grant a five-year permit, the FAA would request the following conditions in the permit."

- *That bird counting continue.
- *That the review task force continue to meet quarterly.
- *That ACUA report any unusual event.

*That any of the following will trigger an immediate meeting of the FAA-ACUA-SJTA-

- pilot reports of birds towering over the landfill.
- aircraft/bird strikes associated with the landfill.

*That any below listed occurrence will result in an action plan to correct the situation, including the possibility of temporary closure-

- a. a dramatic increase in birds at the airport.
- b. an increase in birds at the landfill as follows-
 - any birds appearing at night.
 - peak number from baseline observed three or more times in a single month.
 - means for month increasing more than 50%.
 - any of the above, observed for three consecutive months, would call for temporary closure of the landfill to putrescible waste until a thorough analysis and remedy is found.

On August 25, 1999 a meeting was held between representatives of the FAA, the DEP, and the ACUA to discuss continued nighttime landfilling of municipal waste at the ACUA landfill. Based upon discussions at this meeting, the FAA contacted the Department by telephone on August 31, 1999 with a revision to paragraph " b." noted above. Specifically, that the existing language of this paragraph be supplanted with the following: " Any increase in birds, between 75 to 100 birds, loafing on the landfill at any given time will require the ACUA to notify the airport operator and the air traffic control tower at the Atlantic City International Airport."

Although the DEP concurs with overall concerns expressed by the FAA pertaining to the continued nighttime landfilling of putrescible waste, the specific concerns noted above are more appropriately addressed during the DEP's technical review phase of permit issuance.

Finally, the ACUA has been conducting nighttime landfilling of various amounts of solid waste (including putrescible municipal waste) with no noticeable attraction of birds since 1997 pursuant to the above noted research, development, and demonstration projects and the ACUA is to be commended for their efforts in this regard. However, the FAA, as noted above, continues to have concerns whether nighttime landfilling of putrescible solid waste is a sustainable activity. Therefore, the DEP considers it prudent to re-evaluate the results of nighttime landfilling on an annual basis. Consequently, within Section C. of this certification, the Department approves with modification nighttime landfilling of putrescible waste contingent upon the submission to the DEP on an annual basis of an administrative action (pursuant to N.J.A.C. 7:26-6.11(b)10) which reports on the results of this activity and the identification of any problems.

Issue: Landfill Capacity

The July 2, 1999 amendment states that "...the landfill has adequate capacity to accept all of the County's wastes through the year 2026." The amendment does not address the issue of waste loadings at the ACUA landfill. The previously adopted amendment of July 30, 1998 specified landfilling 800 tons per day and 3,600 tons per week of type 10 (municipal) waste. However, this earlier amendment made no reference to the total amount of all wastes to be landfilled on either a daily or weekly basis. DEP estimates that the ACUA landfill has capacity until the year 2026 if only non-type 10 waste is accepted. If type 10 waste is also accepted, the lifespan of the landfill is significantly curtailed. Therefore, the DEP hereby directs the ACUA to address the capacity issue via an administrative action (pursuant to N.J.A.C. 7:26-6.11(b)10). Specifically, the ACUA must indicate within this administrative action the total amount of waste to be accepted on a yearly basis with a daily peak and, based on these projected waste loadings, the estimated remaining lifespan of the landfill. The administrative action shall be submitted within 90 days of the date of this certification.

Issue: Regulatory Requirements

The ACUA was issued a permit pursuant to the Coastal Area Facility Review Act (CAFRA) for the acceptance of nonputrescible solid waste at the ACUA landfill. Acceptance of putrescible waste at this facility will require a modification to its CAFRA permit. The ACUA is directed to contact the Atlantic Region Supervisor for CAFRA at (609) 292-8262.

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 the July 2, 1999 amendment to the approved County Plan and certify to the County Freeholders that the July 2, 1999 amendment is approved with modification as further specified below.

The County Plan inclusion of the continued nighttime landfilling of municipal solid waste at the ACUA landfill located in Egg Harbor Township, Atlantic County is approved with modification. Specifically, as noted within Section B., continued nighttime landfilling of putrescible waste is approved with modification contingent upon submission to the DEP on an annual basis of an administrative action which reports on the results of this activity and the identification of any problems. Therefore, the decision to continue to approve nighttime landfilling of

municipal waste will be annually re-evaluated with the first such report due one year from the date of this certification.

The construction or operation of any solid waste facility shall be preceded by the acquisition of all necessary approvals pursuant to N.J.S.A. 13:1E-1 et seq., and all other applicable laws. This certification shall not be construed as an expression of the Department's intent to issue a permit modification to operate a landfill.

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 Plan

The provisions of the County 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 wastes. 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, as modified, 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 approved amendment, as modified, to the County Plan contained herein shall take effect immediately.

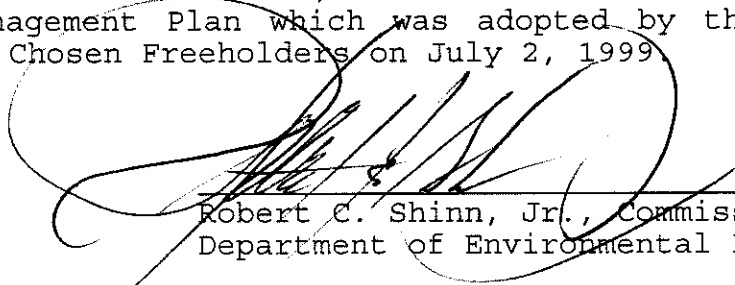
7. Reservation of Authority

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 with Modification 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 with modification 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 July 2, 1999

10/21/99
Date


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