



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection
Office of the Commissioner
P.O. Box 402
Trenton, NJ 08625-0402
Tel. # 609-292-2885
Fax. # 609-292-7695

Robert C. Shinn, Jr.
Commissioner

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

CERTIFICATION
OF THE MARCH 11, 1999
AMENDMENT TO THE UNION 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 August 13, 1980, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Union 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 Union County Board of Chosen Freeholders (County Freeholders) completed such a review and on March 11, 1999, 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 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 amendment proposes within the County Plan regulatory flow control over solid waste types 13, 23, and 27 to specified solid waste processing/disposal facilities based upon the completion of nondiscriminatorily bid contracts.

The amendment was received by the Department on March 29, 1999 and copies were distributed to various administrative review agencies for review and comment, as required by law. The DEP has reviewed this amendment on an expedited basis and has determined that the amendment adopted by the County Freeholders on March 11, 1999 is approved as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the March 11, 1999 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 this regard, the County Freeholders are notified of the issues of concern relative to the March 11, 1999 amendment which are included in Section B.2. below.

In conjunction with the review of the amendment, the Department circulated copies to fifteen 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, Game and Wildlife, DEP
Division of Compliance and Enforcement, DEP
Division of Solid and Hazardous Waste, 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
U.S. Environmental Protection Agency

1. Agency Participation in the Review of the March 11, 1999 Amendment

The following agencies did not object to the proposed amendment:

Division of Parks and Forestry, DEP
Division of Water Quality, DEP
Green Acres Program, DEP
Department of Agriculture
Department of Community Affairs
New Jersey Turnpike Authority

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

Land Use Regulation Element, DEP
Office of Air Quality Management, DEP
Division of Fish, Game and Wildlife, DEP
Division of Compliance and Enforcement, DEP
New Jersey Advisory Council on Solid Waste Management
Department of Health
Department of Transportation
U.S. Environmental Protection Agency

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

Division of Solid and Hazardous Waste, DEP

2. Issues of Concern Regarding the March 11, 1999 Amendment

Issue: Historical Background for Imposition of Flow Control

In an amendment adopted on December 18, 1997, the County initially proposed the concept of imposing flow control over solid waste types 13, 23, and 27. In a certification dated April

30, 1998, the Department rejected this proposal on the basis that the County failed to demonstrate that contracts were awarded to the designated disposal facilities in a nondiscriminatory manner. In an amendment adopted on May 21, 1998, the County reiterated its proposal to exercise regulatory flow control over solid waste types 13, 23, and 27 following the nondiscriminatory procurement of the services of one or more disposal facilities. However, this nondiscriminatory procurement process was not completed as of adoption of the May 21, 1998 amendment. Therefore, within a certification dated July 20, 1998, the Department approved with modification the concept of regulatory flow control over specific waste types contingent upon receipt and approval by the DEP of a subsequent amendment which documents awarding a nondiscriminatory bid contract(s) to provide disposal services. The March 11, 1999 amendment provides this needed documentation.

Issue: Nondiscriminatory Procurement Process

On October 23, 1998, the Union County Utilities Authority (UCUA) issued a Request for Bids for the provision of bulky waste recycling facility services covering nonrecycled solid waste types 13 and 23 (Alternate A) and for the provision of industrial waste recycling facility services covering nonrecycled solid waste type 27 (Alternate B).

Under Alternate A, the UCUA solicited bids for the provision of bulky waste recycling facility services for the receiving, weighing, and processing of nonrecycled waste types 13 (including 13C) and 23 generated from within the County. Processing includes, but is not limited to, the recovery of recyclables from such solid waste, the marketing thereof, and the transfer, transportation, and disposal of residue.

Under Alternate B, the UCUA solicited bids for the provision of industrial waste recycling facility services for the receiving, weighing, and processing of nonrecycled waste type 27 generated from within the County. Processing includes, but is not limited to, the recovery of recyclables from such solid waste, the marketing thereof, and the transfer, transportation, and disposal of residue.

This Request for Bids was advertised locally in The Home News & Tribune and The News Record, throughout New Jersey utilizing The Star Ledger, regionally in The Philadelphia Inquirer, and nationally with Waste News, a trade magazine circulated to solid waste industries and related entities throughout the country. Therefore, this procurement process was open to all bidders regardless of geographical location.

On January 13, 1999, contracts were awarded to the Hackensack Meadowlands Development Commission (HMDC) as the lowest

responsible bidder for both Alternate A and Alternate B for the provision of bulky waste recycling facility services and industrial waste recycling facility services, respectively. Therefore, within Section C. of this certification, the Department approves the following waste flows:

*All nonrecycled solid waste types 13 and 23 generated from within Union County are directed to the HMDC Transfer Station and Materials Recovery Facility for the provision of bulky waste recycling facility services.

*All nonrecycled solid waste type 27 generated from within Union County is directed to the HMDC Transfer Station and Materials Recovery Facility for the provision of industrial waste recycling facility services.

*All residue remaining after recycling of solid waste types 13, 23, and 27 at the HMDC Transfer Station and Materials Recovery Facility is directed to the HMDC 1-E North Area Landfill for disposal.

Issue: Exemption from Flow Control for Specific Waste Types

The March 11, 1999 amendment notes that "The UCUA and the County recognize that certain generators of solid waste types 13, 23, and 27 may utilize in-county permitted on-site disposal facilities for disposal of such solid waste. Accordingly, such solid waste that continues to be disposed of at existing, fully permitted disposal facilities, maintained by generators of such waste at the point of generation, is excepted from the provisions of this Section III [of the amendment]." To obtain further clarification of this exemption issue, counsel to the County Freeholders was contacted. On May 24, 1999, she provided the following clarification. To the extent that the Linden Landfill in the City of Linden, Union County, is permitted to accept and dispose of solid waste types 13, 23, and 27, all such solid waste types 13, 23, and 27 generated from within the City of Linden and disposed of at the Linden Landfill shall not be subject to the bulky waste agreement (for waste types 13 and 23) and the industrial waste agreement (for waste type 27) between the HMDC and the UCUA. These parties expressly acknowledge and agree that upon the closing of the Linden Landfill, all solid waste types 13, 23, and 27 generated from within the City of Linden shall be delivered to the HMDC for processing, recycling, and disposal of residue under the terms of either the bulky waste recycling facility services agreement or the industrial waste recycling facility services agreement. The Department hereby approves this exemption until closure of the Linden Landfill.

C. Certification of the Union 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 March 11, 1999 amendment to the approved County Plan and certify to the County Freeholders that the March 11, 1999 amendment is approved as further specified below.

The County Plan inclusion of the UCUA's nondiscriminatory procurement process to secure materials recovery and disposal services is approved. Specifically, since the UCUA has adequately demonstrated that it secured all contracts in a nondiscriminatory manner, the UCUA may commence the delivery of Union County generated waste as follows:

*All nonrecycled solid waste types 13 and 23 are directed to the HMDC Transfer Station and Materials Recovery Facility located at 100 Baler Boulevard (Lot 1, Blocks 175 and 177) in North Arlington, Bergen County for the provision of bulky waste recycling facility services.

*All nonrecycled solid waste type 27 is directed to the HMDC Transfer Station and Materials Recovery Facility located at 100 Baler Boulevard (Lot 1, Blocks 175 and 177) in North Arlington, Bergen County for industrial waste recycling facility services.

*All residue remaining after recycling solid waste types 13, 23, and 27 at the HMDC Transfer Station and Materials Recovery Facility is directed to the HMDC 1-E North Area Landfill located at 100 Baler Boulevard (Lot 1, Blocks 175-183; 185-189) in North Arlington, Bergen County and in Kearny, Hudson County (Lot 10, Block 149) for disposal.

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 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 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, -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.

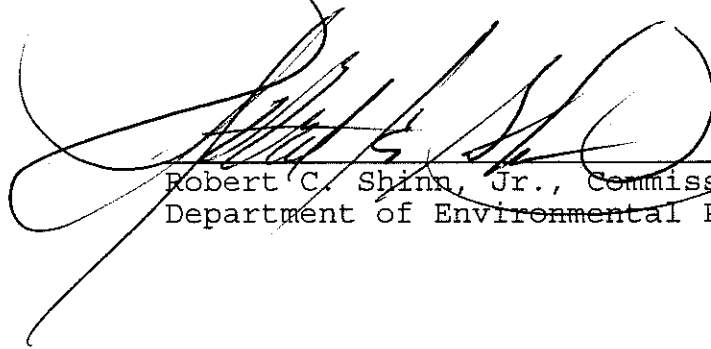
7. Reservation of Authority

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, 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 the amendment, as outlined in Section C. of this certification, to the Union County District Solid Waste Management Plan which was adopted by the Union County Board of Chosen Freeholders on March 11, 1999.

6/1/99
Date



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