



State of New Jersey

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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 29, 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 July 29, 1998, adopted an amendment to its approved County Plan.

The July 29, 1998 amendment proposes a strategy of authorizing the refinancing of existing Atlantic County Utilities Authority (ACUA) solid waste debt through the New Jersey Environmental Infrastructure Trust.

The amendment was received by the Department on October 2, 1998, and copies were circulated to various administrative review agencies for review and comment, as required by law. The DEP has reviewed this amendment and has determined that the amendment adopted by the County Freeholders on July 29, 1998 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 29, 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, as modified, is consistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the issue of concern relative to the amendment which is included in Section B.2. below.

In conjunction with the review of the amendment, the DEP circulated copies to sixteen federal and state 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 Parks and Forestry, DEP
Division of Fish, Game and Wildlife, DEP
Division of Compliance and Enforcement, DEP
Division of Solid and Hazardous Waste, DEP
Division of Water Quality, 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
Department of Transportation
Department of Community Affairs
U.S. Environmental Protection Agency
Pinelands Commission

1. Agency Participation in the Review of the July 29, 1998 Amendment

The following agencies did not object to the proposed amendment:

Division of Water Quality, DEP
Office of Air Quality Management, DEP
Division of Compliance and Enforcement, DEP
Division of Parks and Forestry, DEP
Green Acres Program, DEP
Department of Community Affairs
Department of Agriculture
New Jersey Turnpike Authority
New Jersey Pinelands Commission
New Jersey Advisory Council on Solid Waste Management

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

Division of Fish, Game and Wildlife, DEP
Land Use Regulation Element, DEP
Department of Health
Department of Transportation
U.S. Environmental Protection Agency

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

Division of Solid and Hazardous Waste, DEP

2. Issue of Concern Regarding the July 29, 1998 Amendment

Issue: Proposed Legislation

Legislative debate has taken place since the denial of certification by the United States Supreme Court in the case of Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County et al on November 10, 1997. Several bills to amend the New Jersey Solid Waste Management Act have been introduced and have been the subject of Senate and Assembly Committee debate. Among the various strategies to address the loss of traditional flow control authority is one to authorize the State of New Jersey to refinance the existing solid waste debt of counties or county authorities through the New Jersey Environmental Infrastructure Trust. While this strategy has not yet been introduced as part of any draft legislation to date, Atlantic County has chosen to amend its County Plan in the event this refinancing option is part of legislative amendments to the New Jersey Solid Waste Management Act and related statutes. The ACUA has estimated that refinancing of its existing solid waste debt through this State Trust will result in significant reductions of the existing annual debt service of \$8.1 million. Also, DEP regulations at N.J.A.C. 7:26-6.10(a)6. specify that a plan

amendment is required to describe "the method of financing solid waste management in the district, including any mechanism to be instituted by the district for ensuring the payment of outstanding debt and other financial obligations." Therefore, in anticipation of legislation being enacted and in compliance with DEP regulations, the County adopted the July 29, 1998 amendment. Since this refinancing strategy is contingent upon enactment of enabling State legislation, Section C. of the certification approves with modification this strategy contingent upon enactment of said legislation. Also, Section C. notes that if enactment of appropriate legislation is not forthcoming by December 31, 2003, this certification shall become null and void and have no further effect.

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 29, 1998 amendment to the approved County Plan and certify to the County Freeholders that the July 29, 1998 amendment is approved with modification as further specified below.

The County Plan inclusion of the strategy to authorize the refinancing of existing ACUA solid waste debt through the New Jersey Environmental Infrastructure Trust is approved with modification contingent upon enactment of enabling State legislation. Also, as noted in Section B., if such legislation is not forthcoming by December 31, 2003, this certification shall become null and void and have no further effect.

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 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 waste. All nonhazardous materials separated at the point of generation for sale or reuse are subject to regulation pursuant to 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

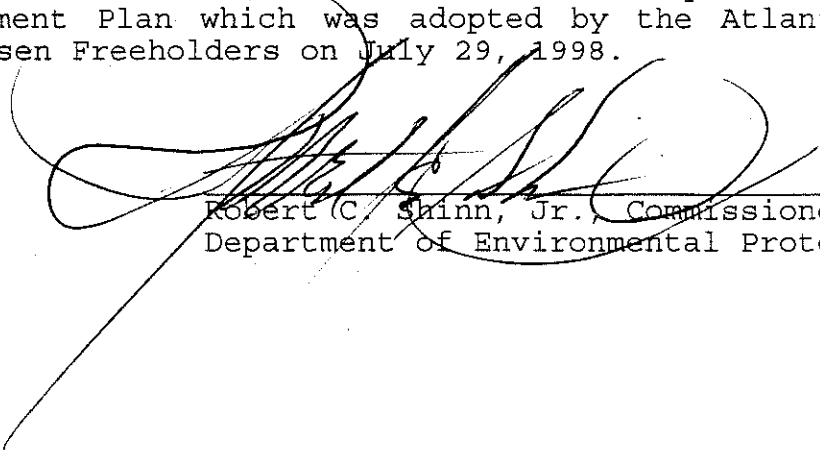
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's 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 29, 1998.

2/3/99
Date


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