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STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
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(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 JULY 12, 1990
AMENDMENTS 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 approved, with modifications, the Union County District Solid Waste Management 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 the 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 the 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 Union County Board of Chosen Freeholders completed such a review and on July 12, 1990, adopted two amendments to its approved district solid waste management plan. These amendments proposed to include the Merck & Co., Inc. incinerator in Linden and the Interstate Recycling, Inc. transfer station/materials recovery facility in Hillside within the district solid waste management plan.

The amendments were received by the Department of Environmental Protection on August 6, 1990 and copies were distributed to various state level agencies for review and comment, as required by law. The Department has reviewed these amendments and has determined that for the amendments adopted by the Union County Board of Chosen Freeholders on July 12, 1990 the inclusion of the Merck and Co. incinerator is approved and the inclusion of the Interstate Recycling, Inc. transfer station/materials recovery facility is rejected.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I, Judith A. Yaskin, Commissioner of the Department of Environmental Protection have studied and reviewed the July 12, 1990 amendments to the Union County District Solid Waste Management Plan according to the objectives, criteria, and standards developed in the Statewide Solid Waste Management Plan and I find and conclude that the plan amendment including the Merck and Co., Inc. incinerator is consistent with the Statewide Solid Waste Management Plan while the plan amendment including the Interstate Recycling, Inc. transfer station/materials recovery facility is inconsistent with the Statewide Solid Waste Management Plan.

1. July 12, 1990 Amendment - Merck & Co., Inc.

The Division of Solid Waste Management circulated the plan amendment to fifteen review agencies and solicited their review and recommendations. Pursuant to N.J.S.A. 13:1E-24a(2) and (3), these agencies included various agencies, bureaus, and divisions within the Department of Environmental Protection as well as the Board of Public Utilities. Also among these agencies were the Department of Community Affairs, the Department of the Public Advocate, the Department of Health, the Department of Agriculture, the Department of Transportation, and the New Jersey Turnpike Authority. Of these agencies, the following did not object to the proposed plan amendment: the N.J.D.E.P. Divisions of Water Resources, Fish, Game and Wildlife, Parks and Forestry, and Coastal Resources; the State Departments of Agriculture, Community Affairs, and Transportation; the Board of Public Utilities, the New Jersey Advisory Council on Solid Waste Management, the Green Acres Program and the New Jersey Turnpike Authority. The following agencies failed to respond to our requests for comments: the State Departments of Health and the Public Advocate, and the U.S. Environmental Protection Agency. The Divisions of Solid Waste Management and Environmental Quality submitted substantive comments which are further addressed below.

The Division of Environmental Quality (DEQ) commented that incinerators 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 or property. Incinerators are also regulated under N.J.A.C. 7:27-11, "Incinerators". This regulation defines the construction, operation, and emission standards for all incinerators. Additionally, incinerators are subject to the provisions of N.J.A.C. 7:27-8.2(a)14, which requires permits and certificates for any incinerator. New and modified equipment which emits air contaminants must incorporate advances in the art of air pollution control. For incineration, this usually includes scrubbing for hydrochloric acid control, a baghouse for particulate control, and burners in a secondary combustion zone for hydrocarbon control. At this time, DEP requires that, at a minimum, scrubber air pollution control shall be installed achieving less than 0.03 grains of particulates per dry standard cubic feet (gr/dscf), adjusted to 7% oxygen, and at least 90% reduction in hydrochloric acid emissions. New incineration facilities are required to install more advanced control technologies, such as spray driers and baghouses, to achieve 0.015 gr/dscf at 7% oxygen. Also, the DEP is considering rulemaking to require retrofitting of better air pollution controls for existing waste incinerators.

At this time, any permit application for waste incineration shall include:

1. Air quality modelling and an evaluation of downwash, which demonstrate sufficient stack height.
2. Cancer risk assessment for metals and dioxin, demonstrating low cancer risk on and off site.
3. Continuous emission monitoring and recording for carbon monoxide, oxygen, and secondary chamber temperature.
4. Extensive stack testing after construction.
5. Compliance with the Department's "Air Pollution Control Guidelines for Resource Recovery Facilities and Incinerators" March 1983, amended November 1, 1984, amended April 1987, if over 800 pounds per hour charging capacity.

The Division of Solid Waste Management (DSWM) commented that the Union County district recycling plan designates newspapers, glass, aluminum, white ledger, computer paper and corrugated as recyclable materials. If any of these recyclables are present in the waste stream of the Merck facility, they must be recycled in conformance with the district recycling plan. The Division also commented regarding the permitting status of the Merck incinerator. Specifically, the facility has never had a solid waste facility permit and, as such, reference in the amendment to permit renewal

is incorrect. Also, the facility's air pollution apparatus permit expires in December 1990. A renewal application to the Division of Environmental Quality must be submitted prior to expiration in order for the facility to validly operate. Also, since pathological waste is processed at the incinerator, the facility comes under the purview of regulated medical waste regulations.

Finally, the Division commented that any incinerator is required to obtain a solid waste facility permit in accordance with N.J.A.C. 7:26-2B, prior to the expiration of the facility's current air pollution control permit, which is issued by the Division of Environmental Quality pursuant to N.J.A.C. 7:27. Also, on March 6, 1989, Governor Kean signed into law the "Comprehensive Regulated Medical Waste Management Act," P.L. 1989, c. 34. This legislation provides a distinction between a commercial facility and a non-commercial facility as one "which accepts regulated medical waste from other generators for a cost-based fee not in excess of the costs actually incurred by the facility or on-site generator for the treatment or disposal of the regulated medical waste." The Act also grandfathered all existing medical waste disposal facilities into their respective district solid waste management plans. Unless a facility was acting as a commercial facility prior to March 6, 1989 and was, therefore, grandfathered into the district plan, approval of a medical waste incinerator must be limited to its existing sole source status. In response, by copy of this certification, Union County and Merck & Co., Inc. are informed of the comments and requirements of the DSWM and the DEQ.

2. July 12, 1990 Amendment - Interstate Recycling, Inc.

The Division of Solid Waste Management circulated the plan amendment to fifteen review agencies and solicited their review and recommendations. Pursuant to N.J.S.A. 13:1E-24a(2) and (3), these agencies included various agencies, bureaus, and divisions within the Department of Environmental Protection as well as the Board of Public Utilities. Also among these agencies were the Department of Community Affairs, the Department of the Public Advocate, the Department of Health, the Department of Agriculture, the Department of Transportation, and the New Jersey Turnpike Authority. Of these agencies, the following did not object to the proposed plan amendment: the N.J.D.E.P. Divisions of Water Resources, Environmental Quality, Fish, Game and Wildlife, Parks and Forestry, and Coastal Resources; the State Departments of Agriculture and Community Affairs; the Board of Public Utilities, the Green Acres Program, the New Jersey Turnpike Authority and the New Jersey Advisory Council on Solid Waste Management. The following agencies failed to respond to our requests for comments: the State Departments of Health and the Public Advocate, and the U.S. Environmental Protection Agency. The Department of Transportation and the Division of Solid Waste Management submitted substantive comments which are further addressed below.

The Department of Transportation commented that if this solid waste facility requires ingress or egress to a state highway, the applicant must file for an access and possibly a drainage application. In response, by copy of this certification, the county is informed of these comments.

The Division of Solid Waste Management commented that site constraints might limit the facility's processing capacity. For any processing capacity higher than 100 tons per day (TPD), the applicant must demonstrate adequate queuing areas for the truck traffic that it generates. Also, adequate storage areas for recyclables must be provided. The existing buildings must incorporate all the environmental safeguards for solid waste facilities set forth in N.J.A.C. 7:26-2 et seq. The facility would also require a preapplication conference to determine regulation applicability. Further, any waste received from another county must be returned to that county in an equivalent amount minus the recyclables.

Finally, the Division commented that the Department is in litigation with Interstate Recycling, Inc. The suit sought to close the facility in Hillside for operating a solid waste facility without obtaining a solid waste facility permit. On October 3, 1990, Superior Court Judge Frederick Kentz, Jr. entered a permanent injunction against Interstate from operating a solid waste facility until it receives a permit from the Department in accordance with N.J.S.A. 13:1E-5a and N.J.A.C. 7:26-2 et seq., files a disclosure statement pursuant to N.J.S.A. 13:1E-128 and N.J.A.C. 7:26-16, and receives prior approval from the Department and the Attorney General. Judge Kentz held that Interstate violated the Solid Waste Management Act and its implementing rules and regulations. In addition, the principal owners of the unauthorized Interstate facility are also principal owners of other solid waste operations in New Jersey. These other facility and haulage operations have been the subject of numerous enforcement actions of the Department for non-compliance with solid waste regulations. Most notable of these actions pertains to Mitchell Environmental, Inc., where, on October 29, 1990, the Department formally acted to revoke the transporter's license from this company. Based upon the recent order of the Superior Court and the revocation of the transporter's license, the Division recommends that the Interstate Recycling, Inc. transfer station/materials recovery facility not be included within the Union County Plan.

In response, the Department concurs with the comments of the Division and in Section C. rejects the inclusion within the district plan of the Interstate Recycling, Inc. transfer station/materials recovery facility. The Department does not consider the principal owners of Interstate Recycling, Inc. to be reliable or competent to operate a solid waste facility within the state.

C. Certification of Union County District Solid Waste Management Plan Amendments

I, Judith A. Yaskin, Commissioner of the Department of Environmental Protection, in accordance with N.J.S.A. 13:1E-1 et seq. and N.J.S.A. 13:1E-21, which established specific requirements regarding the contents of the district solid waste management plans, have reviewed the July 12, 1990 amendments to the approved Union County District Solid Waste Management Plan and certify to the Union County Board of Chosen Freeholders that the July 12, 1990 amendment including the Merck & Co., Inc. incinerator is approved and the July 12, 1990 amendment including the Interstate Recycling, Inc. materials recovery facility/transfer station is rejected as noted below.

1. July 12, 1990 Amendment - Merck & Co., Inc.

The inclusion within the district plan of the Merck & Co., Inc., Building 56 Incinerator (B-56), located at lot 67, block 470 in Linden, Union County, is approved. The Building 56 incinerator is an existing sole source facility with a charging capacity of 2,700 pounds per hour (32.4 tons per day). The facility burns general plant and cafeteria waste as well as special wastes such as biohazardous, material liners, off spec chemical products and regulated medical waste. Merck & Co., Inc. shall develop a waste segregation plan to ensure recycling. When the Union County resource recovery facility becomes operational, Merck will utilize the segregation plan to isolate those non-special waste types not designated for recycling (general office, plant and cafeteria waste) and will direct non-special waste to the resource recovery facility. The B-56 incinerator will remain operational, however, to enable the company to dispose of its special wastes on-site if it has received all applicable permits and approvals.

As noted in Section B. of the certification, under the Comprehensive Regulated Medical Waste Management Act (P.L. 1989, c. 34) signed by Governor Kean on March 6, 1989, a moratorium or a ban of at least one year is imposed on Departmental approval or consideration of any new commercial medical waste incinerator. Therefore, the plan inclusion approval of new facilities which were not in operation and accepting regulated medical waste on or prior to March 6, 1989 is restricted to facilities limited to non-commercial use. The Merck and Co., Inc. Building 56 incinerator has been operating for several years. The Department assumes that such operation was for non-commercial use and entailed the incineration of wastes generated on-site at the Linden plant. As such, the facility is probably grandfathered into the Union County Plan pursuant to the Comprehensive Medical Waste Management Act. Nevertheless, the applicant must submit to the Department a certified affidavit verifying the non-commercial status of the facility. This affidavit, a sample of which may be obtained by contacting the NJDEP, Division of Solid Waste Management, Bureau of Special Waste Planning, must be submitted within 45 days of the date of this certification. In addition, the applicant is hereby directed to contact the NJDEP Division of Solid Waste Management, Bureau of Resource Recovery, to obtain a solid waste facility permit and to contact the Division of Environmental Quality, Bureau of Air Quality Planning and Evaluation, to obtain a renewal of their air pollution apparatus permit. 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 applicable laws. The issuance of operating permits pursuant to the Solid Waste Management Act is limited to those applicants found by the Department and the Attorney General to be deserving of licensing under the provisions of N.J.S.A. 13:1E-126 et seq.

2. July 12, 1990 Amendment - Interstate Recycling, Inc.

The inclusion within the district plan of the Interstate Recycling, Inc. materials recovery facility/transfer station, located on lots 13 and 28, block 201, in Hillside Township, Union County, is rejected. Such rejection is due to the facts noted in Section B. above which indicate the

blatant disregard the principal owners of Interstate have for the solid waste laws of the State and that the Department does not consider the owners to be reliable and competent to operate a solid waste facility in New Jersey. Finally, it is hereby noted that at the time of adoption by the Union County Board of Chosen Freeholders of the July 12, 1990 amendment including the Interstate Recycling, Inc. transfer station/materials recovery facility, neither the Superior Court Order enjoining the company from operation had been entered nor had its transporter's license been revoked by the Department.

D. Other Provisions Affecting the Plan Amendments

1. Contracts

Any contract renewal or new contract for solid waste collection or disposal which is inconsistent with the within amendments to the Union County District Solid Waste Management Plan and which was executed prior to the approval of these amendments 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 of Environmental Protection and operating pursuant to a contract as herein described, shall be deemed to be in violation of these amendments and of the Union County District Solid Waste Management Plan if such renegotiation is not completed within ninety (90) days of the effective date of these amendments; provided, however, that any such registrant may, upon application to the Department of Environmental Protection, and for good cause shown, obtain an extension of time to complete such renegotiation.

2. Compliance

All solid waste facility operators and collector/haulers registered with the Department of Environmental Protection and operating within Union County and affected by the amendments contained herein shall operate in compliance with these amendments and all other approved provisions of the Union County District Solid Waste Management Plan. Any facility operator or collector/hauler 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 of Environmental Protection 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 Union County District Solid Waste Management 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. Also, all non-hazardous 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 (N.J.A.C. 7:26-6).

4. Certification to Proceed with the Implementation of Plan Amendment

This document shall serve as the certification of the Commissioner of the Department of Environmental Protection to the Union County Board of Chosen Freeholders and pursuant to N.J.S.A. 13:1E-24c. and f., the county shall proceed with the implementation of the approved amendment contained herein.

5. Definitions

For the purpose of these amendments 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 N.J.A.C. 7:26-1.4 and -2.13.

6. Effective Date of Amendment

The approved amendment to the Union County District Solid Waste Management 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 of Environmental Protection pursuant to its authority under the law. The Union County District Solid Waste Management 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 and rules, regulations, and orders of the Department, including the 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 and Rejection of the Amendments 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 including the Merck & Co., Inc. incinerator and reject the amendment including the Interstate Recycling, Inc. materials recovery facility/transfer station, as outlined in Section C. of this certification, to the Union County District Solid Waste Management Plan which were adopted by the Union County Board of Chosen Freeholders on July 12, 1990.

Dec. 22, 1990
DATE


JUDITH A. YASKIN
COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION