



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
GLOUCESTER COUNTY SOLID WASTE
MANAGEMENT DISTRICT

CERTIFICATION
OF THE MAY 6, 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 May 6, 1998, adopted an amendment to its approved County Plan.

The amendment represents the County's supplemental 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 May 6, 1998 amendment proposes the imposition of a \$21.96 per ton Environmental Investment Charge (EIC) on every ton of solid waste generated within Gloucester County to finance the payment of outstanding debt incurred by the Gloucester County Improvement Authority (GCIA) in fulfilling its responsibilities as the Gloucester County solid waste management implementation agency.

The amendment was received by the Department on May 18, 1998, and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed this amendment on an expedited basis and has determined that the amendment adopted by the County Freeholders on May 6, 1998 is approved in part and modified 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 May 6, 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 issues of concern relative to the May 6, 1998 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 Transportation
Department of Community Affairs
Department of Treasury
U.S. Environmental Protection Agency

1. Agency Participation in the Review of the May 6, 1998 Amendment

The following agencies did not object to the proposed amendment:

Division of Compliance and Enforcement, DEP
Office of Air Quality Management, DEP
New Jersey Turnpike Authority
Department of Agriculture
New Jersey Advisory Council on Solid Waste Management

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

Division of Parks and Forestry, DEP
Division of Fish, Game and Wildlife, DEP
Division of Water Quality, DEP
Green Acres Program, DEP
Land Use Regulation Element, DEP
Department of Health
Department of Transportation
Department of Treasury
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 May 6, 1998 Amendment

Issue: Previously Adopted Atlantic Coast Amendment

In a previous amendment dated February 18, 1998, the County proposed that following the nondiscriminatory procurement of

solid waste disposal services the GCIA would regulate the movement of all solid waste generated within the County. The amendment further proposed that an EIC would be charged once regulatory waste flow control is re-established in a constitutional manner and that the actual dollar amount of the EIC would be determined following completion of this procurement process. However, on January 28, 1998, as a result of a finding of financial difficulty, the Department of Community Affairs' (DCA) Local Finance Board (LFB) issued an order authorizing the GCIA to impose an EIC of \$21.96 per ton until the earlier of (1) the extension, rescission, or other amendment of the order by the LFB or (2) December 31, 1998. This order was followed by a letter dated March 4, 1998, co-signed by the 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 County to amend the County Plan to include the EIC of \$21.96. Additionally, the March 24, 1998 certification of the February 18, 1998 amendment specified that N.J.A.C. 7:26-6.10(b)2. requires that a County 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." The March 24, 1998 certification also stated that any future amendments which propose the amount of the EIC must also include detailed methodology as to the calculation of the EIC. The May 6, 1998 amendment responds to these directives.

Issue: Calculation of the EIC

The May 6, 1998 amendment identifies the various costs to be funded through the collection of the EIC on all solid waste generated within the County. According to the amendment, proceeds from the collection of the EIC will be used to finance debt service on bonds issued to finance the GCIA County Landfill, enforcement, and fixed costs of maintaining the landfill (regardless of its operational status). These annual costs are \$4,656,110. The County proposes to use the 1996 solid waste tonnage generation figure of 212,064 tons for its calculation of the EIC. Based upon the dollar costs presented in the amendment of the various items to be funded through the EIC and the 1996 tonnage rate, an EIC of \$21.96 per ton has been determined comprised of the following:

<u>Expense</u>	<u>Charge Per Ton</u>
Debt Service	\$15.57
Insurance	1.30
Engineering Services	.52
Leachate Treatment	2.66
Methane Collection	.06
Permits	.80
Enforcement	<u>1.05</u>
	\$21.96

In determining whether all of the above noted costs are eligible

EIC expenses, the Department referred to its August 1997 Guidance Document in Response to the May 1, 1997 Court Decision on Solid Waste Flow Control which identified standby operating costs (minimal operating costs required to keep a facility open) as permissible EIC expenses. Exclusive of debt service and enforcement, all the remaining costs can be considered standby operating costs. Therefore, within Section C. of this certification, the DEP approves the imposition of an EIC of \$21.96 per ton for calendar year 1998. However, the LFB directed the County to submit monthly reports which shall be reviewed prior to DCA approval of an EIC for calendar year 1999. Consequently, Section C. of this certification does not approve an EIC for calendar year 1999. This Departmental decision will allow the County sufficient time to ascertain tonnage collection for 1998 and to modify its projected 1999 EIC accordingly. Should the County opt to continue collecting an EIC in 1999, DEP approval may be obtained via an Administrative Action (N.J.A.C. 7:26-6.11(b)10.),

Issue: Method of Collection of the EIC

The Department's March 28, 1998 certification of the County's February 18, 1998 amendment also stipulated that if the district chooses to impose a weighing requirement at an in-district facility(ies) in order to collect any fees or charges for ensuring the payment of an EIC, the County must designate the facility(ies) through the County Plan amendment process. Within the May 6, 1998 amendment, the County proposes the scalehouse at the Wheelabrator Resource Recovery Facility and the scalehouse at the GCIA County Landfill as the designated facilities for in-county weighing of nonmunicipal solid waste collection vehicles. The EIC will be charged and collected from each collector that transports nonmunicipal solid waste generated within the County. After weighing, the hauler may dispose of the waste at an in-county or out-of-county facility. If a collector chooses to dispose Gloucester County generated solid waste at an out-of-county facility, the EIC will be charged based on the weight recorded at the designated in-county weighing facility as compared to pre-set tare weights for the transport vehicle.

The May 6, 1998 amendment further proposes that for waste generated by municipalities within the County, the municipalities may elect one of two options for billing of the EIC. Under the first option, the GCIA will determine the EIC based upon an historic three-year average of solid waste generated by the municipality, and bill the municipality accordingly on a monthly basis. Under the second proposed option, the GCIA will determine the EIC based upon monthly weight slips certified by the designated weighing facility and bill the municipality accordingly on a monthly basis.

Finally, the Department adopted regulations at N.J.A.C. 7:26-6.10(b)2. which restrict in-district weighing to a 6 month period and require the submission of a subsequent plan amendment which

identifies a long-term strategy for collection of outstanding debt that examines all reasonable available alternatives. Therefore, within Section C. of this certification, the in-district weighing requirement is approved with modification contingent upon the submission of a subsequent plan amendment which identifies an alternative method for collection of outstanding debt. This amendment shall be submitted within 6 months of the date of this certification. Following the submission of this plan amendment, the County may continue to collect any fees through in-district weighing pending the Department's review of the alternative method of collection.

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 May 6, 1998 amendment to the approved County Plan and certify to the County Freeholders that the May 6, 1998 amendment is approved in part and modified in part as further specified below.

Imposition of an EIC

The County Plan inclusion of the assessment of an Environmental Investment Charge of \$21.96 per ton for calendar year 1998 is approved. Should the County opt to continue collecting an EIC in calendar year 1999, DEP approval may be obtained via an Administrative Action.

In-District Weighing

The County Plan inclusion of the method of collecting the EIC is approved with modification. Specifically, as noted within Section B., consistent with DEP regulations in-district weighing is modified to restrict it to a 6 month period and requires the submission of a subsequent amendment which identifies an alternative long-term strategy for collection of outstanding debt. This amendment shall be submitted within 6 months of the date of this certification. Following the submission of this amendment, the County may continue to collect any charges through in-district weighing pending the DEP's review of the alternative method of collection.

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

7. Reservation of Authority

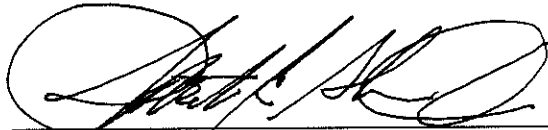
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's 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 and 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 in part and modify 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 May 6, 1998.

6/5/98

Date



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