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Scott A. Weiner
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 DECEMBER 5, 1991
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 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, 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 (County Freeholders) completed such a review and on December 5, 1991, adopted an amendment to its approved County Plan. The amendment, as adopted, designates the Union incinerator as a regional facility to be utilized by Bergen and Union Counties and designates the Empire Sanitary Landfill located in Taylor, Pennsylvania as the disposal facility to accept ash residue from the incinerator and bypass waste from Union County.

The amendment was received by the Department of Environmental Protection and Energy (Department or DEPE) on February 26, 1992, and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed this amendment, as well as the entire County Plan, and has determined that the amendment adopted by the County Freeholders on December 5, 1991 is approved in part and approved with modification 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 December 5, 1991 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 approved portion of this plan amendment is consistent with the Statewide Solid Waste Management Plan.

In conjunction with the review of the amendment, the Department circulated copies to sixteen 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. These agencies are the following:

Office of Energy, DEPE
Division of Coastal Resources, DEPE
Division of Parks and Forestry, DEPE
Division of Fish, Game and Wildlife, DEPE
Division of Solid Waste Management, DEPE
Green Acres Program, DEPE
Groundwater Quality Management Element, DEPE
Wastewater Facilities Regulation Element, DEPE
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
Department of the Public Advocate
U.S. Environmental Protection Agency

1. Agency Participation in the Review of the December 5, 1991 Amendment

The following agencies did not object to the proposed plan amendment:

Division of Parks and Forestry, DEPE
Office of Energy, DEPE
Groundwater Quality Management Element, DEPE
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
Department of Agriculture
Department of Community Affairs
Department of Transportation

The following agencies did not respond to the Department's requests for comments:

Division of Coastal Resources, DEPE
Division of Fish, Game and Wildlife, DEPE
Green Acres Program, DEPE
Wastewater Facilities Regulation Element, DEPE
Department of Health
Department of the Public Advocate
U.S. Environmental Protection Agency

The following agencies submitted substantive comments which are further addressed below:

Division of Solid Waste Management, DEPE

2. Issues of Concern Regarding the December 5, 1991 Amendment

Issue: Submission of Interdistrict Agreement

In accordance with the Department's approval of the construction and service agreement for the Union incinerator, dated December 16, 1991, Bergen County and Union County are required to proceed with due diligence and good faith to execute an interdistrict agreement setting forth the precise terms of the Bergen/Union regional partnership for use of the Union incinerator. This interdistrict agreement must be submitted to the Department for approval. In addition, both Bergen and Union County must amend their respective district solid waste management plans to include the interdistrict agreement within 90 days of the execution thereof.

Issue: Out-of-State Disposal

The amendment designates the Empire Sanitary Landfill as the County's facility to accept ash residue from the facility and bypass waste from Union County. The use of the Empire Sanitary Landfill as a primary long-term disposal site for the disposal of ash residue and bypass waste is contrary to the State's compelling need to reduce reliance on out-of-state disposal and the critical public policy goal of establishing disposal self-sufficiency. Therefore, the Empire Sanitary Landfill should

only be used on a short-term basis and/or as a backup facility. Further, as set forth in the Department's approval of the construction and service agreement for the Union County incinerator, dated December 16, 1991, and the certification of the August 1, 1991 amendment to the Union County Plan, the County was required to actively pursue the development of in-state landfill capacity and to submit a subsequent plan amendment to the Department by June 16, 1992 that identifies an in-state disposal site. To date, however, the County has not met this important submission requirement. This could be accomplished through the development of the previously designated Elizabeth and Linden sites or through interdistrict arrangements with other New Jersey counties.

Issue: Waste to be Accepted by Empire Sanitary Landfill

The amendment provides that the Empire Sanitary Landfill will accept ash residue from the resource recovery facility and bypass waste from Union County consisting of N.J. ID types 10, 13, 23, 25 and 27. The Empire Landfill contract does not provide for the acceptance of waste that is generated in Union County and that cannot be processed by the incinerator (nonprocessable waste). The County should submit a subsequent plan amendment within 120 days of the date of this certification identifying its proposed disposal site for nonprocessable waste during the operations period. This may require a modification of the Empire Landfill contract to provide for short-term disposal of nonprocessable waste generated in Union County. The selection of a disposal site should be consistent with the State's compelling need to reduce reliance on out-of-state disposal and the critical public policy goal of establishing disposal self-sufficiency.

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 December 5, 1991 amendment to the approved County Plan and certify to the County Freeholders that the December 5, 1991 amendment is approved in part and approved with modification in part, as further specified below.

1. The Regional Incinerator

The designation of the Union County incinerator, to be located in Rahway, New Jersey, as a regional solid waste facility for the processing of acceptable waste, after recycling, from Union County and Bergen County is approved. The County is directed to proceed in good faith and with due diligence to negotiate an interdistrict agreement with Bergen County in accordance with the requirements of the Department's approval of the construction and service agreement for the Union incinerator, dated December 16, 1991. Within 90 days after execution of an interdistrict agreement, both Bergen County and Union County must amend their respective solid waste management plans to include such agreement.

2. Empire Sanitary Landfill

The designation of the Empire Sanitary Landfill located in Taylor, Pennsylvania, as the facility to accept ash residue from the incinerator and bypass waste is approved with modification. As noted in Section B., the Empire Sanitary Landfill shall be used only on a short-term basis and/or as a backup facility. In this regard, the County was previously directed in the Department's approval of the construction and service agreement for the incinerator, dated December 16, 1991, and certification of the August 1, 1991 amendment to the Union County Plan to submit a subsequent plan amendment to the Department by June 16, 1992 that identifies an in-state disposal site. As noted in Section B., Union County has not submitted this important plan amendment to the Department to date and must do so as soon as possible. In addition, the County must amend the Union County Plan within 120 days of the certification of this amendment to identify a landfill disposal site for its nonprocessable waste once the proposed incinerator commences operations.

3. Union County Response to Solid Waste Task Force Final Report

On February 18, 1992, I certified the August 1, 1991 amendment to the County Plan, which addressed in detail those areas of the County Plan that need further consideration to fulfill the source reduction, recycling and regionalization recommendations of the Governor's Emergency Solid Waste Assessment Task Force as accepted by the Governor on November 16, 1991. The Department anticipates that the County will submit subsequent plan amendments in response to the suggestions set forth in that certification. In addition, the County is reminded that a waste composition and weighing study must be performed to reflect achievement of at least a 60% recycling rate for the total solid waste stream in both Union and Bergen Counties. This is particularly important to this amendment since the incinerator permit may need to be amended depending on the results of the study.

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 and shall not apply to liquid wastes, sewage sludge, septage, and hazardous wastes. All nonhazardous 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 set forth at N.J.A.C. 7:26-6, but 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.

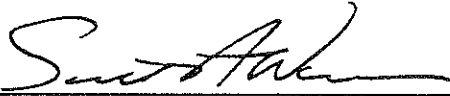
7. Reservation of Authority

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. The Department has published a Statewide Solid Waste Management Plan, with appendices, which includes the Department's planning guidelines, rules, regulations, orders of the Department, 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 in Part and Approval with Modification in Part of the Amendment by the Commissioner of the Department of Environmental Protection and Energy

In accordance with the requirements of N.J.S.A. 13:1E-1 et seq., I hereby approve in part and approve with modification in part the December 5, 1991 amendment to the Union County District Solid Waste Management Plan as set forth in Section C. of this certification.

July 16 1992
DATE


SCOTT A. WEINER
COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND ENERGY