

*This is a copy of the Morris County Municipal Utilities Authority Administrative Action signed by Commissioner Robert C. Shinn Jr. on January 09, 1998.*

Office of the Commissioner  
P.O. Box 402  
Trenton, New Jersey 08625-0402  
Tel. # (609) 292-2885  
Fax. # (609) 292-7695

Mr. Glenn W. Schweizer, Executive Director  
Morris County Municipal Utilities Authority  
P.O. Box 370  
300 Mendham Road  
Mendham, New Jersey 07945-0370

Dear Mr. Schweizer:

On December 12, 1997 the Department of Environmental Protection's Division of Solid and Hazardous Waste received the December 9, 1997 Morris County Municipal Utilities Authority's (MCMUA) request for administrative action pursuant to the provisions of N.J.A.C. 7:26-6.11(b)9. The December 9, 1997 request for administrative action represents the MCMUA '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. 112F.3d 652 (3rd Cir. 1997), cert. den., November 10, 1997.] As a result of that decision, 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.

The December 9, 1997 MCMUA request for an administrative action pursuant to N.J.A.C. 7:26-6.11(b)9. petitions the Department to reaffirm without modification the solid waste disposal system that has been in effect in Morris County for a number of years. That system includes:

\* The January 6, 1993 MCMUA contract with Waste Management of Pennsylvania for out-of-state landfill disposal; and,

\* The November 7, 1997 contract with Morris County Transfer Station, Inc. (MCTS) for the operations of the two MCMUA transfer stations and the transportation of the solid waste to the out-of-state landfill facility.

With regard to the acquisition of landfill capacity, on October 19, 1992, the MCMUA issued a Request for Proposals (RFP) for the sale to MCMUA of an undivided interest in real property, consisting of certain easement rights to use up to 4,500,000 tons of landfill capacity in one or more landfills located outside of Morris County. The Easement would be for a term of 10 years, with a five (5) year option which could be exercised by the MCMUA at its sole option. Five (5) proposals in response to the RFP were submitted to the MCMUA. All proposers were placed on an equal and competitive level and each proposal was evaluated for its technical, legal and financial merit. Based upon the results of the non-discriminatory evaluation of all the proposals, the MCMUA selected the Waste Management of Pennsylvania, Inc. proposal and the January 6, 1993 contract was entered into.

With regard to the contract for the operations of the two transfer stations and the transportation of the waste to the out-of-state landfill, on June 30, 1997 the MCMUA advertised a Notice to Bidders in a weekly national solid waste publication and in two newspapers. The MCMUA requested bids for two alternative proposals, combined operations of the two transfer stations and transportation to the out-of-state landfill or only transportation services. The MCMUA received five (5) bids in response to the Notice to Bidders. The MCMUA determined that the Morris County Transfer Station, Inc. was the lowest responsive and responsible bid and entered into the Combined Services Contract on November 7, 1997.

Pursuant to N.J.A.C. 7:26-6.11(b)9., the MCMUA held a public hearing on December 9, 1997 to receive comment following proper notice to reaffirm its existing solid waste management system. Therefore, since the MCMUA has sufficiently demonstrated that the procurement process for the out-of-state landfill capacity and the operations of the two transfer stations and the transportation to the out-of-state landfill are consistent with the criteria set forth in the Atlantic Coast decision, pursuant to N.J.A.C. 7:26-6.11(f) the Department hereby approves as an administrative action the Morris County solid waste management system. Accordingly, Morris County may direct all solid waste to either the MCMUA Mt. Olive Transfer Station or the MCMUA Parsippany-Troy Hills Transfer Station.

Finally, the Department is concerned that if the contract awarded to MCTS does not provide for materials recovery, it may have an adverse impact upon the recycling rates achieved by the County and may conflict with the allowance for procurement of recycling services afforded to commercial waste generators [see N.J.S.A. 13:1E-99.16(d)]. If this is the case, the County is hereby directed (pursuant to N.J.A.C. 7:26-6.11(b)6.) to submit with 45 days an Administrative Action which provides a narrative description of how it will meet or surpass the State's mandated recycling goals and provide for materials recovery, particularly for Type 13C solid waste.

This administrative action is in no way intended by the Department to represent a legal determination regarding the effect of the Atlantic Coast decision on any specific contract between public and/or private parties.

Should you have any questions in this regard, please contact Gary Sondermeyer, Director, Division of Solid and Hazardous Waste, at 609-984-6880.

Sincerely,

Robert C. Shinn, Jr.  
Commissioner