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

**CERTIFICATION
OF THE APRIL 20, 2005
AMENDMENT TO THE OCEAN 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 (now the New Jersey Meadowlands Commission) develop comprehensive plans for waste management in their respective districts. On May 13, 1980, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Ocean 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 Ocean County Board of Chosen Freeholders (County Freeholders) completed such a review and on April 20, 2005, adopted an amendment to its approved County Plan.

The April 20, 2005 County Plan amendment establishes intra-state waste solid waste flow in conformity with the Atlantic Coast decision; revises the development plan for the Ocean County Landfill (OCLF); adds an additional lot and block to the OCLF; modifies the inclusion of the materials recovery facility (MRF) located at the OCLF to designate it as a materials recovery facility/transfer station (MRF/TS) with a maximum capacity of 2,000 tons per day (TPD); permits the materials recovery facility/transfer station building footprint to be moved into the northern part of Block 2, Lots 769 and 770 (located within the OCLF); identifies the components of the County recycling education and outreach activities; establishes various requirements for generators of recyclable materials; expands the County's recycling enforcement program, and updates the County's list of facilities included within the County Plan.

The amendment was considered administratively complete for review by the Department on July 1, 2005 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 20, 2005 is approved, as modified herein, as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the April 20, 2005 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 amendment 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 April 20, 2005 amendment, which are included below.

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 Water Quality, DEP
Division of Parks and Forestry, DEP
Division of Fish and Wildlife, DEP
Solid and Hazardous Waste Management Program, DEP
Office of Local Environmental Management, DEP
Office of Air Quality Management, DEP
Green Acres Program, DEP
Land Use Regulation Program, DEP
Bureau of Solid Waste Compliance and Enforcement, DEP
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management

Pinelands Commission
Department of Agriculture
Department of Health and Senior Services
Department of Transportation
Department of Community Affairs
U.S. Environmental Protection Agency

Elements of the April 20, 2005 Amendment

Element: County Plan Inclusion of Regulatory Flow Control

In 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.] each solid waste management district was advised to reevaluate its solid waste disposal strategy in light of this court decision and, if necessary, initiate appropriate amendments thereto. As a response to the Atlantic Coast decision, Ocean County has adopted the April 20, 2005 amendment which proposes, among other things as detailed above, intra-state waste flow whereby all non-recycled solid waste generated within Ocean County, and which is not transported to a permitted out-of-state facility for disposal, shall be directed to the OCLF for disposal.

In the Atlantic Coast case, the United States Court of Appeals for the Third Circuit enjoined the enforcement of New Jersey's low control regulations noting that "...the State of New Jersey cannot protect the local waste disposal market, and thereby exclude out-of-state competitors, in order to use revenues to finance substantial debts of its waste management districts." However, the court noted that "...a law that directs waste to a particular facility will not necessarily violate the dormant Commerce Clause as long as out-of-state operators are given an even chance to compete for the opportunity to dispose of the state or district's waste." Further, the court held that "...[a]lthough the state of New Jersey may no longer preclude the designation of out-of-state waste disposal facilities or operators, the state and county authorities remain free to regulate the flow of waste within New Jersey as long as the state's laws and regulations treat in-state and out-of-state facilities equally." Subsequently, the Appellate Division of the Superior Court of New Jersey upheld the enforcement of waste flow restrictions as they affected the in-state flow of waste. See, IMO Allegations of Violations of Law by A. Fiore & Sons, Inc., 305 N.J. Super. 192, (App. Div. 1997). The Atlantic Coast and Fiore decisions represent the existing legal precedents regarding restrictions on the intra-state flow of waste in New Jersey. Therefore, since the proposed intra-state strategy does not preclude transporters from disposing of solid waste at out-of-state facilities, within Section C. of this certification the Department approves the County's disposal strategy.

Element: Ocean County Landfill, Materials Recovery Facility (MRF) and Transfer Station

On June 26, 1980, the Ocean County Board of Chosen Freeholders adopted an amendment to their County Plan to include the Ocean County Landfill (OCLF) in Manchester Township. This amendment was certified as approved with modifications by the Department on July 31, 1980.

On February 19, 1991, the Ocean County Board of Chosen Freeholders adopted an amendment to their County Plan to include a materials recovery facility (MRF) at the existing OCLF on Block 2, Lots 31, 32, and 33 in Manchester Township. This amendment also stated for clarification the block and lot designation of the OCLF in Manchester Township. The OCLF designation is: Block 2, Lots 1, 2, 5, 6, 8 through 24, 30 through 37, 59 through 65, 768, 769, 770, 771, 772, 777, and 778; Block 3.02, Lot 642; and Block 33, Lot 783, in Manchester Township. These sections of the February 19, 1991 amendment were approved on July 26, 1991.

On April 3, 1996 the Ocean County Board of Chosen Freeholders adopted an amendment to their County Plan to include additional blocks and lots to the OCLF for use as buffer. The additions are: Block 3, Lots 635, 636, 637, 638 and Block 3.03, Lot 1. This amendment was certified as approved with modifications by the Department on September 11, 1996.

On April 17, 2000 the Department approved an Administrative Action request to include within the Ocean County Plan the relocation of the designated location of the MRF within the OCLF. The MRF is located at Block 2, Lots 15, 642, 769, 770.

The April 20, 2005 amendment revises the development plan for the OCLF so that a filled portion of the landfill can be redeveloped to accept bulky waste and construction/demolition debris. The MRF designation is modified for Plan inclusion as a materials recovery facility/transfer station (MRF/TS) with a maximum capacity 2,000 TPD. The amendment also includes the MRF/TS building footprint to be moved into the northern parts of Block 2, Lots 769 and 770. The amendment further lists the designated blocks and lots for the OCLF which are now: Block 2, Lots 1, 6, 9 through 24, 30 through 37, 59 through 65, 768, 769, 770, 771, 772, 775, 777, and 778; Block 3, Lot 635, Block 3.02, Lot 642; Block 303, Lot 1, and Block 2, Lot 775, is an addition to the currently approved block and lot designation. The amendment states that the bulky waste/construction and demolition landfill will be located on Block 2, Lots 6, 14, 15, 19, 20, 23, and 61. The MRF/TS will be located on Block 2, Lots 15, 769, and 770.

Finally, waste generated within Ocean County and delivered to the MRF/TS, which is not disposed of at the OCLF, must also abide by the intra-state waste flow provisions and not be disposed of at another in-state disposal facility.

Element: Recycling Initiatives

On October 21, 1987, the Ocean County Board of Chosen Freeholders adopted an amendment to their County Plan to include the district recycling plan pursuant to the requirements of the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E.11 et seq. (Recycling Act). This amendment was certified as approved with modifications by the Department on March 22, 1988.

On July 20, 1988, the Ocean County Board of Chosen Freeholders adopted an amendment to their County Plan to include modifications to the district recycling plan as per the requirements of the Recycling Act. This amendment was certified as approved with modifications by the Department on September 6, 1988.

On April 3, 1996, the Ocean County Board of Chosen Freeholders adopted an amendment to their County Plan to include modifications to the district recycling plan which contained a strategy for source reduction and recycling. This amendment was certified as approved by the Department on September 11, 1996.

The April 20, 2005 amendment identifies the components of the County recycling education and outreach activities; establishes the recycling requirements for generators of recyclable materials, and requires the expansion of the County's recycling enforcement program. As specified in C. below, one element of the amendment specifying recycling requirements for generators of recyclable materials is modified, to require a subsequent submittal by the County.

Element: Facility Updates

The April 6, 1996 amendment to the County Plan, certified by the Department on September 11, 1996 provided a list of facilities included within the County Plan.

The April 20, 2005 plan amendment updates this list. Section C of this certification lists the facilities deleted from and included within the County Plan.

Regulatory Requirements

Transfer stations/material recovery facilities are subject to the provisions of N.J.A.C. 7:27-5, "Prohibition of Air Pollution." This regulation prohibits the release of odors and other air contaminants which interfere with the enjoyment of life and property. Further, transfer stations/material recovery facilities are also 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, if the proposed operation will discharge pollutants as defined in N.J.A.C. 7:14-1.9, said operation must secure a New Jersey Pollutant Discharge Elimination System Permit and/or a Treatment Works Approval for pollutant discharges prior to operation.

C. Certification of the Ocean 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 county solid waste management plans, I have reviewed the April 20, 2005 amendment to the approved County Plan and certify to the County Freeholders that the April 20, 2005 amendment is approved as further specified and modified below.

The April 20, 2005 County Plan amendment proposing: intra-state solid waste flow in conformity with the Atlantic Coast decision; revision of the development plan for the Ocean County Landfill (OCLF); the addition of certain lots and blocks to the OCLF; modification of Plan inclusion of the materials recovery facility (MRF) located at the OCLF to designate the facility a materials recovery facility/transfer station (MRF/TS) with a maximum capacity of 2,000 tons per day (TPD); movement of the footprint of the materials recovery facility/transfer station building footprint into the northern part of Block 2, Lots 769 and 770 (located within the OCLF); identification of the components of the County's recycling education and outreach activities; expansion of the County's recycling enforcement program, and, updates to the County's list of approved facilities are approved. Regarding Section 2.2 of the amendment entitled "Compliance By Generator", specifically that element requiring the establishment of recycling programs for bottles and cans at public or private swimming beaches, the criteria for this requirement is stated as "sufficient size to be serviced by lifeguards". Although the Department agrees with a general requirement to require recycling at places of public congregation, such as swimming beaches, the rationale for the presence of lifeguards as the determining factor in the requirement is unclear. The Department is of the opinion that the presence of trash receptacles, for example, for the use of swimming beach users would be a more compelling rationale for the requirement to provide for recycling. Therefore, within 180 days of the date of this certification, the County shall submit to the Department, in the form of an Administrative Action pursuant to N.J.A.C. 7:26-6.11, the justification for the criteria (lifeguards at swimming beaches) in this section of the amendment.

The following list of facilities are deleted from the approved plan:

- Andrew Nemeth Farm (Sam Russo Farm), farm leaf-mulching site at Block 58, Lot 13, Plumstead Township.
- John Kummings Stump Reduction Center, stump recycling center at Block 34, Lot 1, Eagelswood Township.
- Ocean County Landfill Corp., Inc., Solid Waste Composting operation to process Type 10 waste at Block 2, Lots 31 and 32, Manchester Township.
- Ocean County Landfill Corp., Inc., Rutgers Pilot Compost Operation, compost field research station, Manchester Township.
- Pinelands Recycling Center, Class B Recycling Center to recycle stumps, brush, tree parts, concrete asphalt, brick, block, unpainted wood at Block 25, Lots 79, 81, 85, and 86, Stafford Township.

- Ralph Clayton & Sons, Class B Recycling Center to recycle concrete, asphalt, brick and block at Block 11.5, Lot 70, Lakewood Township.
- South Brunswick Asphalt, Class B Recycling Center to recycle concrete, asphalt, brick, block, tree stump and tree parts, Block 824, Lot 1, Berkeley Township.
- South Jersey Recycling Center, Class C Recycling Center to recycle stump and tree parts at Block 79, Lot 28, Plumsted Township.
- Tanner Landfill, stump dump at Block 114, Lot 13, Block 124, Lots 13, 37, 47, and 47.01, Barnegat Township.

The following list of facilities is included within the approved plan:

- Supreme Computer Wholesaler, Class D Recycling Center to recycle computers and computer components at Block 1607, Lot 2, Lakewood Township.
- Suffolk Recycling Corp., Class B Recycling Center to recycle asphalt, concrete, brick and block at Block 12, Lots 39, 40, and 41, South Toms River.
- Rubbercycle Inc. (formally CBM Inc.), Class B Recycling Center to recycle tires at Block 1609m, Kit 28.02, Lakewood Township.
- Supreme Computer and Electronic Recycler, Class D Recycling Center to recycle computers, computer components and electronic equipment at Block 1607, Lot 11, Lakewood Township.
- Ecoglas Recycling, Class D Recycling Center to recycle cathode ray tubes at Block 1605, Lot 5, Lakewood Township.

This certification shall not be construed as an expression of the Department's intent to issue a solid waste facility permit or permit modification for any proposed facility or operation, or to issue any other permit which may be required from the Department.

The construction or operation of any solid waste facility shall be preceded by the acquisition of all necessary permits and approvals pursuant to N.J.S.A. 13:1E-1 et seq., and all other applicable laws. The issuance of operating permits pursuant to the Solid Waste Management Act is limited to those applicants found by the DEP and the Attorney General of the State of New Jersey to be deserving of licensing under the provisions of N.J.S.A. 13:1E-126.

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 County 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 Implementation of 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 Freeholders shall proceed with the implementation of the approved components of the 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 Amendment

The approved components of 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.

E. **Certification of Approval 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 Ocean County District Solid Waste Management Plan which was adopted by the Ocean County Board of Chosen Freeholders on April 20, 2005.

November 17, 2005

Date

Bradley M. Campbell

Bradley M. Campbell, Commissioner
Department of Environmental Protection