



## State of New Jersey

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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  
GLOUCESTER COUNTY SOLID WASTE  
MANAGEMENT DISTRICT**

**CERTIFICATION  
OF THE FEBRUARY 18, 1998  
AMENDMENT TO THE GLOUCESTER 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 September 26, 1980, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Gloucester 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 Gloucester County Board of Chosen Freeholders (County Freeholders) completed such a review and on February 18, 1998,

adopted an amendment to its approved County Plan.

The amendment represents the County's response to the May 1, 1997 decision of the United States Court of Appeals for the Third Circuit which declared unconstitutional New Jersey's historic system of solid waste flow control. [See Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County et al. 112 F.3d 652 3d Cir. 1997, cert. den. November 10, 1997]. Specifically, each solid waste management district must reevaluate its solid waste disposal strategy in light of this recent court decision and, if necessary, initiate appropriate amendments thereto.

In general, the Department refers the County to the solid waste regulations at N.J.A.C. 7:26-1 et seq. to the extent they relate to specific procedural and substantive issues addressed in this and subsequent plan amendments. In addition, this certification is in no way intended by the DEP to represent a legal determination regarding the effect of the Atlantic Coast decision on any specific contract between public and/or private parties.

The February 18, 1998 amendment proposes a strategy of implementing regulatory flow control based upon nondiscriminatorily reprocurd solid waste disposal services. Also, the amendment proposes that an Environmental Investment Charge (EIC) will be imposed once regulatory flow control is re-established.

The amendment was circulated to various administrative review agencies for review and comment, as required by law, on February 18, 1998. The Department has reviewed this amendment on an expedited basis and has determined that the amendment adopted by the County Freeholders on February 18, 1998 is modified in part and remanded in part as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the February 18, 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 the approved portion of this plan amendment, as modified, is consistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the issues of concern relative to the amendment which are included in Section B.2. below.

In conjunction with the review of the amendment, 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 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 Treasury  
Department of Transportation  
Department of Community Affairs  
U.S. Environmental Protection Agency

**1. Agency Participation in the Review of the February 18, 1998 Amendment**

The following agencies did not object to the proposed amendment:

Office of Air Quality Management, DEP  
Division of Water Quality, DEP  
Division of Compliance and Enforcement, DEP  
Division of Parks and Forestry, DEP  
Green Acres Program, DEP  
Department of Transportation  
Department of Agriculture  
New Jersey Turnpike Authority

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 Treasury  
New Jersey Advisory Council on Solid Waste Management  
U.S. Environmental Protection Agency

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

Division of Solid and Hazardous Waste, DEP  
Department of Community Affairs

**2. Issues of Concern Regarding the February 18, 1998 Amendment**

**Issue: Previously Adopted Atlantic Coast Amendment**

On October 1, 1997, the County Freeholders adopted an amendment which proposed a market participant strategy providing for

voluntary delivery of Gloucester County generated solid waste to the Gloucester County Landfill. While the Department was reviewing this amendment, the County informed the DEP that it was in the process of adopting a subsequent amendment which would supersede the October 1, 1997 amendment. The February 18, 1998 amendment states "This amendment supersedes any and all terms, amendments and those portions of the approved County Solid Waste Management Plan specifically addressed herein, including, but not limited to the amendment dated October 1, 1997." Therefore, by the DEP certifying within Section C. of this certification the February 18, 1998 amendment, the County's strategy of implementing regulatory flow control based upon nondiscriminatorily reprocured solid waste disposal services supersedes the market participant strategy adopted within the October 1, 1997 amendment.

#### **Issue: Revised Solid Waste Disposal Strategy**

As noted above, the County had previously considered a market participant strategy. The February 18, 1998 amendment proposes that the Gloucester County Improvement Authority (GCIA) regulate the movement of all solid waste generated within the County. In response to the Atlantic Coast decision, a reprocurement process for the disposal of all County generated waste will be undertaken by the GCIA on behalf of the County. Specifically, the GCIA intends to reprocure solid waste disposal services and to enter into one or more agreement(s) with a provider(s) for solid waste disposal services to provide those services to municipalities and other users of the County system through regulatory waste flow. Since this procurement has not yet been completed, within Section C. of the certification this component of the amendment is approved with modification contingent upon receipt and approval by the DEP of a subsequent amendment or administrative action which documents awarding a nondiscriminatorily bid contract(s) to provide disposal services.

#### **Issue: Imposition of an EIC**

The February 18, 1998 amendment notes that an EIC will be charged once regulatory waste flow is re-established in a constitutional manner. The amendment states that the actual dollar amount of the EIC will be determined based upon the amount of additional revenues needed to meet the debt service related to the GCIA landfill and other amounts needed to fund expenses relating to the landfill which are not generated by the tipping fee.

The amendment notes that the Department of Community Affairs' (DCA) Local Finance Board (LFB) summoned the GCIA to appear before them to review financial difficulties facing the GCIA. Additional specifics relative to this appearance are not provided within the February 18, 1998 amendment. However, on January 28, 1998, as a result of a finding of financial difficulty, the LFB issued an order authorizing the GCIA to impose an EIC of \$21.96 per ton for

debt service for the County landfill which shall remain in effect until the earlier of December 31, 1998 or an extension, recision, or other amendment of the order. This order was followed by a letter of March 4, 1998 which was cosigned by DEP and DCA concurring in the finding of financial difficulty and authorizing the immediate imposition of an EIC.

The March 4, 1998 letter also emphasized the need for the submission, as soon as possible, of additional solid waste planning approvals consistent with December 1, 1997 DEP adopted regulations pursuant to the imposition and collection of an EIC. Specifically, N.J.A.C. 7:26-6.10(b)6. requires that a district solid waste management plan be amended to "specify 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, the County Plan must be amended to specify an EIC dollar amount. While the amount of the EIC being charged was identified to the LFB, this amount must be indicated to the DEP through the plan amendment process. Also, N.J.A.C. 7:26-6.10(b)2. requires "the designation of an in-district weighing facility(ies), if a district chooses...to impose a weighing requirement in order to collect any fees or charges for ensuring the payment of outstanding debt..." If the mechanism for collection of an EIC is through in-district weighing, then the County Plan must be amended to designate in-district weighing facility(ies). The February 18, 1998 amendment does not address the method for collection of the EIC. Consequently, within Section C. of this certification, the portion of the amendment proposing the imposition of an EIC is remanded for further consideration and evaluation by the County consistent with DEP's solid waste regulations. This certification action does not countermand the authorization of DEP and DCA to immediately impose an EIC.

Any future amendment adopted by the County Freeholders which assesses the amount of the EIC must include detailed methodology as to the calculation of the EIC, including but not limited to, the following:

- i. Analysis of current tip fee to determine various EIC components;
- ii. Analysis of how costs of various EIC components could be reduced;
- iii. Determination of means of calculating an EIC;
- iv. Determination of billing agency and mechanism for collecting an EIC;
- v. Analysis to demonstrate justness and reasonableness of the final EIC and the ability to meet debt obligations.

**Issue: Pending Litigation**

The Gloucester County Resource Recovery Facility (RRF) is a private facility which was financed by the proceeds of 1988 Series A and B Solid Waste Resource Recovery Revenue Bonds which were issued by the Gloucester County Improvement Authority (GCIA and owner/operator of the County Landfill). The proceeds of these bonds were loaned to Signal Environmental Systems (SES or Wheelabrator and owner/operator of the RRF) and are secured by a \$63 million letter of credit by Fuji Bank. Additionally, GCIA is obligated to a bond covenant (Section 611 of the bond resolution) that it will not compete with the RRF. Finally, SES and GCIA are exclusive holders of franchises which distribute the flow of waste between the landfill and the RRF. There is litigation pending on the continued validity of these contractual obligations between GCIA and SES Gloucester [see County of Gloucester, New Jersey v. SES Gloucester L.P., Superior Court, Chancery Division, Gloucester County, Docket No. GLO-L-1791-97].

After the amendment was submitted to the DEP, Robert J. Del Tufo, Esq., of Skadden, Arps, Slate, Meagher and Flom representing Fuji Bank submitted written objections to the October 1, 1997 amendment. In addition, Edward DeHope, Esq., of Riker, Danzig, Scherer, Hyland and Perretti submitted comments in opposition to the amendment on behalf of Wheelabrator Gloucester Company, L.P.

Within Section C. of this certification the Department takes no position on the validity of the contractual provisions entered into by the parties which is the subject of pending litigation.

**C. Certification of the Gloucester 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 February 18, 1998 amendment to the approved County Plan and certify to the County Freeholders that the February 18, 1998 amendment is modified in part and remanded in part as further specified below.

The County Plan inclusion of a nondiscriminatory reprocurement process to solicit bids for the disposal of the County's solid waste is approved with modification contingent upon receipt and approval by the DEP of a subsequent amendment or administrative action adopting the results of this process.

The County Plan inclusion of the imposition of an Environmental Investment Charge once regulatory flow control is re-established is remanded for further consideration and evaluation by the County consistent with Departmental solid waste regulations as specified in Section B.2. above. Specifically, Section B.2. outlines the

data to be contained within a subsequent plan amendment which is needed for the Department to review and act upon the imposition of an EIC. Finally, as noted in Section B.2., this remand action does not countermand the authorization of DEP and DCA to immediately impose an EIC.

**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 Plan**

The provisions of the District 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 and hazardous waste. 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 Implementation of the 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**

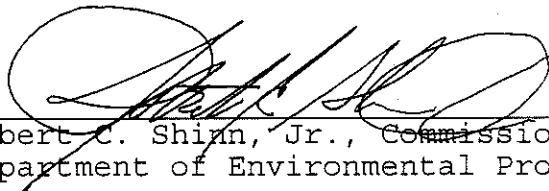
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's 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 Modification and Remand 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 modify in part and remand in part the amendment, as outlined in Section C. of this certification, to the Gloucester County District Solid Waste Management Plan which was adopted by the Gloucester County Board of Chosen Freeholders on February 18, 1998.

March 24, 1998

Date



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