



State of New Jersey

Department of Environmental Protection
Office of the Commissioner

P.O. Box 402

Trenton, NJ 08625-0402

Tel. # 609-292-2885

Fax. # 609-292-7695

James E. McGreevey
Governor

Bradley M. Campbell
Commissioner

**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 APRIL 17, 2002
AMENDMENT 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.

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 April 17, 2002, adopted an amendment to its approved County Plan.

The April 17, 2002 amendment proposes to include in the County Plan a revised solid waste funding and planning system. The revised system will provide for the defeasance of the Bergen County Utilities Authority's (BCUA) solid waste debt. Specifically, the County Plan amendment proposes the inclusion of the following:

1. The New Jersey Meadowlands Commission's (NJMC) purchase of the BCUA transfer station for \$18,500,000. The proceeds from this transaction shall be used for the defeasance of the BCUA solid waste debt. NJMC will also deposit into the defeasance escrow account an amount equal to the amount on deposit in the Kingsland Park Sanitary Landfill (KPSL) Statutory Closure Fund. This amount is estimated to be \$23,500,000. The NJMC will be reimbursed this amount once closure is complete and the money in the statutory fund lapses into the Sanitary Landfill Facility and Contingency Fund.
2. The NJMC acquisition of the KPSL from Bergen County and assumption of all closure and post-closure responsibilities.
3. The use of \$20,000,000 in Resource Recovery Investment Tax (RRIT) Fund monies for the defeasance of the solid waste debt.
4. The use of \$10,000,000 from the KPSL Closure Fund Escrow Account for the defeasance of the solid waste debt. (This fund money is separate and different from the \$23,500,000 Statutory Closure Fund noted above. The \$10,000,000 KPSL Closure Fund Escrow Account is not a statutory fund and the money may be utilized prior to closure of the landfill with DEP approval.)
5. The State of New Jersey contribution of \$11,500,000 for the defeasance of the solid waste debt.
6. The BCUA contribution of \$12,875,893 from its cash reserves for the defeasance of the solid waste debt.
7. The creation of two separate funds: a short-term liabilities fund to support the initial, short-term costs associated with the defeasance of the solid waste debt; and, a long-term liabilities fund to support the long-term costs associated with the sale of the transfer station and the transfer of KPSL to the NJMC.
8. The BCUA utilization of \$8,500,000 currently on deposit in its solid waste management division accounts fund to continue providing solid waste services for a period of ten years in accordance with its statutory solid waste obligations.
9. The County Plan inclusion of a revised short-term solid waste system and disposal strategy whereby solid waste generated within Bergen County may be disposed of at any duly permitted and licensed solid waste facility regardless of the location of the facility. The revised short-term strategy shall remain effective for a period of three years at which time a long-term solid waste

system and strategy will be promulgated.

10. The deletion from the County Plan of the BCUA transfer station/material recovery facility, NJDEP Facility # 0239000093.

11. The County Plan inclusion of the Class C and Class B Recycling Center at the previous BCUA transfer station site.

12. The amendment was received by the Department and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed this amendment and has determined that the amendment adopted by the County Freeholders on April 17, 2002 is approved as provided in N.J.S.A. 13:1E-24b.

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

In conjunction with the review of the amendment, the Department circulated copies to seventeen 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 Water Quality Management, DEP
Division of Solid and Hazardous Waste, DEP
Office of Air Quality Management, DEP
Green Acres Program, DEP
Land Use Regulation Element, DEP
New Jersey Turnpike Authority
New Jersey Meadowland Commission
New Jersey Advisory Council on Solid Waste Management
Department of Agriculture
Department of Health and Senior Services
Department of Transportation
Department of Community Affairs
Department of Treasury
U.S. Environmental Protection Agency

Issues of Concern Regarding the April 17, 2002 Amendment

Issue: Solid Waste Disposal Strategy

Prior to November 10, 1997, solid waste generated within Bergen County was directed to the BCUA transfer station or certain private transfer stations for in-state and/or out-of-state disposal.

On May 1, 1997, the United States Court of Appeals for the Third Circuit issued a Decision and Judgment in Atlantic Coast Demolition and Recycling v. Atlantic County Board of Chosen Freeholders, et al. 112 F. 3d. 652 affirming the decision of the United States District Court declaring New Jersey's solid waste flow regulations to be unconstitutional. On November 10, 1997, the United States Supreme Court denied the State of New Jersey's Petition for Certiorari appealing the May 1, 1997 ruling.

After November 10, 1997, Bergen County maintained a free market system for solid waste management.

The April 17, 2002 County Plan amendment proposes to reaffirm the current solid waste management strategy for a limited duration. The County Plan amendment proposes that solid waste generated within Bergen County may be disposed of at any duly permitted and licensed facility regardless of the location of the facility. This solid waste strategy shall remain in effect for a three-year period at which time a long-term solid waste system and strategy will be developed.

As a result of the sale of the BCUA transfer station, many Bergen County municipalities will require alternative disposal arrangements. Subsequent to the adoption of the April 17, 2002 amendment, the BCUA on April 18, 2002 entered into a contract with Waste Management of New Jersey, Inc. for a Cooperative Marketing Program whereby Bergen County municipalities may voluntarily enter into solid waste service agreements with the BCUA for disposal of the municipal solid waste at Waste Management transfer station facilities in Bergen County. As noted in Section C., Bergen County shall submit to the Department within one year of the date of this certification, an administrative action incorporating into the County Plan the Cooperative Marketing Program and detailing the municipalities that have entered into the program.

Issue: BCUA Bond Defeasance

The April 17, 2002 County Plan amendment stated that as of December 31, 2001, the BCUA solid waste bonds are outstanding in the amount of \$91,125,000. Based on the BCUA's current solid waste rates and charges, the BCUA states that it does not presently generate sufficient revenue through its transfer station operations to fund its yearly debt service payments. As a result, the BCUA currently utilizes reserve funds for the BCUA bi-annual debt service payments. The BCUA projects that the reserve funds will be depleted by 2004. Therefore, in order to address the potential financial difficulty, the BCUA proposes the defeasance of its solid waste bonds, thereby eliminating its solid waste debt obligation. The defeasance of the solid waste bonds will be accomplished by establishing an escrow account funded through:

The NJMC purchase of the BCUA transfer station for \$18,500,000;

The NJMC proposed deposit of an amount equal to the amount on deposit in the KPSL Statutory Closure Fund estimated to be \$23,500,000; (The NJMC will be reimbursed from the KPSL closure fund account after closure is complete and the money in the statutory fund lapses into the Sanitary Landfill Closure Fund.)

The use of \$20,000,000 in RRIT Fund monies;

The use of \$10,000,000 from the KPSL Closure Fund Escrow Account; (This fund is separate and different from the \$23,500,000 Statutory Closure Fund noted above. The \$10,000,000 KPSL Closure Fund Escrow Account is not a statutory fund and the money may be utilized prior to closure of the landfill with approval of the DEP.

The State of New Jersey proposed contribution of \$11,500,000; and,

The BCUA contribution of \$12,875,893.

Issue: NJMC/EnCap Golf Holdings, Inc. Redevelopment Project

The NJMC and EnCap have entered into a brownfield redevelopment project that involves the remediation of landfills within the NJMC District and the subsequent development of a golf course/resort complex, commercial, residential and retail space. The redevelopment project consists of the closure of three landfills (Avon, Lyndhurst, and Rutherford) as well the closure of the KPSL, construction and operation of a golf course, and construction of a hotel/resort.

The landfills will be remediated and redeveloped pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 13:1E-116.1 et seq. The landfills will be remediated and closed by filling the redevelopment project site with a combination of fill materials, dredged sediments and/or clay from dredging of New Jersey's rivers, channels and harbors.

Issue: Class C and Class B Recycling Center Designation

On April 17, 1991, Bergen County adopted a County Plan amendment which designated a regional leaf composting facility at the KPSL. This County Plan amendment was approved by the Department on October 20, 1991. The facility is utilized under contract between NJMC and a private entity. The NJMC notified Bergen County of EnCap's requirement to utilize the KPSL prior to the termination of the current contract for use of this facility. Therefore, NJMC requested to use the BCUA transfer station site as a temporary transfer facility for leaves, grass and vegetative material currently delivered to the BCUA vegetative waste compost facility located atop KPSL.

The April 17, 2002 County Plan amendment designates a Class C and Class B recycling center at the BCUA transfer station, located at Block 154, Lots 1 and 2, Block 174, Lots 1, 2, 3, and 4, in

the Borough of North Arlington. Class B material permitted to be accepted shall be limited to vegetative waste, logs and brush. The maximum daily capacity for the Class C and Class B recycling center shall be 1,500 tons per day. The designation of this Class C and Class B recycling center shall terminate four years from the date of this certification document.

Issue: Bergen County Recycling Plan

Included within the April 17, 2002 County Plan amendment document, as Appendices E, F and G is detailed information related to municipal recycling programs (Appendix E); municipal composting programs (Appendix F) and BCUA District-wide programs and services (Appendix G). The Department notes that, at least for the years 1995 through 2000, Bergen County achieved the highest municipal solid waste recycling rate for any county, as determined by the Department. Additionally, Bergen County achieved total recycling rates for the same period that were consistently among the top five counties in the state. The County is to be commended for these achievements, and the many programs detailed in Appendix G related to, among other things: household hazardous waste collection; paint recycling; computer and other electronics recycling; used motor oil collection; scrap tire recycling; household battery management programs, and various solid waste and recycling educational programs.

However, it must also be noted that Bergen County has experienced a significant drop in both its municipal solid waste (MSW) and total recycling rates during the time period noted above. Specifically, the Department has documented a 17.7 percent drop in the MSW recycling rate, and a 17.6 percent drop in the total recycling rate. This, coupled with the request by the County to utilize \$20 million in RRIT funds, which had been used to fund the Municipal Recycling Assistance Program, to defease its solid waste debt, concerns the Department. Therefore, as noted in Section C., Bergen County shall submit, within one year from the date of this certification, a plan including financial support as appropriate detailing how the county will reverse this trend, and achieve the State's statutory recycling goals.

C. Certification of the Bergen 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 April 17, 2002 amendment to the approved County Plan and certify to the County Freeholders that the April 17, 2002 amendment is approved as further specified below.

The County Plan inclusion of the New Jersey Meadowlands Commission (NJMC) purchase of the BCUA transfer station for \$18,500,000 is approved.

The County Plan inclusion of the NJMC acquisition of the Kingsland Park Sanitary Landfill (KPSL) from Bergen County and assumption of all closure and post-closure responsibilities is approved.

The County Plan inclusion of the NJMC proposed deposit of an amount equal to the amount on deposit in the KPSL Statutory Closure Fund estimated to be \$23,500,000 is approved.

The use of \$20,000,000 in Resource Recovery Investment Tax (RRIT) Fund monies for the defeasance of the solid waste debt is approved.

The County Plan inclusion of the use of \$10,000,000 from the KPSL Closure Fund Escrow Account for the defeasance of the solid waste debt is approved.

The County Plan inclusion of the appropriation by the State of New Jersey of \$11,500,000 for the defeasance of the solid waste debt is approved.

The County Plan inclusion of the BCUA contribution of \$12,875,893 from its cash reserves for the defeasance of the solid waste debt is approved.

The County Plan inclusion of the creation of two separate funds: a short-term liabilities fund to support the initial, short-term costs associated with the defeasance of the solid waste debt; and, a long-term liabilities fund to support the long-term costs associated with the sale of the transfer station and the transfer of KPSL to the NJMC is approved. Bergen County shall submit in a subsequent administrative action the financial details regarding these two accounts.

The County Plan inclusion of the BCUA utilization of \$8,500,000 currently on deposit in its solid waste management division accounts fund to continue providing solid waste services for a period of ten years in accordance with its statutory solid waste obligations is approved.

The County Plan inclusion of a revised short-term solid waste system and disposal strategy whereby solid waste generated within Bergen County may be disposed of at any duly permitted and licensed solid waste facility regardless of the location of the facility is approved. The revised short-term strategy shall remain effective for a period of three years at which time a long-term solid waste system and strategy will be promulgated. Bergen County shall submit to the Department within one year of the date of this certification, an administrative action incorporating into the County Plan the Cooperative Marketing Program created subsequent to this amendment. Also as noted in Section B., Bergen County shall submit, within one year from the date of this certification, a plan including financial support as appropriate, detailing how the County will reverse this trend, and achieve the State's statutory recycling goals.

The deletion from the County Plan of the BCUA transfer station/material recovery facility, NJDEP Facility # 0239000093 is approved.

The County Plan inclusion of the Class C and Class B Recycling Center at the previous BCUA transfer station site, located at Block 154, Lots 1 and 2, Block 174, Lots 1, 2, 3, and 4, in the Borough of North Arlington is approved. The County Plan designation of this recycling center shall terminate four years from the date of this certification. Should Bergen County want to

extend the County Plan designation of the recycling center beyond the four year limitation, the county shall be required to submit the extended designation in an administrative action.

This certification shall not be construed as an expression of the Department's intent to issue a recycling center approval to any recycling center for Class C and/or Class B materials. A recycling center approval shall only be issued where the applicant has submitted an administratively complete application, as per N.J.A.C. 7:26A-3.5, where all the substantive criteria for approval set forth in N.J.A.C. 7:26A-3.2,3.3, and 3.4 are satisfied, where a fee has been paid in accordance with N.J.A.C. 7:26A-2, and where none of the criteria for denial of a recycling center approval are met, as per N.J.A.C. 7:26A-11 and 12.

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 wastes. All nonhazardous materials separated at the

point of generation for sale or reuse 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 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 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 amendment 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. Further, nothing approved herein shall exempt Bergen County, BCUA or NJMC from the necessity to acquire all other permits and approvals required by law.

E. **Certification 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 the amendment, as outlined in Section C. of this certification, to the Bergen County District Solid Waste Management Plan which was adopted by the Bergen County Board of Chosen Freeholders on April 17, 2002.

May 16, 02
Date

Bradley M. Campbell
Bradley M. Campbell., Commissioner
Department of Environmental Protection

