



## State of New Jersey

Christine Todd Whitman  
Governor

Department of Environmental Protection

Robert C. Shinn, Jr.  
Commissioner

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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 DECEMBER 18, 1997  
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 December 18, 1997, adopted an amendment to its approved County Plan.

The amendment represents the County's 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 December 18, 1997 amendment has 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 (EIC)
- \*Enforcement Provisions

The amendment was received by the Department on January 15, 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 December 18, 1997 is approved in part, rejected 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 December 18, 1997 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 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 December 18, 1997 amendment which are included in Section B.2. below.

In conjunction with the review of the amendment, the Department circulated copies to seventeen 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  
Department of Treasury  
U.S. Environmental Protection Agency  
Hackensack Meadowlands Development Commission

1. Agency Participation in the Review of the December 18, 1997 Amendment

The following agencies did not object to the proposed amendment:

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

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

Division of Fish, Game and Wildlife, DEP  
Office of Air Quality Management, DEP  
Land Use Regulation Element, DEP  
Department of Health  
Department of Treasury  
U.S. Environmental Protection Agency

Hackensack Meadowlands Development Commission

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

Division of Solid and Hazardous Waste, DEP  
New Jersey Advisory Council on Solid Waste Management

2. Issues of Concern Regarding the December 18, 1997 Amendment

Issue: Lease of the Union County Resource Recovery Facility (UCRRF) to Ogden Martin Systems of Union, Inc.

The amendment proposes a new agreement between UCUA and Ogden Martin Systems of Union, Inc. (Ogden Martin) which is contained in several related documents: a Waste Disposal Agreement, a Facility Lease, an Operating Agreement, and supporting guarantees from Ogden Martin's parent corporation. As the changes contemplated constitute a substantial renegotiation of the existing Service Agreement between the UCUA and Ogden Martin, the UCUA has filed for approval of these agreements pursuant to N.J.S.A. 13:1E-158, part of the statutes commonly known as the "McEnroe Act," N.J.S.A. 13:1E-136 et seq. The petition seeking McEnroe approval from the Department and the Department of Community Affairs' (DCA) Division of Local Government Services was filed by the UCUA on March 4, 1998 and is the subject of a separate order of even date herewith. The amendment proposes that the UCUA will lease the UCRRF to Ogden Martin for a term of 25 years at a rate equal to annual lease payments in an amount sufficient to provide for payment of debt service on \$180,000,000 of the UCUA's debt obligations. The UCUA is restructuring its debt in conjunction with the new agreement as well, which restructuring is also described in the December 18, 1997 amendment. A Verified Petition seeking the Department's approval pursuant to N.J.S.A. 48:3-9 has been filed by the UCUA and is the subject of a separate order of even date herewith.

As part of this lease agreement, the UCUA will guarantee to deliver to the UCRRF not less than 250,000 tons and not more than 300,000 tons of processible waste per year. The UCUA expects to provide this tonnage through voluntary long-term contracts with Union County municipalities and/or commercial generators. (See below, "Voluntary Contracts for the Disposal of Waste Types 10 and 25<sup>4</sup>"): Ogden Martin will be solely responsible for securing additional waste for the remaining capacity of the UCRRF. The County proposes to allow Ogden Martin to process out-of-county type 27 solid waste upon Ogden Martin's receipt of the necessary permit approval. Ogden Martin will process UCUA guaranteed waste at an initial (i.e. 1998) rate of \$47.50 per ton. Under the arrangement Ogden Martin will assume responsibility for the UCUA's existing transportation agreement. Ogden Martin will not be assuming the ash disposal agreement in the form originally described in the amendment, via outright assignment of the ash disposal agreement. Instead, Ogden

Martin will make payment to the UCUA in a sufficient amount to cover the debt service on bonds ("Landfill Bonds") issued by the UCUA to cover the acquisition of the remaining capacity at the Alliance Landfill for disposal of ash residue/bypass waste, and the \$47.50 per ton rate includes these services. The \$47.50 rate will be subject to annual escalation based on the Consumer Price Index (CPI). Within Section C. of this certification, the lease agreement between Ogden Martin and the UCUA is approved subject to the provisions of the McEnroe approval and the order regarding the refinancing of the UCUA's debt.

**Issue: Voluntary Contracts for the Disposal of Waste Types 10 and 25 at the UCRRF**

The UCUA has offered a contract to each of Union County's 21 municipalities and all commercial haulers servicing Union County customers for the disposal of processible waste types 10 and 25 at the UCRRF. The contracts offered are for a 25 year period at an initial tipping fee of \$50 per ton, \$47.50 of which represents the service charge, subject to CPI-based annual increases thereafter and \$2.50 of which is a fixed UCUA administrative charge. To the extent that the \$2.50 per ton is insufficient to cover all of the UCUA's administrative costs, Union County and the UCUA will enter into a Limited Deficiency Agreement wherein the County will pay the shortfall in those costs. The contracts with municipalities will impose minimum delivery guarantees based upon the average number of tons per year that the municipality has delivered to the UCRRF during the preceding three years. Contracts with the commercial haulers will also include minimum delivery guarantees. It is these voluntary contracts which the UCUA will utilize to meet its guaranteed tonnage requirement of 250,000 tons per year under its agreement with Ogden Martin.

If a municipality does not deliver its guaranteed tonnage from its own waste, there are various mechanisms to compensate for the shortfall. The municipality or the UCUA can seek additional tonnage from another Union municipality which has entered into a voluntary contract with the UCUA, the UCUA can seek additional waste via a new voluntary contract with a new source, or the UCUA can ask Ogden Martin to procure additional waste, with the municipality eventually paying for any rate differential owed to Ogden Martin. The Department notes that, while the UCUA has identified 11 Union County municipalities which have passed resolutions which evidence an intent to enter into voluntary contracts with the UCUA, and three more which are considering such resolutions, there are no signed contracts to date. Moreover, there are a number of Union County municipalities which cannot enter into such contracts because they do not currently contract for the provision of solid waste services on behalf of their towns. Finally, it should be noted that Ogden Martin has a significant incentive to assist in mitigation of shortfalls in waste at the best possible price. Ogden Martin's parent corporation has

guaranteed approximately \$20,000,000 of the Facility Lease payments, providing a strong reason for Ogden Martin to provide waste.

Within Section C. of this certification, the County's strategy to enter into voluntary, long-term contracts with municipalities and commercial haulers servicing Union County customers is approved subject to the provisions of the McEnroe approval.

**Issue: Regulatory Flow Control to J&J Recycling Company, Inc. and Linden Landfill Based Upon Nondiscriminatory Procurement**

The December 18, 1997 amendment describes the County's proposed disposal strategy for solid waste types 13, 23, and 27. According to the amendment, the County intends to continue to direct waste types 13, 23 and 27 to the J&J Recycling Company, Inc., and the residue from that processing to the Linden Landfill. The amendment asserts that the existing disposal services provided by J&J and the Linden Landfill were procured through nondiscriminatory procurement processes. The County claims that its request for proposals for accepting, processing, and disposal of these waste types, which ultimately resulted in the selection of J&J Recycling Company, Inc., was open to all vendors without regard to geographic location. Similarly, the County reaffirmed that its existing agreement with Linden Landfill for the disposal of residue from the J&J facilities is consistent with the Commerce Clause of the U.S. Constitution. However, documentation supporting the selection of J&J and the Linden Landfill in a nondiscriminatory manner was not provided by the County in the plan amendment. A subsequent submission by the UCUA dated April 23, 1998 provided the following information.

On October 2, 1992, the UCUA issued a "Request for Qualifications and Request for Proposals (RFP) for the Acceptance and Processing, and Disposal of Residue from, Bulky and Industrial Waste." This RFP was advertised on October 8, 9, and 11, 1992 in the Star Ledger. This notice did not contain any geographic restriction concerning the facility location nor did the RFP. Additionally, the RFP was provided to seven proposers, all of whom were located in New Jersey. The UCUA received one proposal, from J&J Recycling Company, Inc., and issued a contract to this company to provide the noted services on January 28, 1993. In the August 1997 Guidance Document in Response to the May 1, 1997 Court Decision on Solid Waste Flow Control issued by the Department in response to the invalidation of New Jersey's traditional system of waste flow, the Department noted that relevant case law indicated that open and competitive procurement processes were characterized by the preparation of "detailed bid specifications that were advertised and distributed nationwide." (Guidance Document, p.4.) The UCUA's procurement process was advertised only in one New Jersey newspaper and was distributed to New Jersey proposers only. As the

direction of residue to the Linden Landfill is, by the UCUA's description, pursuant to the J&J Recycling Company, Inc., contract, its status is irrevocably tied to that contract. Consequently, within Section C. of this certification, the imposition of regulatory flow control to the J&J Recycling Company, Inc. and the Linden Landfill is rejected. Therefore, the County may not direct waste to either the J&J recycling facility or the Linden Landfill.

**Issue: Interdistrict Agreement between the UCUA and the Bergen County Utilities Authority (BCUA)**

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. 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 federal court was denied by the federal district court.

Significant portions of the strategy outlined in the December 18, 1997 amendment are reliant upon the continued obligation of the BCUA to deliver waste to the UCRRF pursuant to its interdistrict agreement with the UCUA. In a letter from the BCUA to the Department dated January 7, 1998, which was incorporated as an exhibit in the UCUA's public hearing on the amendment, the BCUA objected to the Union County strategy in light of the pending litigation concerning the validity of the interdistrict agreement. A similar objection was related to the Department in the review agency comments. Within Section C. of this certification, the Department notes that this certification is subject to whatever final decision is issued in the litigation described above.

**Issue: Environmental Investment Charge (EIC)**

The amendment provides the strategy for financing the county system, which consists of the UCRRF for processing solid waste types 10 and 25 and the J&J facilities for waste types 13, 23, and 27, including the payment of outstanding debt and other financial obligations. The amendment proposes the implementation of a system that recovers stranded investment costs from all past and present users of the County system, including Bergen County, through the assessment of an EIC. According to the amendment, the UCUA intends to assess the EIC on non-users of the County system. The tipping fee charged at the UCRRF and the J&J facilities to municipalities and commercial customers that enter into contracts with the UCUA will include a component substantially equivalent to the EIC.

The EIC will consist of three defined components:

Stranded Debt	\$13.53
Stranded Host Community Fee	2.03
Stranded Administrative Fee	2.50

The County also proposes to include in the EIC an undetermined per ton fee for transition costs which include "operating losses until date of restructuring, legal expenses, and cost of debt services on the EIC portion of the bonds prior to the final collection of the EIC." The County anticipates that these costs will total several million dollars. According to the amendment, the first three components of the EIC will be assessed pro-rata based upon 1996 tonnage delivered to the UCRRF by the UCUA, and upon Bergen County based on the guaranteed tonnage required under the interdistrict agreement as follows:

<u>County</u>	<u>Tons</u>	<u>Percentage</u>
Union County	291,100	60.26%
Bergen County	192,000	39.74%

The EIC as proposed within the amendment contains undefined administrative charges. However, a subsequent submission by the UCUA dated April 23, 1998 revealed a breakdown of administrative expenses constituting 20 plus components totaling \$4.09 per ton. The UCUA also requested an outside cap on the EIC of 10% greater than the amounts projected in that submission to provide flexibility to adjust the EIC. Since many of these components appear to be unacceptable administrative expenses and the per ton administrative EIC is different from that proposed within the December 18, 1997 amendment, Section C. of this certification remands for further consideration and evaluation the administrative fee component of the EIC. Additionally, since the UCUA has yet to provide the constituents of the transition costs component of the EIC, Section C. also remands for further consideration and evaluation the transition cost component of the EIC. Therefore, the EIC approved by the DEP in Section C. is restricted to only the stranded debt and stranded host community fee components or \$15.56 per ton. The Department is cognizant that should a decision be reached in the pending UCUA/BCUA interdistrict agreement litigation absolving the BCUA of all or a portion of its financial obligations, the UCUA would have to recalculate the various EIC components.

On April 27, 1998 the DCA's Local Finance Board approved a petition for permission to implement a financial plan filed by the UCUA on April 16, 1998. That petition contained the same information and requests as the UCUA made in its April 23, 1998 submission to the Department. The Local Finance Board approval was conditioned upon the Department's approval of the EIC in the December 18, 1997



amendment. Accordingly, the amount of the EIC approved herein is restricted to only the stranded debt and stranded host community fee components or \$15.56 per ton.

Finally, the County plans to procure one or more in-district weighing facilities through which transporters not utilizing the UCRRF must pass before removing waste from the County for out-of-district disposal. The weighing facilities will collect data to be used for recordkeeping and the assessment of the EIC. Although no further information was provided by the UCUA concerning this concept within the December 18, 1997 amendment, a subsequent submission by the UCUA dated April 23, 1998 provided the following information.

A Notice to Bidders is being published on April 23, 1998 in the News Record and on April 24, 1998 in the Star Ledger. Receipt of bids is due on May 8, 1998 with the awarding of a contract(s) on or about June 15, 1998. Since this procurement process has not been completed, Section C. of the certification approves with modification the designation of weighing stations contingent upon receipt and approval by the DEP of an administrative action designating said facilities. Furthermore, pursuant to N.J.A.C. 7:26-6.10 (b)2, the County must submit within six months of the implementation of in-district weighing an alternative strategy to for acquiring the data necessary for recordkeeping purposes and the assessment of an EIC on entities disposing waste types 10 and 25 at facilities other than the UCRRF.

**Issue: Enforcement**

The amendment states that the UCUA will continue to be responsible for the enforcement of the County Plan. Specifically, this enforcement action will include, but not be limited to, the weighing and/or monitoring of hauler vehicles, and any other lawful duties reasonably required to assist the UCUA in the calculation, assessment, billing, and collection of an EIC. Within Section C. of this certification, the enforcement component of the amendment is approved.

**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 18, 1997 amendment to the approved County Plan and certify to the County Freeholders that the December 18, 1997 amendment is approved in part, rejected in part, and modified in part as further specified below.

Lease of the Union County Resource Recovery Facility (UCRRF) to Ogden Martin Systems of Union, Inc.

The County Plan inclusion of the lease of the UCRRF to Ogden Martin Systems of Union, Inc. for a term of 25 years is approved consistent with the terms and conditions of the McEnroe approval.

Voluntary Contracts for the Disposal of Waste Types 10 and 25 at the UCRRF

The County Plan inclusion of the strategy to offer voluntary contracts to each of Union County's 21 municipalities and to commercial haulers servicing Union County customers, for the disposal of processible waste types 10 and 25 at the UCRRF, is approved consistent with the terms and conditions of the McEnroe approval.

Regulatory Flow Control of Waste Types 13, 23 and 27 to J&J Recycling Company, Inc.

The County Plan inclusion of the imposition of regulatory flow control to the J&J Recycling Company, Inc., and the Linden Landfill, is rejected. As noted within Section B., the County has failed to demonstrate that contracts were awarded to these facilities in a nondiscriminatory manner. Therefore, the County may not direct waste to either the J&J recycling facility or the Linden Landfill.

UCUA/BCUA Interdistrict Agreement

As noted within Section B., the UCUA/BCUA interdistrict agreement is the subject of pending litigation. Therefore, this certification is subject to whatever final decision is issued in the noted litigation.

Environmental Investment Charge

The County Plan inclusion of the imposition of an EIC is restricted to only approval of the stranded debt and stranded host community fee components or an amount of \$15.56 per ton. As noted within Section B., the administrative fee and transition costs components of the EIC are remanded for further consideration and evaluation by the County. Also, the County Plan inclusion of the designation of weighing facilities to collect the EIC is approved with modification contingent upon receipt and approval by the DEP of an administrative action designating said facilities.

Enforcement

The County Plan inclusion of the UCUA assuming responsibility to enforce the County system as described within the amendment is approved.

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 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 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, 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

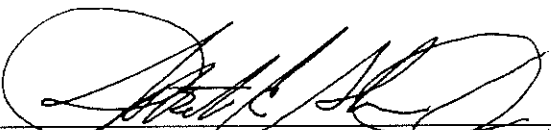
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's 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, Rejection 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, reject 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 December 18, 1997.

April 30, 1998

Date

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