



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection
Division of Solid and Hazardous Waste
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Robert C. Shinn, Jr.
Commissioner

JUL 28 1998

Mr. Richard S. Dovey, President
Atlantic County Utilities Authority
6700 Delilah Road
Egg Harbor Township, New Jersey 08234-5623

Dear Mr. Dovey:

On July 9, 1998 the New Jersey Department of Environmental Protection's Division of Solid and Hazardous Waste received the July 6, 1998 Atlantic County Utilities Authority's (ACUA) request for administrative action pursuant to the provisions of N.J.A.C. 7:26-6.11(b)10. The July 6, 1998 administrative action request represents the ACUA's supplemental 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 (3rd Cir. 1997), cert. den., November 10, 1997.] As a result of that decision, each solid waste disposal district must reevaluate its strategy and, if necessary, initiate appropriate amendments thereto.

The July 6, 1998 ACUA request for administrative action responds to the Department's April 29, 1998 certification of the March 10, 1998 amendment to the Atlantic County District Solid Waste Management Plan which, among other things, proposed the imposition of an Environmental Investment Charge (EIC) to be assessed against all solid waste generators in the County. The April 29, 1998 certification approved the imposition of an EIC of \$31.12 per ton, based upon historic solid waste generation, for 90 days from the date of the certification for all commercial solid waste generators and for the balance of calendar year 1998 for all residential solid waste generators. Further, the certification directed Atlantic County within the 90 day period, to submit through an administrative action the specific method for determining the assessment of an EIC upon commercial waste generators.

The July 6, 1998 request for administrative action represents the County's specific methodology for determining the assessment of the EIC upon commercial solid waste generators. The methodology proposed allocates the EIC upon nonresidential real property owners

that generate solid waste, exclusive of construction and demolition, bulk, and asbestos wastes, based on land use.

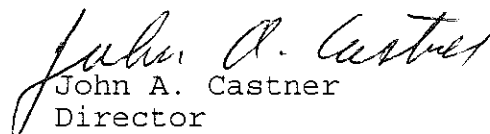
Specifically, this methodology divides nonresidential property into various business groups. Within each business group different size businesses have different waste characteristics. A business size indicator (BSI) is assigned to depict the size of each business within a business group. Each business group is then assigned a waste generation classification (WGC) based upon examining the results of a field survey, investigating waste industry standards, and reviewing other waste generation studies. The WGC provides an objective indicator of the waste generation per BSI within each business group and represents the average of the range of the estimated waste generation within a business group. The allocation of the EIC is the product of multiplying the BSI of the property by the assigned WGC. This resulting number represents the total estimated tons of waste generation for each property. The product of multiplying the estimated tons of waste generation for each property by the EIC of \$31.12 produces the total EIC service charge for that property. Therefore, the implementation of the EIC for each nonresidential real property owner is based upon the assigned business group, the BSI, the WGC, and the EIC.

This system of classification will account for approximately 75% of the nonresidential generation of solid waste within the county. The balance of this other waste consists primarily of construction and demolition, bulk, and asbestos wastes. The ACUA proposes that vehicles transporting these solid wastes (solid waste types 13 and 27) shall report to a designated scale house for weighing and assessment of the EIC of \$31.12 per ton. This latter proposal will be the subject of a separate plan amendment action initiated by the County pursuant to N.J.A.C. 7:26-6.10.

Since the ACUA has complied with the directive specified within the Department's April 29, 1998 certification, the DEP hereby approves pursuant to N.J.A.C. 7:26-6.11(f) the land use based methodology for the collection of the EIC of \$31.12 per ton for nonresidential generators of solid waste for the balance of calendar year 1998. The Department notes that the ACUA's ability to assess the EIC is the subject of pending litigation in Superior Court, Atlantic County, Chancery Division, Township of Galloway et al v. Atlantic County Utilities Authority, Docket Number ATL-C-90-98. Accordingly, this administrative action approval is subject to whatever final decision is issued in that litigation.

Should you have any further questions in this regard, please contact Frank Coolick, Assistant Director, Division of Solid and Hazardous Waste at (609) 633-1418.

Sincerely,


John A. Castner
Director