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Scott A. Weiner
Commissioner

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

**CERTIFICATION
OF THE MAY 27, 1992
AMENDMENT TO THE MORRIS 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 January 29, 1981 the Department of Environmental Protection approved, with modifications, the Morris 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 plan at any time and, if found inadequate, a new plan must be adopted. The Morris County Board of Chosen Freeholders (County Freeholders) completed such a review and on May 27, 1992 adopted an amendment to its approved County Plan.

The amendment proposed County Plan inclusion of the Mt. Hope Products recycling center located in Rockaway Township, Morris County. The recycling center is planning to recycle nonhazardous hydrocarbon contaminated soil.

The amendment was received by the Department of Environmental Protection and Energy (Department or DEPE) on June 23, 1992 and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed this amendment, as well as the entire County Plan, and has determined that the amendment adopted by the County Freeholders on May 27, 1992 is approved as provided in N.J.S.A. 13:1E-24. Serious deficiencies in the County Plan have been identified within Section C. of this certification.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the May 27, 1992 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 is consistent with the Statewide Solid Waste Management Plan.

In conjunction with the review of the amendment, the Department circulated copies to sixteen 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. These agencies are the following:

Office of Energy, DEPE
Land Use Regulation Element, DEPE
Groundwater Quality Management Element, DEPE
Wastewater Facilities Regulation Element, DEPE
Division of Parks and Forestry, DEPE
Division of Fish, Game and Wildlife, DEPE
Division of Solid Waste Management, DEPE
Green Acres Program, DEPE
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 the Public Advocate
U.S. Environmental Protection Agency

1. Agency Participation in the Review of the May 27, 1992 Amendment

The following agencies did not object to the proposed plan amendment:

Division of Parks and Forestry, DEPE
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
Department of Agriculture
Department of Transportation
Department of Community Affairs

The following agencies did not respond to the Department's requests for comments:

Office of Energy, DEPE
Groundwater Quality Management Element, DEPE
Green Acres Program, DEPE
Department of Health
Department of the Public Advocate
U.S. Environmental Protection Agency

The following agencies submitted substantive comments which are further addressed below:

Land Use Regulation Element, DEPE
Wastewater Facilities Regulation Element, DEPE
Division of Fish, Game and Wildlife, DEPE
Division of Solid Waste Management, DEPE

2. Issues of Concern Regarding the May 27, 1992 Amendment

Issue: Regulatory Requirements

Recycling centers 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. Also, recycling centers are considered solid waste facilities which are subject to N.J.A.C. 7:27-8.2(a)16 which requires air pollution control permits for any equipment which vents a solid waste facility directly or indirectly into the outdoor atmosphere. Such vents may require devices to control odors and other air contaminants. Finally, the combustion of used oil, and mixtures of used oil and other oil, are subject to the provisions of N.J.A.C. 7:27-8.2(a)13 which requires that the combustion of such oil only be done in controlled devices with air pollution control permits specific to the combustion of used waste oil.

Also, if the proposed operation will discharge (liquid) pollutants as defined in N.J.A.C. 7:14A-1.9, said operation must secure a New Jersey Pollutant Discharge Elimination System permit and/or a Treatment Works Approval for pollutant discharges prior to operation.

Further, the DEPE has an existing enforcement action against the applicant for alleged impacts on freshwater wetlands from his quarry operation at the site in Rockaway Township. Therefore, a Freshwater Wetlands Letter of

Interpretation must be applied for by Mt. Hope Products from the DEPE's Land Use Regulation Element to ensure that the recycling center will be properly situated on the applicant's property to exclude any impact on freshwater wetlands.

Finally, the proposed Mt. Hope Products recycling center will process nonhazardous hydrocarbon contaminated soil. This material is considered a Class B recyclable material. As such, the recycling center must obtain a recycling center approval from the Department pursuant to N.J.A.C. 7:26A-3 prior to operation.

The County Freeholders and the applicant are hereby notified of these comments.

Issue: General Site Considerations

The proposed recycling center location is in a general area of high fish/wildlife resource and habitat values. As such, site contamination and the site's compatibility with the surrounding values/users should be two important considerations in the acceptability of this facility. Besides the presence of the more common wildlife species typically found in the Highlands Area, species like bear, wild turkey and bobcat (endangered) are also known to occur in the Mt. Hope area. Other important species of concern include: barred owl (threatened), wood turtle (threatened) and timber rattlesnake (endangered). Snake Hill Brook is a FW-2 Trout Production Stream (native brook trout) that is protected as Category 1 Water (no measurable, calculable or predictable changes in water quality). Lake Ames, downstream of the site, is a Green Acres recreation area; Hibernia Brook is a trout maintenance/ trout stocked waterbody; Mt. Hope Pond is a trout stocked waterbody; and Mt. Hope Lake is a warmwater impoundment stocked and recreationally used by the Rockaway Sportsmen Association. Moreover, adjacent land areas are proposed for use as a recreation area as part of the mitigation plan for the Mt. Hope Pumped Storage Hydroelectric Facility.

It must be noted that Mt. Hope Products currently utilizes a 500 acre site in Rockaway Township, which is zoned for mining, for asphalt manufacturing and rock quarrying. These activities have been in operation for many years. Mt. Hope Products requests Departmental approval to operate a recycling center for reclaiming/recycling nonhazardous hydrocarbon contaminated soil. This type of operation is necessary to process hydrocarbon contaminated soil and for the State to achieve its goal of recycling 60% of the total waste stream by 1995. For this primary reason, it is appropriate to approve this activity at the planning phase of the project development process. However, during the application process for an approval to operate a recycling center to process Class B recyclable materials, Mt. Hope Products must demonstrate compliance with all applicable Departmental rules and regulations prior to receipt of the necessary recycling center approval.

The County Freeholders and the applicant are hereby notified of these comments.

C. Certification of the Morris 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 27, 1992 amendment to the approved County Plan and certify to the County Freeholders that the May 27, 1992 amendment is approved as further specified below.

1. May 27, 1992 Amendment

The County Plan inclusion of the Mt. Hope Products recycling center located at 625 Mt. Hope Road, Block 20001, Lot 5.01, in Rockaway Township, Morris County is approved. This recycling center will recycle nonhazardous hydrocarbon contaminated soil. Specifically, the facility will remove petroleum hydrocarbons from soil which has tested to be type 27 nonhazardous solid waste. Soil may be contaminated with gasoline, diesel, kerosene, jet fuel, #4 and #6 heating oils, and other refinery products.

Priority consideration shall first be given to acceptance of material from Morris County generators, then from New Jersey generators, and finally from out-of-state generators. The recycled materials will be used in Mt. Hope Products' manufacturing of bituminous concrete/asphalt. The anticipated processing capacity will be 150 tons per hour or 1,200 tons per day. On a quarterly basis, Mt. Hope Products shall provide the municipal recycling coordinator of the municipality of the soils generation with documentation of the quantity of material recycled from that municipality. Also, Mt. Hope Products shall provide on a quarterly basis the Morris County solid waste coordinator and the DEPE's Division of Solid Waste Management, Office of Recycling and Planning, with documentation on the quantity of material being recycled. Because this recycling center will be handling Class B recyclable materials, as defined at N.J.A.C. 7:26A-1.3, it must obtain a recycling center approval from the Department pursuant to N.J.A.C. 7:26A-3 prior to operation. Further, pursuant to N.J.A.C. 7:26A-4.1(a)1.iii, Class A recyclable materials may be commingled only with other Class A recyclable materials. Class B recyclable materials may be commingled only with other Class B recyclable materials and only to the extent authorized in the general approval. Finally, a Freshwater Wetlands Letter of Interpretation must be applied for by Mt. Hope Products from the DEPE's Land Use Regulation Element to ensure that the recycling center will be properly situated on the applicant's property to exclude any impact on freshwater wetlands.

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 B recyclable materials. A recycling center approval shall only be granted where the applicant has submitted an administratively complete application, as per N.J.A.C. 7:26A-3.5, where all substantive criteria for approval set forth in N.J.A.C. 7:26A3.2, 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.

Any residue generated as a result of the operation of this recycling center shall be disposed of pursuant to the County Plan and the Interdistrict and Intradistrict Solid Waste Flow Rules (N.J.A.C. 7:26 et seq.). The construction and operation of a recycling center which receives, stores, processes or transfers Class B recyclable materials, as defined at N.J.A.C. 7:26A-1.3, shall be preceded by the acquisition of the necessary approval pursuant to N.J.A.C. 7:26A-3 et seq., and shall be in conformance with Departmental regulations and guidelines, including N.J.A.C. 7:26A-4.

2. Morris County District Solid Waste Management Plan Deficiencies

Since 1985, in ten (10) separate certifications, the Department has noted deficiencies within the County Plan and the County Freeholders have been directed to address the deficiencies within a subsequent plan amendment submission. Specifically, these deficiencies pertain to the lack of available suitable sites to provide solid waste facilities to treat and dispose of the solid waste generated, the lack of a transportation plan, and the lack of a description of financing needed solid waste facilities. At present, the County has a short-term solid waste disposal strategy which relies completely on out-of-state disposal with no identified long-term disposal strategy. The failure of the County to move forward with any significant element of its County Plan is particularly alarming in light of the County's status as a 100% exporter of solid waste at a time when the United States Congress is seriously considering national legislation to control interstate shipments of solid waste. Also, the County has failed to address the recommendations of the Emergency Solid Waste Assessment Task Force Final Report concerning source reduction, recycling and regionalization despite a prior directive in this regard as contained within the Department's April 19, 1991 certification of the County's October 24, 1990 and November 28, 1990 plan amendments. To date, the Department has not received the required plan amendment and the submission deadline of October 16, 1991 has long since passed. Therefore, the County Freeholders are directed to submit the required plan amendments as previously outlined in the Department's April 19, 1991 certification within 90 days of the date of this certification. The failure of the County to comply with this directive may result in the withholding and reallocation of Solid Waste Services Tax moneys and the withholding of the County's Resource Recovery Investment Tax moneys. In addition, the DEPE will consider the possible direct intervention in the planning process of Morris County.

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 and shall not apply to liquid wastes, sewage sludge, septage, and hazardous wastes. 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 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 and -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.

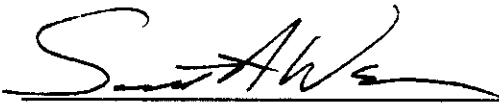
7. Reservation of Authority

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. The Department has published a 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 of the Amendment and Notification of Deficiencies by the Commissioner of the Department of Environmental Protection and Energy

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 Morris County District Solid Waste Management Plan which was adopted by the Morris County Board of Chosen Freeholders on May 27, 1992. I hereby also require, as noted in Section C., the Morris County Board of Chosen Freeholders to address the noted deficiencies within the timeframe specified.

11/17/92
DATE /


SCOTT A. WEINER
COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND ENERGY