



State of New Jersey

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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 MAY 21, 1998
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 May 21, 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 21, 1998 amendment proposes to:

- *Re-establish regulatory flow control for solid waste types 13, 23, and 27 following the procurement of disposal services through a nondiscriminatory process and
- *Provides supplemental information on certain components of the Environmental Investment Charge (EIC) which were remanded for further consideration and evaluation in the Department's April 30, 1998 certification of the County's December 18, 1997 amendment.

The amendment was received by the Department on June 1, 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 21, 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 Union County District Solid Waste Management Plan Amendment

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the May 21, 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 21, 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
U.S. Environmental Protection Agency
Hackensack Meadowlands Development Commission

1. Agency Participation in the Review of the May 21, 1998 Amendment

The following agencies did not object to the proposed amendment

Division of Compliance and Enforcement, DEP
Office of Air Quality Management, DEP
Green Acres Program, DEP
New Jersey Advisory Council on Solid Waste Management
Department of Transportation
Department of Community Affairs
Department of Agriculture
New Jersey Turnpike Authority

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
Land Use Regulation Element, DEP
Department of Health
U.S. Environmental Protection Agency
Hackensack Meadowlands Development Commission

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 May 21, 1998 Amendment

Issue: Previously Adopted Atlantic Coast Amendment

On December 18, 1997, the County Freeholders adopted an amendment proposing their initial response to the Atlantic Coast decision which had six components:

- *Lease of the Union County Resource Recovery Facility (UCRRF) to Ogden Martin Systems of Union, Inc.
- *Voluntary contracts for the disposal of waste types 10 and 25 at the UCRRF
- *Regulatory flow control of waste types 13, 23 and 27 to J&J Recycling Company, Inc. and Linden Landfill based upon nondiscriminatory procurement
- *Interdistrict agreement between Union County Utilities Authority (UCUA) and Bergen County Utilities Authority (BCUA)
- *Imposition of Environmental Investment Charge
- *Enforcement provisions

Within an April 30, 1998 certification, the DEP took the following actions relative to each of these six components:

- *Approved the lease agreement between Ogden Martin and the UCUA subject to the provisions of the McEnroe approval and the DEP's approval of an order regarding the refinancing of the UCUA's debt pursuant to N.J.S.A. 48:3-9;
- *Approved the County's strategy to enter into voluntary, long-term contracts with municipalities and commercial haulers servicing Union County customers to dispose of waste types 10 and 25 at the UCRRF subject to the provisions of the McEnroe approval;
- *Rejected the imposition of regulatory flow control for waste types 13, 23, and 27 to J&J Recycling Company, Inc. and the Linden Landfill since the County failed to demonstrate that contracts were awarded to these facilities in a nondiscriminatory manner;
- *Took no position on the interdistrict agreement between the UCUA and BCUA which is currently under litigation;
- *Approved an EIC of \$15.56 per ton for stranded debt and stranded host community benefits while remanding the administrative fee and transition cost components for further consideration and evaluation by the County;
- *Approved with modification the designation of weighing facilities to collect the EIC contingent upon the approval by the DEP of an administrative action designating the facilities; and
- *Approved the UCUA assuming responsibility for enforcing the County solid waste management system.

Issue: Regulatory Flow Control

The May 21, 1998 amendment proposes that the UCUA will exercise regulatory flow control over solid waste types 13, 23, and 27 following the nondiscriminatory reprocurement of the services of

one or more disposal facilities. According to the amendment, the solicitation of bids were advertised locally in The Home News and The News Record, throughout New Jersey utilizing The Star Ledger, regionally with The Philadelphia Inquirer, and nationally with Waste News. Therefore, this procurement process was open to all bidders regardless of geographical location but was not completed as of adoption of the amendment.

Since the nondiscriminatory procurement process was not completed as of adoption of the May 21, 1998 amendment, within Section C. of this certification the DEP approves with modification this component of the amendment contingent upon receipt and approval by the DEP of a subsequent amendment or administrative action (N.J.A.C. 7:26-6.11(b)10.) which documents awarding a nondiscriminatorily bid contract(s) to provide disposal services. The distinction between the adoption of an amendment or the issuance of an administrative action is that if the selected facility is already included within the County Plan as a designated transfer or disposal facility, an administrative action will suffice. Otherwise, the plan amendment adoption process must be completed.

Issue: Administrative Fee and Transition Cost Components of the Environmental Investment Charge

The May 21, 1998 amendment provides supplemental information concerning the administrative fee and transition cost components of the EIC. This information is provided in response to the Department's remand of these components of the EIC for further consideration and evaluation as contained within its April 30, 1998 certification of the County's December 18, 1997 amendment. Within the May 21, 1998 amendment and an addendum submitted to the DEP, the County provided the following information.

As part of its restructured system, the administrative costs to be incurred by the UCUA include a post-lease administrative and operating budget of \$1,553,119 and an enforcement budget of \$500,000 for a total of \$2,053,119. An estimated \$1,053,119 of this amount will be born directly by the respective counties with Union County assuming 60% or \$634,610 and Bergen County assuming 40% or \$418,509. The remaining \$1,000,000 will be recouped as follows:

- *As a \$2.50 per ton component of the existing \$50 per ton contract price to be charged to all Union County municipalities and commercial transporters that have entered long-term disposal contracts with the UCUA for the use of the UCRRF.
- *As a \$2.50 per ton component of the tipping fee charged to all County generators for waste types 13, 23, and 27 that will be subject to flow control.
- *As a \$2.50 per ton EIC added to the previously approved EIC of \$15.56, which will partially fund the cost of the enforcement

program, to be charged to all County generators that elect not to utilize the UCRRF. The UCUA anticipates that this EIC will generate \$250,000 (\$2.50 per ton X estimated 100,000 tons) of the \$500,000 enforcement budget, on an annual basis. In other words, the additional EIC component will be used for enforcement purposes only with other post-lease administrative costs coming from the \$50 contract tipping fee at the UCRRF and the disposal tipping fee for waste types 13, 23, and 27. Regarding the EIC for enforcement, in light of a December 22, 1997 letter from the UCUA to the Union County Regional Environmental Health Commission (the designated County Environmental Health Act agency for Union County) nonrenewing the contract between the UCUA and the regional commission, the County is directed to submit within 30 days as an administrative action a narrative description of how the enforcement program will now be implemented by the UCUA.

The May 21, 1998 amendment also proposes an increase to the April 30, 1998 DEP approved \$13.53 per ton stranded debt component of the EIC to defray additional "transition costs" associated with the delay in restructuring the County solid waste system. The DEP considers such transition costs to constitute stranded debt. According to the amendment, the County originally requested the \$13.53 per ton amount based on the implementation of the new system by January 1998. The amendment notes that since the loss of flow control in November 1997, it was necessary for the UCUA to establish a market price lower than the previously established \$83.05 rate in order to attract waste to the UCRRF. Despite the modified \$50 per ton rate, the UCUA has only been able to fill 50% of the UCRRF's capacity. As a result, the UCUA has been experiencing inadequate cash flow to pay fully all expenses including debt service. The net impact of this shortfall amounts to a monthly loss of \$2 million totalling, in the aggregate, about \$16 million from November 1997 to May 1998. The amendment notes that if the system restructuring were completed by June 15, 1998, the transition cost would be \$.45 bringing the debt component of the EIC to \$13.98 per ton. If, however, the system restructuring were not completed by June 15, 1998, an additional \$1.85 per ton transition cost, above the \$13.98 debt component, would be needed for the next three months. The system restructuring was not completed by June 15, 1998. Therefore, the County is requesting this additional \$1.85 per ton transition cost for up to the 90 days of additional time that might be required to complete the system restructuring.

Within Section C. of this certification the Department approves until June 30, 1999 the \$2.50 per ton component of the EIC to be utilized to partially fund enforcement costs associated with the implementation of the County's solid waste management strategy. Also approved within Section C. until June 30, 1999 is the increase in the stranded debt component of the EIC from \$13.53 to \$13.98 per ton which represents inclusion of the \$.45 per ton transition cost. Should the County opt to continue collecting an EIC after June 30,

1999, the County may submit such a request as an administrative action (N.J.A.C. 7:26-6.11(b)10.). Finally, the DEP approves an additional \$1.85 per ton component of the EIC for transition costs for up to 90 days for completion of the activities associated with the system restructuring. Therefore, the total EIC approved by DEP shall be at least \$18.51 and shall not exceed \$20.36 per ton (for up to 90 days).

The EIC will now consist of the following:

<u>Item</u>	<u>Amount</u>
Stranded Debt	\$13.53
Stranded Host Community Fee	2.03
Enforcement Costs	2.50
Transition Costs	.45
Additional Transition Costs*	<u>1.85</u>
Total	\$20.36

*Maximum, calculated on the basis of a 90 day delay in implementation of the system restructuring

The DEP EIC approvals contained within Section C. of this certification are consistent with an order issued on April 27, 1998 by the Department of Community Affairs' Local Finance Board which specified that "The EIC shall...be an amount that is at least \$18.51 per ton [$\$20.36 - 1.85 = 18.51$] and shall not exceed \$20.36 without the prior approval of the Board."

Issue: Pending Litigation

Pursuant to an interdistrict agreement between the UCUA and BCUA dated August 25, 1993, the BCUA is required to deliver 192,000 tons per year of processible solid waste to the UCRRF. The obligations of BCUA under the interdistrict agreement, including the obligation of BCUA to deliver and/or pay as if waste were delivered, are the subject of pending litigation in Superior Court, Union County, Chancery Division, I/M/O/ Union County Utilities Authority v. Bergen County Utilities Authority, Docket No. UNN-C-161-97, before the Hon. John M. Boyle. The BCUA has been temporarily restrained by court order from terminating payments to the UCUA as required by the interdistrict agreement. The BCUA request that the state court action be vacated to federal court was denied by the federal district court.

In a separate litigation also pending in Superior Court, Union County, Law Division, I/M/O Bergen County Utilities Authority v. Union County Utilities Authority et al., Docket No. UNN-L-3081-98, the BCUA challenged the authority of the UCUA to assess the EIC against the BCUA. That litigation is still pending. The BCUA named the Department in that litigation as an indispensable party,

but has not formally served the Department to date.

As noted in the Department's April 30, 1998 certification, significant portions of the strategy outlined in the December 18, 1997 amendment, as well as the May 21, 1998 amendment, are reliant upon the continued obligation of the BCUA to deliver waste to the UCRRF pursuant to its interdistrict agreement. The Local Finance Board, as noted above, issued its April 30, 1998 resolution ordering the implementation of a financial plan, including the imposition of an EIC. The Local Finance Board noted that "...in establishing the EIC, the Board has relied upon representations by the UCUA and the County that the execution of a proposed County Deficiency Agreement is intended to be the ultimate source of payments..." with respect to the bonds which the UCUA intends to support in the first instance with payments from the EIC. The UCUA has made similar representations to the Department. Therefore, the Department notes that this certification is subject to whatever final decisions are issued in the litigation described above. The Department further notes that the approval of the EIC is being given with the understanding that the proposed County Deficiency Agreement is the ultimate source of payment for amounts required to pay the principal and interest on the 1998 UCUA Bonds to be issued in connection with the UCUA's restructuring of its debt.

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 May 21, 1998 amendment to the approved County Plan and certify to the County Freeholders that the May 21, 1998 amendment is approved in part and modified in part as further specified below.

Regulatory Flow Control Over Solid Waste Types 13, 23, and 27 Pursuant to Nondiscriminatory Procurement

The County Plan inclusion of the UCUA's proposal to exercise regulatory flow control to direct solid waste types 13, 23, and 27 to designated facilities is approved with modification contingent upon receipt and approval by the DEP of a subsequent amendment or administrative action which documents awarding nondiscriminatorily bid contract(s) to provide disposal services.

Administrative Fee and Transition Cost Components of the Environmental Investment Charge

The County Plan inclusion of a \$2.50 per ton component of the EIC, to be utilized to partially fund enforcement costs associated with the implementation of the County's solid waste management strategy, is approved until June 30, 1999. Furthermore, the County Plan

inclusion of an increase of \$.45 in the stranded debt component of the EIC to reflect transition costs is approved until June 30, 1999. Should the County opt to continue collecting an EIC after June 30, 1999, the County may submit such a request as an administrative action. Also, as noted within Section B., the County is directed to submit within 30 days as an administrative action a narrative description of how the enforcement program will now be implemented by the UCUA. Finally, the County Plan inclusion of an additional interim transition cost of \$1.85 per ton for up to 90 days to defray additional costs incurred by the UCUA resulting from a delay in implementation of the restructuring of its system is also approved. Therefore, the total EIC approved by DEP shall be at least \$18.51 and shall not exceed \$20.36 per ton (for up to 90 days).

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

7. Reservation of Authority

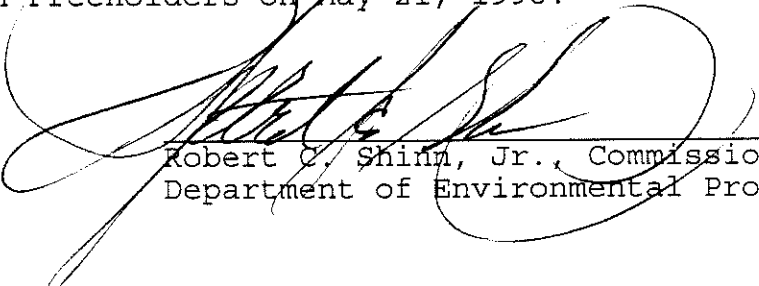
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's 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 Union County District Solid Waste Management Plan which was adopted by the Union County Board of Chosen Freeholders on May 21, 1998.

Date

7/20/98


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