



State of New Jersey

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IN THE MATTER OF CERTAIN AMENDMENTS
TO THE ADOPTED AND APPROVED SOLID
WASTE MANAGEMENT PLAN OF THE
BERGEN COUNTY SOLID WASTE
MANAGEMENT DISTRICT

CERTIFICATION OF THE
FEBRUARY 21, 1996 AMENDMENTS TO
THE BERGEN 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 October 31, 1980, the Department of Environmental Protection (Department or DEP) approved with modifications the Bergen 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, 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 County Plan at any time and, if found inadequate, a new County Plan must be adopted. The Bergen County Board of Chosen Freeholders (County Freeholders) completed such a review and on February 21, 1996, adopted two amendments to its approved County Plan.

Amendment 96-02 proposed inclusion of the existing Leonia leaf compost facility located in the Borough of Leonia within the County Plan. Amendment 96-03 proposed a policy to delete noncompliant transfer stations from the County Plan.

The February 21, 1996 amendments were received by the DEP on March 26, 1996 and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed these amendments and has determined that the amendments adopted by the Bergen County Freeholders on February 21, 1996 are approved with modification as provided in N.J.S.A. 13:1E-24.

B. Findings and Conclusions with Respect to the Bergen County District Solid Waste Management Plan Amendments

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the February 21, 1996 amendments 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 these plan amendments are consistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders and the Borough of Leonia are notified of the issues of concern relative to the February 21, 1996 amendments which are included in Sections B.2. and B.3. below.

In conjunction with the review of these amendments, the Department 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 Water Quality, DEP
Division of Enforcement, DEP
Division of Solid and Hazardous Waste, DEP
Green Acres Program, DEP
Office of Air Quality Management, 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
Hackensack Meadowlands Development Commission

1. Agency Participation in the Review of the February 21, 1996 Amendments

The following agencies did not object to the proposed amendments:

Division of Parks and Forestry, DEP
Division of Fish Game and Wildlife, DEP
Department of Community Affairs
Department of Agriculture
Department of Transportation
Hackensack Meadowlands Development Commission

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

Division of Water Quality, DEP
Division of Enforcement, DEP
Office of Air Quality Management, DEP
Green Acres Program, DEP
Land Use Regulation Element, DEP
New Jersey Turnpike Authority
Department of Health
New Jersey Advisory Council on Solid Waste Management
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 Amendment 96-02

Issue: Planning and Regulatory Requirements

The inclusion in the County Plan of the existing Leonia leaf compost facility corrects a historical planning deficiency. Currently, the facility operates pursuant to the provisions of N.J.A.C. 7:26-1.11. This regulation exempts compost facilities with a capacity not in excess of 20,000 cubic yards annually from the Department's solid waste permitting requirements. However, pursuant to N.J.A.C. 7:26-1.11 (e)1., any site operating under such a permitting exemption must be included within the solid waste management plan of the solid waste management district within which the facility is to be located. Therefore, Amendment 96-02 addresses this historical planning deficiency.

If any activities associated with the Leonia leaf compost facility will discharge pollutants as defined in N.J.A.C. 7:14A-1.9, said operation must secure a New Jersey Pollutant Discharge Elimination

System Permit for pollutant discharges prior to operation.

Compost facilities 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 or property.

3. Issue of Concern Regarding Amendment 96-03

Issue: Legal Impacts

The amendment proposes a policy to delete any transfer station from the County Plan upon a determination and/or conviction of a violation in contradiction of the County Plan, Statewide Solid Waste Management Plan, and/or the Solid Waste Management Act. This language is overly specific in that it only addresses the deletion of transfer stations and not other types of solid waste facilities operating within Bergen County. Moreover, the language of the amendment only speaks to violations of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., which established a regulatory framework for implementing environmental safeguards, and not the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq., which established a system of economic regulation. It was due to increasing environmental concerns posed by the unregulated management of solid waste that the Legislature passed both these acts in 1970. Therefore, as noted in Section C.2., the amendment is approved with modification to apply to all solid waste facilities located within Bergen County and to encompass violations of the Solid Waste Utility Control Act.

The amendment also appears impermissably vague to the extent that it could possibly be rejected on appeal as unenforceable. The amendment provides that when a solid waste transfer station which is included in the Bergen County Plan operates "at any time in contradiction or violation" of the Statewide Solid Waste Management Plan, the County Plan, or the Solid Waste Management Act, that transfer station "shall be recommended" for deletion from the County Plan "upon the determination and/or conviction" of such a violation. The amendment is vulnerable because it is not clear which specific actions would lead to deletion from the County Plan. Minor violations of any of these regulatory or statutory programs should not give rise to deletion from the County Plan, at least when they would not lead as well to revocation of a facility's license or loss of its certificate of public convenience and necessity. Also, the language is imprecise in that it is difficult to determine what actions would be "in contradiction" of the state or county plans, or the statute, but not be "in violation" of them as well. Therefore, as noted in Section C.2., the amendment is approved with modification by deleting "in contradiction" and "upon determination" from the plan amendment.

Finally, the deletion process itself could lead to delays in

removing a solid waste facility from the County Plan. The only way to amend a county plan is by adopting another plan amendment and the subject amendment is not clear as to whether a solid waste facility deemed to merit deletion from the County Plan would have to be removed via a subsequent amendment. Amendments require public notice and hearing, with an opportunity to object and seek relief in Superior Court. In the event such an amendment for deletion was certified by the Department, the plan certification would also be subject to review in the Appellate Division. Therefore, as noted in Section C.2., the amendment is approved with modification to specify that a solid waste facility shall be proposed for deletion via adoption of a subsequent amendment of the County Plan upon order of the Department or the Superior Court of New Jersey.

C. Certification of the Bergen County District Solid Waste Management Plan Amendments

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 February 21, 1996 amendments to the approved County Plan and certify to the County Freeholders that the February 21, 1996 amendments are approved with modification as further specified below.

1. Amendment 96-02

The County Plan inclusion of the existing Leonia compost facility located on Block 102, Lots 2 and 3 in the Borough of Leonia, Bergen County for the exclusive acceptance of leaves is approved with modification. Specifically, that portion of the amendment which states that the compost facility will be deleted from the County Plan if it is determined that the facility operates contrary to the County Plan, the Statewide Solid Waste Management Plan, and/or the Solid Waste Management Act is modified consistent with the language and procedure stated in C.2. below.

The construction or operation of any solid waste facility shall be preceded by the acquisition of all necessary permits and approvals pursuant to N.J.S.A. 13:1E-1 et seq., and all other applicable laws.

2. Amendment 96-03

The County Plan inclusion of a policy to delete from the Bergen County Plan any noncompliant solid waste transfer station which operates at any time in contradiction or violation of the County Plan, Statewide Solid Waste Management Plan, and/or the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., upon a determination and/or conviction of such violation, is approved with modification. Specifically, as noted in Section B.3., for purposes

of clarification the following language is incorporated within the Bergen County Plan: "Any solid waste facility heretofore included in the Bergen County Plan which operates in violation of, for which revocation would be warranted, the Bergen County Plan, the Statewide Solid Waste Management Plan, the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq., the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and/or the rules and regulations which implement those statutes shall be proposed for deletion via an amendment of the Bergen County Plan upon final order of the Department or the Superior Court of New Jersey."

D. Other Provisions Affecting the Plan Amendments

1. Contracts

Any contract renewal or new contract for solid waste collection or disposal which is inconsistent with these amendments to the County Plan and which was executed prior to the approval of these amendments 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 these amendments and of the County Plan if such renegotiation is not completed within ninety (90) days of the effective date of these amendments 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 amendments contained herein shall operate in compliance with these amendments 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 and shall not apply to liquid waste, construction and demolition waste, sewage sludge, septage, and hazardous waste. All nonhazardous 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 set forth at N.J.A.C. 7:26-6, but 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 Amendments

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 modified amendments certified herein.

5. Definitions

For the purpose of these amendments 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 Amendments

The amendments, as modified, to the County Plan contained herein shall take effect immediately.

7. Reservation of Authority

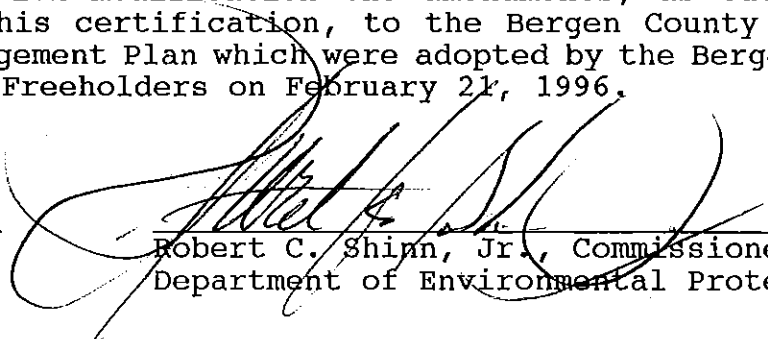
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's planning guidelines, rules, regulations, orders of the Department, 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 Amendments 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 amendments, as outlined in Section C. of this certification, to the Bergen County District Solid Waste Management Plan which were adopted by the Bergen County Board of Chosen Freeholders on February 21, 1996.

Date

8/9/96


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