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DEPARTMENT OF ENVIRONMENTAL PROTECTION  
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(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 25, 1989  
MODIFICATION TO THE DECEMBER 13, 1988  
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 approved, with modifications, the Atlantic County District Solid Waste Management 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 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 techniques. 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. The Atlantic County Board of Chosen Freeholders completed such a review and on December 13, 1988 adopted an amendment to its approved district solid waste management plan. The amendment proposed an interim/bypass landfill site in Egg Harbor Township. On May 26, 1989, the Department certified the December 13, 1988

amendment with modification. The approval required the submission of a viable bird deterrent plan within 45 days. On July 25, 1989, the county approved a modification to the plan amendment which outlined a bird deterrent plan for the proposed interim/bypass landfill in Egg Harbor Township. The bird deterrent plan proposed collection of all waste in an enclosed building during the day and landfilling of solid waste at night. The modification was received by the Department of Environmental Protection on August 4, 1989, and copies were distributed to various state level agencies for review and comment, as required by law. The Department has reviewed this modification as well as the entire Atlantic County District Solid Waste Management Plan, and has determined that the modification adopted by the Atlantic County Board of Chosen Freeholders on July 25, 1989 is rejected as provided in N.J.S.A. 13:1E-24. With regard to the district plan, while the requirements of the Act concerning the report have been met, the district's plan remains deficient in some important ways.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I, Christopher J. Daggett, Commissioner of the Department of Environmental Protection have studied and reviewed the July 25, 1989 modification to the Atlantic County District Solid Waste Management Plan according to the objectives, criteria, and standards developed in the Statewide Solid Waste Management Plan and I find and conclude that this modification is inconsistent with the Statewide Solid Waste Management Plan.

In addition, the Division of Solid Waste Management circulated the modification to nineteen 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, the Department of Military and Veterans Affairs, the New Jersey Turnpike Authority, the Federal Aviation Administration and the U.S. Department of Agriculture. Of these agencies, the following did not object to the proposed plan amendment: the N.J.D.E.P. Divisions of Water Resources and Fish, Game and Wildlife; the State Departments of Agriculture and Community Affairs; the Pinelands Commission, and the Board of Public Utilities. The following agencies failed to respond to our requests for comments: the N.J.D.E.P. Division of Environmental Quality, the State Departments of Health, Transportation, and the Public Advocate, the Green Acres Program, the New Jersey Turnpike Authority, the New Jersey Advisory Council on Solid Waste Management, and the U.S. Environmental Protection Agency. The N.J.D.E.P. Divisions of Parks and Forestry, Coastal Resources and Solid Waste Management; the Department of Military and Veterans Affairs, the United States Department of Agriculture and the Federal Aviation Administration submitted substantive comments which are further addressed below.

The Division of Parks and Forestry commented that an archaeological survey is being conducted at the site, and, based upon the results of that document, further research may be necessary. In response, since this

amendment is being rejected, the comment does not apply to the interim/bypass landfill. However, by copy of this certification, the county is notified of this requirement with respect to any future solid waste facility at this site.

The Division of Coastal Resources stated that they cannot comment on this amendment at this time, due to a pending C.A.F.R.A. permit application. In response, since this amendment is rejected, this comment does not apply to the interim/bypass landfill. However, the county is notified of the status of their outstanding C.A.F.R.A. permit application, and that a C.A.F.R.A. permit must be issued prior to any development of any solid waste facility at this site, including the ash residual landfill which has already been included in the Atlantic County District Solid Waste Management Plan.

The Department of Military and Veterans Affairs commented that the proposed bird deterrent plan was not a viable and acceptable plan in that it failed to be comprehensive, lacked coordination with concerned agencies and did not address issues raised. Further, landfills are a proven attraction for birds. Therefore, a landfill located adjacent to an airport cannot be considered a compatible land use. The Department's response is found below.

The Federal Aviation Administration (F.A.A.) commented that their position regarding the bird deterrent plan is that it is not adequate to satisfy the F.A.A. concerns regarding the proposed location of the sanitary landfill. The majority of bird deterrent plans are used to reduce problems at airports with an existing problem. The F.A.A. is not aware of any deterrent plan that has successfully eliminated an existing problem. This situation is more serious in that the proposal is to create a problem where none previously existed. The proposal then is to provide a plan to eliminate a bird problem that the sanitary landfill will cause. This solves a problem that could and should be avoided. Finally, the F.A.A. and the Air National Guard are concerned for protecting their missions at the Airport. They are concerned with assuring that the general and commercial aspects of the airport can grow and develop under the future guidance of an airport authority without aviation hazards. To protect the missions and the future of the airport, the F.A.A. continues to oppose the landfill at its present site. The Department's response is found below.

The United States Department of Agriculture (U.S.D.A.) commented that the majority of bird deterrent plans are used to reduce problems at airports with existing bird problems. Further, the U.S.D.A. stated that there is no deterrent plan that has successfully eliminated a bird problem at an airport that they know of. They do not believe that there has been sufficient scientific evidence presented in the bird deterrent plan to demonstrate that this proposal is viable. Further, the U.S.D.A. states that creating any activity near the airport will increase bird activity, and that any activity that increases the bird hazard is an unacceptable alternative. Therefore, the U.S.D.A. recommends that the landfill should be established elsewhere. The Department's response is found below.

The Division of Solid Waste Management has reviewed the modification and has many serious concerns. Specifically, the plan focuses on seagulls as the only bird species to be deterred. Nocturnal birds, which might be attracted by increased vector populations are not adequately discussed. Nor are other

daylight bird populations and their behavioral relationship to facility activities adequately discussed.

Also, the Division remains unconvinced that soaring birds will not be attracted to the daylight activities at the proposed facility regardless of the anticipated lack of food. Any form of attraction of soaring birds to the proposed site will result in an increased risk of a bird aircraft strike hazard across the flight path of departing and incoming aircraft on runway 13-31 and the proposed parallel runway as delineated in the Atlantic City International Airport Master Plan (which is to be completed in the near future), thereby creating a hazard. It is the Division's understanding that this particular airport, commonly referred to as the Atlantic City International Airport, not only serves as a major commercial airport in Southern New Jersey, but also plays a large role in the United States' defense in the region. To adversely impact such a major facility is not only detrimental to nearby residents, but also to those citizens that the facility seeks to protect.

Further, the Division remains unconvinced that the technology of night landfilling and daylight activities conducted within a building is a proven technology and that birds will be deterred. The Department's charge is to ensure to the public, with a high degree of certainty, that operational plans and proposals at any solid waste facility can be successfully implemented. This plan's success, however, is dependent upon the operators' continued strict adherence to the permit conditions. Operator-dependent plans are certainly not fail-safe; therefore, the Division is unwilling to approve the ACUA's plan which may, upon even the slightest deviation from the standard procedure, cause a serious aircraft accident.

Finally, regarding other aspects of the district's solid waste management plan, the Division commented that an incoming waste inspection plan is not included in the modification documents. Further, the Department is still awaiting the submission of the county's modification to their recycling plan, which was due November 29, 1988. Also, the potential for recycling bulky waste such as tree stumps, tires, asphalt, concrete and white goods should be examined prior to disposal in a landfill. It should be noted that several companies, including Tony Canale, Inc., A.E. Stone and R&T Castellini have either received or are seeking approval from the Department to operate recycling centers to process many of these bulky waste materials. Therefore, the Division recommends that the county undertake a waste composition analysis which would determine the various amounts of these materials in Atlantic County's waste stream. Additionally, Atlantic County should investigate the availability of markets which accept this material for recycling.

The Department concurs with the statements of the Department of Military and Veterans Affairs, the F.A.A., the U.S.D.A., and the Division of Solid Waste Management regarding the bird deterrent plan, and rejects the site of the interim/bypass landfill in the Township of Egg Harbor as being unsuitable for a putrescible waste landfill due to the considerable risk of air disaster.

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

I, Christopher J. Daggett, Commissioner of the Department of Environmental Protection, in accordance with N.J.S.A. 13:1E-1 et seq. and N.J.S.A. 13:1E-21, which established specific requirements regarding the contents of the district solid waste management plans, have reviewed the July 25, 1989 modification to the approved Atlantic County District Solid Waste Management Plan and certify to the Atlantic County Board of Chosen Freeholders that the July 25, 1989 amendment is rejected as further specified below.

On May 26, 1989, the December 13, 1988 amendment to Atlantic County's District Solid Waste Management Plan was certified as approved with modification. The approval was stipulated upon the submission of a modification which was to include a viable bird deterrent plan. Since the bird deterrent plan submitted as a modification is not a viable plan, the proposed interim/bypass landfill located on Block 17A, Lots 9, 11 and 12; Block 18A, Lots 2, 3, 4, 5 and 6; Block 19A, Lots 1 and 2; Block 20A, Lots 1 and 2; Block 21A; Lots 1, 2, 3, 4, and 5 on the tax map of the Township of Egg Harbor is rejected. However, the site has previously been approved in a February 16, 1989 certification to accept ash from the proposed resource recovery facility. Therefore, this site is still approved as an ash landfill. Further, while this site is not approved to accept all solid waste types, the Department would consider a new amendment from the county regarding the use of this site as a limited use (type 13 and type 27) landfill. However, such a submission would have to be accompanied by sufficient documentation stating that a bird problem would not result from such an operation proximate to the airport.

Atlantic County is hereby directed to submit a plan amendment designating another site for its interim/bypass landfill. The county has conducted numerous siting studies, including the Rogers, Golden and Halpern study of 1988, which identified other possible landfill sites. The county is hereby directed to reexamine these studies or to perform additional studies, as necessary, in order to select another suitable landfill site and amend the district plan in an expeditious manner. Should the Egg Harbor site be chosen for solid waste types 13 and 27, with appropriate documentation as discussed above, an additional site or sites must be designated for the remaining solid waste types generated in the county. The county is hereby directed to indicate their intentions in this matter, in writing, within 30 days of the date of this certification.

Finally, the Department has 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:

1. N.J.S.A. 13:1E-21b(3) requires a site plan which shall include all existing solid waste disposal 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 and an ash landfill on Doughty Road, Egg Harbor Township, has achieved a large step toward providing sufficient solid waste management disposal. However, the county has not amended their plan to include a suitable interim/bypass landfill until the resource recovery facility commences operation and thereafter. Also, the county has fallen behind the milestones specified for development of a resource recovery facility as called for in the November 20, 1984 Administrative Consent Order signed by the Department and Atlantic County. 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.

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

The Department has previously determined in a April 23, 1985 certification to a November 20, 1984 amendment to 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 was to have completed a transportation survey to this new resource recovery site. However, no adequate transportation study has been forthcoming. Further, a suitable landfill site for all of Atlantic County's waste has not been selected. Therefore, 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).

3. 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 Modification

1. Contracts

Any contract renewal or new contract for solid waste collection or disposal which is inconsistent with the within modification to the Atlantic County District Solid Waste Management Plan and which was executed prior to the approval of this modification 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 of Environmental Protection and operating pursuant to a contract as herein described, shall be deemed to be in violation of this modification 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 modification contained 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.

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 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. Definitions

For the purpose of this modification 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 N.J.A.C. 7:26-1.4 and -2.13.

5. Effective Date of Modification

The modification to the Atlantic District Solid Waste Management Plan contained herein shall take effect immediately.

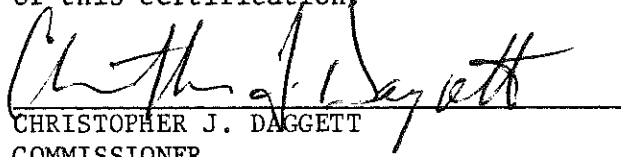
6. Reservation of Authority

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 and rules, regulations, and orders of the Department, including the Interdistrict and Intradistrict Waste Flow Rules (N.J.A.C. 7:26-6), and also includes the compilation of individual district plans and amendments as they are approved.

E. Certification of Rejection of the Modification and Notification of Deficiencies 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 reject the modification 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 25, 1989. Furthermore, I direct Atlantic County to hold a public hearing to site a new landfill to accept the waste generated in Atlantic County and to resolve the remaining planning deficiencies in an expeditious manner. Finally, the county is hereby directed to indicate their intentions in this matter, in writing, within 30 days of the date of this certification.

SEPTEMBER 5, 1989  
DATE

  
CHRISTOPHER J. DAGGETT

COMMISSIONER  
DEPARTMENT OF ENVIRONMENTAL PROTECTION