



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection

Robert C. Shinn, Jr.
Commissioner

**IN THE MATTER OF CERTAIN AMENDMENTS
TO THE ADOPTED AND APPROVED SOLID
WASTE MANAGEMENT PLAN OF THE
CAPE MAY COUNTY SOLID WASTE
MANAGEMENT DISTRICT**

**CERTIFICATION
OF THE MARCH 22, 1994
AMENDMENT TO THE CAPE MAY 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 February 4, 1981, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Cape May 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 County Plan at any time and, if found inadequate, a new County Plan must be adopted. The Cape May County Board of Chosen Freeholders (County Freeholders) completed such a review and on March 22, 1994, adopted an amendment to its approved County Plan.

As adopted, the amendment would: incorporate an Interdistrict Agreement between the Cape May County Municipal Utilities Authority (CMCMUA) and the Atlantic County Utilities Authority (ACUA); amend waste flows for Cape May County's solid waste, as required to effectuate the Interdistrict Agreement; and include a vehicle routing plan to accommodate the Interdistrict Agreement.

The amendment was received by the Department on April 5, 1994 and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed this amendment and has determined that the amendment adopted by the County Freeholders on March 22, 1994 is approved as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the March 22, 1994 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 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 March 22, 1994 amendment which are included in Section B.2 below.

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. These agencies are the following:

Office of Air Quality Management, DEP
Division of Parks and Forestry, DEP
Division of Fish, Game and Wildlife, DEP
Division of Solid Waste Management, DEP
Green Acres Program, DEP
Land Use Regulation Element, DEP
Wastewater Facilities 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

Pinelands Commission
U.S. Environmental Protection Agency

1. Agency Participation in the Review of the March 22, 1994 Amendment

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

Office of Air Quality Management, DEP
Division of Parks and Forestry, DEP
Green Acres Program, DEP
Wastewater Facilities Regulation Element, DEP
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
Department of Agriculture
Department of Transportation
Department of Community Affairs
Pinelands Commission

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

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

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

Division of Solid Waste Management, DEP

2. Issues of Concern Regarding the March 22, 1994 Amendment

Issue: Need for Interdistrict Agreement

On November 30, 1993, the CMCMUA and the ACUA signed the interdistrict agreement. The agreement specified that the ACUA would send 325,000 tons of type 10 solid waste generated from within Atlantic County for disposal at the CMCMUA landfill prior to the May 1, 1996 Pinelands Commission mandated closure date. Further, upon commencement of operation of the CMCMUA's proposed materials recovery/composting facility, the CMCMUA would accept 20,000 tons per year of type 10 solid waste generated within Atlantic County. Finally, Atlantic County would receive 325,000 tons of types 13 and 27 solid waste for disposal at the ACUA's landfill for a period not to exceed 16 years, 6 months commencing from the date of permanent closure of the CMCMUA's landfill. The Department approves this agreement since Cape May County would benefit in that the existing open cell at the CMCMUA landfill would be fully utilized, thereby allowing Cape May County to retire about \$14.3 million in outstanding debt and ensure proper closure of its

landfill. Also, the importation of 20,000 tons of type 10 solid waste per year from Atlantic County to the CMCMUA proposed materials recovery/composting facility would result in Cape May receiving about \$1 million per year in additional revenue. Further, the delivery of Cape May County bulky and industrial waste to Atlantic County would avoid the additional cost of shipping about 325,000 tons of waste out-of-state.

Atlantic County would benefit by saving an estimated \$1.5 million over the next three years as a result of the shorter hauling distances associated with using the CMCMUA landfill. Further, transferring 20,000 tons of type 10 solid waste from Atlantic County to Cape May County for composting would assist Atlantic County in attaining the statutorily mandated 60% recycling rate for the total waste stream. Additionally, the acceptance of 325,000 tons of bulky and industrial waste from Cape May County at the ACUA landfill would result in total extra revenue to Atlantic County in excess of \$22 million.

The State would benefit by promoting its goal of disposal self-sufficiency by reducing the reliance on out-of-state disposal of both Atlantic County and Cape May County generated solid waste. Also, the agreement would promote the State's policies concerning recycling and regionalize solid waste activities. Further, by minimizing the dependency on out-of-state disposal, the State would benefit by avoiding the ancillary impacts of long-haul transport on vehicle emissions, noise, traffic congestion, and safety.

To expedite the commencement of the delivery of waste to the CMCMUA landfill, the Commissioner of the DEP issued an Emergency Redirection Order (ERO) on January 14, 1994. Within the ERO, the counties were directed to amend their respective county plans within 60 days of the issuance of the order to reflect the change in waste flow. The March 22, 1994 amendment fulfills this requirement for Cape May County.

Issue: ERO Litigation

Extensive comments were submitted to the DEP during its review of the March 22, 1994 amendment by attorneys representing Waste Management of Pennsylvania, Inc. (Waste Management) objecting to the interdistrict agreement. Since Waste Management alleges that the interdistrict agreement unlawfully interferes with Atlantic County's contract with the company for disposal of that County's solid waste. Waste Management appealed the issuance of the ERO to the Appellate Division of the Superior Court. On July 20, 1994, Judge Coleman, Presiding Judge, Appellate Division, in the matter of Emergency Redirection of Solid Waste from Atlantic County to Cape May County, Docket Nos. A-2849-93T3 and A-2850-93T3, ruled that the January 14, 1994 ERO is invalid because there was no emergent need for DEP to issue the order. Other issues raised by Waste Management are presently the subject of continuing litigation

filed by Waste Management against various current and former State and county officials. That litigation, Waste Management v. Shinn, et al., Docket No. 1-94-CV-01983, is currently before the United States District Court for the District of New Jersey. The Department will be addressing all of the issues raised by Waste Management in response to that litigation, and therefore declines to set forth an answer herein on the advice of counsel.

Issue: Confirmation of Intent to Proceed with Agreement

Since the adoption of the March 22, 1994 amendment, Assembly Bill A-480, the Solid Waste Disposal Capacity Assurance Act, was approved by the legislature and forwarded to the Governor for consideration. On August 15, 1994 the Governor conditionally vetoed the proposed legislation, citing concerns over the status of Federal monies received by the State for Pinelands related activities. This legislation would have authorized the continued operation of the CCMUA landfill until its existing permitted disposal capacity is exhausted and, therefore, could have eliminated the need for any additional waste from Atlantic County. Also, as noted above, Waste Management has initiated litigation alleging that the interdistrict agreement unlawfully interferes with Atlantic County's contract with the company for disposal of that County's solid waste. Additionally, due to the Appellate Division's order, Atlantic County has ceased the delivery of its waste to the CCMUA Landfill effective July 19, 1994. Therefore, while Section C. of the certification approves the interdistrict agreement, it notes that due to the cessation of the delivery of waste and the Appellate Division order, if both counties still intend to proceed with the arrangement, they must so notify the Department in writing. Upon such notification, the Department will commence the formal rule proposal/adoption procedure to amend the Interdistrict and Interdistrict Solid Waste Flow Rules to implement the interdistrict agreement.

C. Certification of the Cape May 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 March 22, 1994 amendment to the approved County Plan and certify to the County Freeholders that the March 22, 1994 amendment is approved as further specified below.

The County Plan inclusion of the CCMUA/ACUA Interdistrict Agreement and the necessary amended waste flows are approved. The interdistrict agreement would allow for the importation of 325,000 tons of type 10 solid waste generated within Atlantic County for disposal at the CCMUA Landfill commencing on January 24, 1994, which is the total amount to be delivered prior to May 1, 1996. Further, upon commencement of operation of the CCMUA's proposed

materials recovery/composting facility, the CMCMUA would accept for processing the delivery of 20,000 tons per year of type 10 solid waste generated within Atlantic County. In return, Atlantic County would receive 325,000 tons of types 13 and 27 solid waste generated within Cape May County for disposal at the ACUA's Landfill within a period not to exceed 16 years, 6 months commencing from the date of permanent closure of the CMCMUA's landfill.

Also, the traffic routing component of the plan is approved. Specifically, transporters originating in Cape May County shall proceed south on County Road #610 to Woodbine-Oceanview Road (County Road #550); east on Woodbine-Oceanview Road to Route 9; south on Route 9 to Sea Isle Boulevard; east on Sea Isle Boulevard to the Garden State Parkway; north on the Garden State Parkway to Exit 36; north on Fire Road to Doughty Road; north on Doughty Road to the entrance to the ACUA limited use landfill site. Transporters originating in Atlantic County shall proceed south on Doughty Road to Fire Road; south on Fire Road to the Garden State Parkway; south on the Garden State Parkway to Exit 17; west on Sea Isle Boulevard to Route 9; north on Route 9 to Woodbine-Oceanview Road (County Road #550); west on Woodbine-Oceanview Road to County Road #610; north on County Road #610 to the entrance to the CMCMUA Sanitary Landfill site. In both instances the backhaul route shall be the reverse of the delivery route.

Finally, as noted within Section B., due to the cessation of the delivery of Atlantic waste to the CMCMUA landfill and the Appellate Division order, both Cape May and Atlantic Counties are directed to notify the Department in writing of their intent to proceed with the interdistrict agreement. Upon such notification, the DEP will commence the formal rule proposal/adoption procedure to amend the Interdistrict and Interdistrict Solid Waste Flow Rules (N.J.A.C. 7:26-6 et seq.) to implement the interdistrict agreement.

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

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 Waste 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. 7:26A-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.

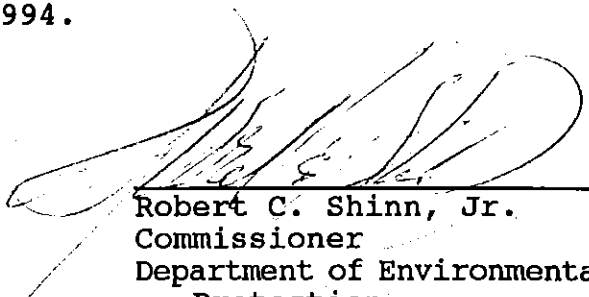
7. Reservation of Authority

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, 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 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 the amendment, as outlined in Section C. of this certification, to the Cape May County District Solid Waste Management Plan which was adopted by the Cape May County Board of Chosen Freeholders on March 22, 1994.

8/24/94
Date


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