



State of New Jersey

Department of Environmental Protection

DONALD T. DI FRANCESCO
Acting Governor

Robert C. Shinn
Commissioner

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

**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 AUGUST 13, 2001
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 August 13, 2001, adopted an amendment to its approved County Plan.

The August 13, 2001 amendment proposes County Plan inclusion of the Tremley Point Marine Transfer Terminal solid waste transfer station. The proposed facility would be located on Block 587, Lot 8, in the City of Linden, and would transfer up to 10,000 tons per day of type 10 municipal solid waste generated in New York City from barges onto rail cars for disposal out-of-state.

The amendment was considered administratively complete on August 20, 2001, and copies were distributed to various administrative review agencies for review and comment, as required by law. Since then, by letter dated September 17, 2001, the New Jersey Attorney General submitted a report to the Local Finance Board in the Department of Community Affairs raising serious questions concerning the circumstances surrounding the selection of Tremley Point in Linden as the location for a solid waste marine transfer terminal. For the reasons set forth more fully below, the Department is constrained to remand without prejudice this proposed plan amendment until the issues raised by that report have been addressed by the appropriate bodies.

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

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 Parks and Forestry, DEP
Division of Fish, Game and Wildlife, DEP
Division of Compliance and Enforcement, DEP
Division of Water Quality Management, 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 and Senior Services
Department of Transportation
Department of Community Affairs
U.S. Environmental Protection Agency

2. Issues Related to the August 13, 2001 Amendment

Issue: Department's June 28, 2001 Remand of the County's November 30, 2000 Amendment

In the Department's June 28, 2001 certification of Union County's November 30, 2001 amendment, which initially proposed the inclusion of the Tremley Point Marine Transfer Terminal in the County Plan, significant issues of concern were noted that compelled the Department to remand the amendment for readoption and recertification. In light of the massive scale of the proposed facility and unprecedented nature of the proposal, the Department recommended that the Freeholder Board carefully review the proposal and provide more detailed information if it chose to readopt the amendment. The issues of concern cited in the Department's June 28, 2001 certification were related to operational logistics; air quality impacts associated with New York City's solid waste management strategy; health, safety and environmental concerns linked to the processing of waste through the facility and its transport by rail to its ultimate disposal destination; and the potential for misinterpretation of the public notice concerning the maximum processing capacity of the facility. While the issues of concern related to operational logistics and environmental, health and safety impacts will also be the subject of the technical phase of the Department's permitting process, more information was requested at the planning phase toward a clearer understanding of the feasibility of processing this volume of material on a daily basis as a matter of public policy, which falls within the responsibility of both the County and State under the requirements of the New Jersey Solid Waste Management Act.

In response to the Department's June 28, 2001 remand of the initial plan amendment proposing County Plan inclusion of the Tremley Point facility, the County conducted a second public hearing to receive comments from citizens on the reproposal of the amendment. The August 13, 2001 amendment incorporated a document prepared by BFI Transfer Systems of New Jersey, Inc., the proposed facility operator, that contained responses to the issues of concern brought to the County's attention in the Department's June 28, 2001 certification. The Department reviewed the BFI-Transfer Systems response document, as well as the entire record of the public hearing associated with the August 13, 2001 amendment and continues to have concerns related to operational logistics of such a massive movement of municipal solid waste, air quality impacts from the proposed facility and impacts of rail transport from the City of Linden to final disposal locations out-of-state. These concerns would normally require substantive technical justification by the applicant and careful review by the Department as part of the technical phase of the Department's permit process. However, given the September 17, 2001 letter and report of the Attorney General noted above, the Department has determined that this matter is remanded without prejudice as outlined in Section C. below.

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 August 13, 2001 amendment to the approved County Plan and certify to the County Freeholders that the August 13, 2001 amendment is remanded without prejudice, without date. As noted above, the Attorney General has prepared an interim report concerning the circumstances surrounding the selection of Tremley Point in Linden as the location for a solid waste marine transfer terminal. The report raises serious questions concerning the involvement in the project of the Mayor of the City of Linden, pointing to possible violations of the Local Government Ethics Law. By letter dated September 17, 2001, the Attorney General submitted the report to the Local Finance Board in the Department of Community Affairs, Division of Local Government Services for investigation and appropriate action by the Board. Copies of the Division of Law letter and report were provided to this Department and are attached hereto as Exhibits One and Two.

In light of this report it appears likely that the Local Finance Board will conduct an inquiry into the matters reported, and that both the Board of Chosen Freeholders and the City of Linden will need an opportunity to determine whether the results of the Local Finance Board proceedings will require reconsideration of their endorsements of the project. Further, in addition to its other responsibilities, the Department must be vigilant in insuring integrity in matters related to the collection and disposal of solid waste. E.g., Trade Waste Management Ass'n, Inc. v. Hughey, 780 F. 2d 221 (3d Cir. 1985); National Waste Recycling, Inc. v. MCIA, 150 N.J. 209 (1997). While the Department by this action does not pass judgment on the matters referred to in the report, it is constrained under these circumstances from approving at this time this proposed plan amendment as in all respects "suitable" until the Local Finance Board, the Board of Chosen Freeholders and the City have taken any actions which they may deem appropriate, leading to the resolution of these serious issues. Accordingly, the Department determines that this matter is remanded without prejudice until such time as these issues have been resolved. Until and unless that occurs, the Department deems it premature to address the issues the Board of Chosen Freeholders sought to address in the response to the Department's June 28, 2001 ORDER OF REMAND such that those issues are reserved.

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 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. 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.

5. Effective Date of the Amendment

The remanded amendment to the County Plan contained herein shall take effect immediately.

6. 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. There may be other issues more properly addressed at a later date. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the

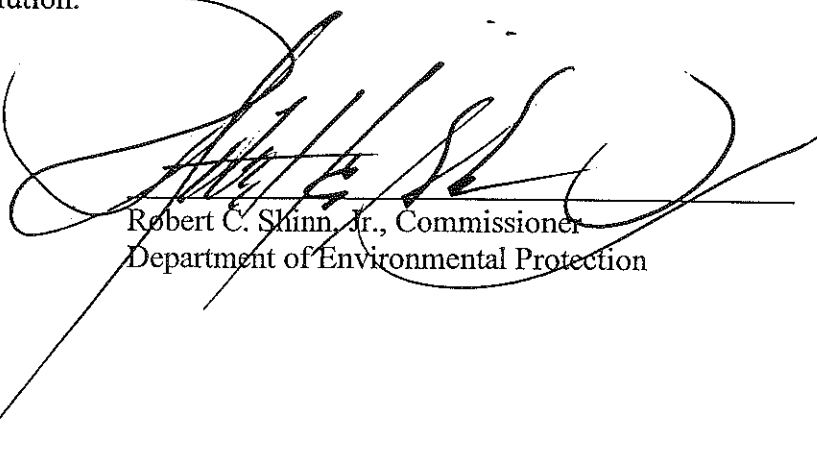
Department's planning guidelines, rules, regulations, orders of the Department, and also includes the compilation of individual district plans and amendments as they are approved.

E. Certification of Remand Without Prejudice 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 remand without prejudice 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 August 13, 2001, and direct the County to provide further information to the Department upon the resolution of the issues raised by the above-captioned litigation detailing the affect on the proposed amendment of such resolution.

Date

9/18/01


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