



STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
CHRISTOPHER J. DAGGETT, COMMISSIONER
CN 402
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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 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, which specified the location of the county's interim/bypass landfill in Egg Harbor Township.

The amendment was received by the Department of Environmental Protection on December 27, 1988 and copies were distributed to various state level agencies for review and comment, as required by law. The Department has reviewed this amendment, as well as the entire Atlantic County District Solid Waste Management Plan, and has determined that the amendment adopted by the Atlantic County Board of Chosen Freeholders on December 13, 1988 is approved with modification as provided in N.J.S.A. 13:1E-24. The amendment is modified to include the implementation of a bird deterrent plan with said plan requiring subsequent written approval by the Federal Aviation Administration. 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 one important way.

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, Christopher J. Daggett, Commissioner of the Department of Environmental Protection have studied and reviewed the December 13, 1988 amendment 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 plan amendment, as modified, is consistent with the Statewide Solid Waste Management Plan.

In addition, the Division of Solid Waste Management circulated the plan amendment to nineteen (19) 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 Military and Veteran's Affairs, the Department of Transportation, 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. Division of Water Resources, 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. 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 Divisions of Environmental Quality, Parks and Forestry, Coastal Resources, Fish, Game and Wildlife and Solid Waste Management as well as the Federal Aviation Administration, the Department of Military and Veteran's Affairs and the U.S. Department of Agriculture submitted substantive comments which are further addressed below.

The Division of Environmental Quality commented that landfills 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 and property. New landfills should be equipped with positive ventilation systems, which direct landfill gases to air pollution control devices. These vents and devices require air pollution control

permits for all stationary equipment used to ventilate a solid waste facility directly or indirectly to the ambient atmosphere. In response, by copy of this certification the county is notified of this requirement.

The Division of Fish, Game and Wildlife commented that the proposed site is a poor location due to the increased chance of avian/airport conflicts. In response, the Department concurs with this site assessment and therefore directs that the plan amendment be modified as further specified in Section C. below.

The Division of Parks and Forestry commented that an archeological survey was deemed appropriate for this site. Also, a survey under Section 106 of the National Historic Preservation Act of 1966 will be necessary for all non-destroyed lands within the entire complex slated for development. In response, by copy of this certification, the county is notified of this requirement. The Department also notes that an ash residue landfill was approved for this site in a February 16, 1989 certification of a plan amendment. The Department stated in that certification "...that archeological surveying may be necessary at the proposed site, although no historical or archeological sites have been identified within the facility site. In response, these issues should be addressed during the Department's permitting phase for the ash residue landfill." Nothing in this certification changes that finding.

The Division of Coastal Resources commented that the site of the interim/bypass landfill in Egg Harbor Township is within the jurisdiction of the Coastal Area Facility Review Act (C.A.F.R.A.) zone, and therefore, Atlantic County must obtain a C.A.F.R.A. permit. Also, the Division of Coastal Resources commented that all new solid waste management facilities are required to comply with the Freshwater Wetlands Protection Act, N.J.S.A. 13:1B-1 et seq. If the proposed facility will involve the disturbance of any freshwater wetland or open water area, then a permit from the Division will be necessary. Furthermore, effective July 1, 1989, disturbances in "transition areas" adjacent to freshwater wetlands and waters will also be regulated. In response, by copy of this certification, the county is notified of these requirements.

The Federal Aviation Administration (F.A.A.) commented that the site of Atlantic County's interim/bypass landfill in Egg Harbor Township is inconsistent with the plans and programs administered by the F.A.A. and therefore will not support any concept or development which further serves to interfere with airport safety and operations. Additionally, a January, 1973 study done by the F.A.A. and the U.S. Department of the Interior concluded that a bird hazard already exists at the F.A.A. Technical Center and that a landfill sited within 10 miles of the Technical Center would only serve to increase the bird hazard. Pursuant to F.A.A. Guideline 5200.5, sanitary landfills will be considered an incompatible land use if located such that it places the runways and/or approach and departure patterns of an airport between bird feeding, water or roosting areas. Such is the case with this particular site. In response, the Department by copy of this certification is notifying Atlantic County of the concerns of the F.A.A. Additionally, the Department is directing the modification of the plan amendment as specified in Section C. of this certification to address these concerns.

The Department of Military and Veterans' Affairs commented that they are opposed to the siting of this facility in such close proximity to any runway of the Atlantic City International Airport. They state that a bird drawn into the engine of the F-16 could cause engine failure and pilot ejection resulting in the loss of an aircraft, damage to property, and possible loss of life. Additionally, the Atlantic City Reservoir is approximately 5000 feet from the end of the primary runway and will provide a watering and roosting area for birds feeding at the landfill. Bird control measures in this area will be virtually impossible. In response, the Department, by copy of this certification, is informing Atlantic County of these concerns. The Department is directing the modification of the plan amendment, as specified in Section C. below, in order to address the concerns raised by the Department of Military and Veterans' Affairs.

The U.S. Department of Agriculture commented that the development of the proposed site in Egg Harbor Township would cause a significant increase in the number of gulls frequenting the area. Development which will impose an additional threat to the aircraft safety and operations for aircraft using Atlantic City International Airport would not be supported. Further, the development of a long range bird hazard reduction plan can only address the existing problem and not the increased problem associated with development of the landfill. Many airports have a bird hazard reduction plan, including full or part time bird patrols which serve only to reduce the hazard, but never seem to eliminate the threat of a bird strike. Also, the City of New York constructed a wire grid over approximately 200 acres of the Fresh Kills Landfill on Staten Island, NY, at a cost of approximately three million dollars for the purpose of eliminating the gull problems in the surrounding area. The birds continued to frequent the area because they can obtain food from the garbage being transported to the site and they have learned to circumvent the grid system. In response, again the Department, by copy of this certification, is informing Atlantic County of the concerns of the U.S. Department of Agriculture. The Department is directing modification of the plan amendment to address the concerns raised above.

The Division of Solid Waste commented that there are concerns with this site because of its critical land use and public safety issues. Atlantic County, through their consultants, initiated a landfill siting study which identified a total of eight possible landfill sites in Atlantic County. This study developed a list of criteria by which these sites were ranked. The Doughty Road site ranked first. It is not clear at this time whether the bird roosting issue can be resolved. As presently planned, the interim/bypass landfill would be located 10,300 feet from the end of the airport runway. By copy of this certification, Atlantic County is notified of these comments. In response, the Department is directing the modification of the plan amendment to include a bird mitigation plan to address these concerns.

The Division of Solid Waste Management also commented concerning the proximity of Jarrets Run, an intermittent stream, to the planned landfill site. These concerns entail possible Army Corps of Engineers approval and wetlands destruction. In response, by copy of this certification, the county is notified of these comments.

Finally, the Division commented that on May 10, 1989, the 134th day of the 150 day review period, the Department received from the Atlantic County Utilities Authority a Proposed Doughty Road Solid Waste Facilities Site Bird Deterrent Plan. The bird deterrent plan was received too late for review. The Division recommended approval of the plan amendment contingent upon a viable bird deterrent plan and upon the county's commitment to implement the plan once approved. In response, the certification is approved, with modification, as specified in Section C. below.

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 December 13, 1988 amendment to the approved Atlantic County District Solid Waste Management Plan and certify to the Atlantic County Board of Chosen Freeholders that the December 13, 1988 amendment is approved, with modification, as further specified below.

On May 10, 1989, the Department received from the Atlantic County Utilities Authority a Proposed Doughty Road Solid Waste Facilities Site Bird Deterrent Plan. This plan was received too late for an adequate review to be performed. Since the bird problem was the only fatal flaw identified for the project, the county is directed to modify the plan amendment to include a viable bird deterrent plan. Therefore, the Department approves, with modification, the site for the interim/bypass landfill on the lots and blocks specified below.

The location of Atlantic County's interim/bypass landfill 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 approved, contingent upon the development of a viable bird deterrent plan. Pursuant to N.J.S.A. 13:1E-24e, within 45 days of the issuance of this certification, Atlantic County shall hold a public hearing on the bird deterrent plan. Atlantic County shall notify the Department of Military and Veterans' Affairs, the U.S. Department of Agriculture and the F.A.A. of the hearing date and time and location. Within 15 days of the holding of the public hearing, the county shall submit the adoption of the modification to the Commissioner for review pursuant to N.J.S.A. 13:1E-24f. The construction or operation of any solid waste facility shall be preceded by the acquisition of all necessary permits and approvals under N.J.S.A. 13:1E-1 et seq., and all other applicable laws. Issuance of operating permits pursuant to the Solid Waste Management Act is limited to those applicants found by the Department and the Attorney General to be deserving of licensing under the provisions of N.J.S.A. 13:1E-126 et seq.

Additionally, on February 23, 1987, Atlantic County was directed by the Department to develop a contingency plan. The county submitted a draft plan to the Department on April 3, 1987. The Department responded on May 14, 1987 stating the county needed to address additional issues within 30 days. On June 7, 1988, the county was granted a Waiver of Strict Compliance by the Pinelands Commission in order to vertically expand the Pinelands Park Landfill. However, this waiver was contingent upon the county submitting a

new contingency plan to the Pinelands Commission and amending their solid waste management plan to include the termination of all Atlantic County landfills located within the Pinelands area by August 8, 1990. The county fulfilled the terms of the waiver with the adoption on October 25, 1988 of an amendment regarding the landfill termination, which was certified by the Department on February 16, 1989. Also, the county submitted a contingency plan to the Pinelands Commission in December, 1988. The Department provided comments with respect to the contingency plan by stating a need for further detail and a request that the county incorporate this plan into their district solid waste management plan. Since the county has not yet incorporated a contingency plan within the district plan, the district will be without alternative disposal options should an interim/bypass landfill fail to come on line by August 8, 1990. Therefore, the county is directed within 45 days of this certification to amend its solid waste management plan to include a contingency plan that will specifically address alternative actions to be taken on August 8, 1990 should an in-county landfill not be available.

With respect to a contingency plan for the county, a transfer station to haul waste out of Atlantic County may be the most feasible alternative. Attachment 1 provides a workable timeframe for the county to implement this alternative as their contingency plan should they so decide.

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(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 within amendment to the Atlantic County District Solid Waste Management Plan and which was executed prior to the approval of this amendment and subsequent to these effective dates 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 the 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 this amendment 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. 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 and N.J.A.C. 7:26-1.4 and -2.13.

6. Effective Date of Amendment

The amendment to the Atlantic County District Solid Waste Management 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 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 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 With Modification of the Amendment and Notification of Deficiency 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 amendment, with 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 December 13, 1988. Also, Atlantic County is hereby directed to promptly proceed with the directives specified in Section C. of this certification and to correct the noted deficiency in the district plan.

MAY 26, 1989
DATE


CHRISTOPHER J. DAGGETT
COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ATTACHMENT 1

Activity Detail for Implementation
of Transfer Station Alternative of
the Atlantic County Contingency Plan

<u>Activity</u>	<u>Date</u>
o County to submit adopted plan amendment to include contingency plan and transfer station site.	June 30, 1989
o County to identify project vendor.	July 31, 1989
o County to submit EHIS, engineering designs and other permit applications.	September 30, 1989
o County to complete financing arrangements.	October 31, 1989
o County to acquire site.	November 30, 1989
o County to begin construction of transfer station.	January 31, 1990
o County to complete site work and building construction and testing for startup.	July 31, 1990
o County to begin full-scale operations of transfer station.	August 8, 1990