



State of New Jersey
Department of Environmental Protection and Energy
Office of the Commissioner
CN 402
Trenton, NJ 08625-0402

Jeanne M. Fox
Acting 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 JUNE 22, 1993
AMENDMENT TO THE CAPE MAY COUNTY
DISTRICT SOLID WASTE MANAGEMENT PLAN**

BY ORDER OF THE ACTING 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 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 June 22, 1993, adopted an amendment to its approved County Plan. The amendment proposed the recycling of additional materials comprising nonchemically treated wood waste, tree parts and stumps at the existing Daley's Pit recycling center for Class B materials located in Upper Township, Cape May County.

The amendment was received by the Department of Environmental Protection and Energy (Department or DEPE) on July 21, 1993, 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 June 22, 1993 is approved in part and rejected in part 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 June 22, 1993 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 and the applicant are also notified of the issue of concern regarding the June 22, 1993 amendment which is included in Section B.2. below.

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
Land Use Regulation Element, DEPE
Wastewater Facilities Regulation Element, DEPE
Division of Parks and Forestry, DEPE
Division of Fish, Game and Wildlife, DEPE
Division of Solid Waste Management, DEPE
Green Acres Program, DEPE
Pinelands Commission
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
Pinelands Commission

1. Agency Participation in the Review of the June 22, 1993 Amendment

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

Division of Fish, Game and Wildlife, DEPE
Green Acres Program, DEPE
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
Department of Agriculture
Department of Health
Department of Transportation

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

Division of Parks and Forestry, DEPE
Department of Community Affairs
Department of the Public Advocate
U.S. Environmental Protection Agency

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

Office of Air Quality Management, DEPE
Division of Solid Waste Management, DEPE
Wastewater Facilities Regulation Element, DEPE
Land Use Regulation Element, DEPE
Pinelands Commission

2. Issue of Concern Regarding the June 22, 1993 Amendment

Issue: Regulatory Requirements

Recycling centers 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 and property. Also, recycling centers are considered solid waste facilities and are subject to N.J.A.C. 7:27-8.2(a)16 which requires air pollution control permits for any equipment which vents a solid waste facility directly or indirectly into the outdoor atmosphere. Such vents may require devices to control odors and other air contaminants. Finally, the use of crushers, chippers and shredders will necessitate the control of particulate emissions to the air. Pursuant to N.J.A.C. 7:27-8.2(a), 7, 11, 15 and 16, air pollution control permits to construct, install, or alter control apparatus or equipment are required. Also, facilities that crush nonchemically treated wood waste, tree parts, and stumps must comply with the noise control code found at N.J.A.C. 7:29-1.

If any operation of the recycling center will discharge pollutants as defined in N.J.A.C. 7:14-1.9, said operation must secure a New Jersey Pollutant Discharge Elimination System Permit and/or a Treatment Works Approval for pollutant discharges prior to operation.

The recycling center is located in the Pinelands National Reserve. Pursuant to a Memorandum of Agreement between the Pinelands Commission (Commission) and the DEPE's Office of Regulatory Policy-Coastal Planning, the project will be reviewed by the Commission should it require a CAFRA permit, stream encroachment permit, or waterfront development permit. Such review would be based on the location of the development in a Forest Management Area. Pending the completion of such a review, the proposed additional materials to be processed at the facility appear to be an inconsistent use within the Forest Management Area. The determination concerning the project's consistency with the standards of the Pinelands Plan will be taken into consideration by the Commission in its review of the permit application. However, it must be noted by the DEPE that it continues to be the Department's position that the Pinelands Plan does not prohibit recycling centers in the same way as it prohibits solid waste disposal facilities. Therefore, the DEPE will not reject the inclusion of a recycling center in a County Plan simply because it is located within the Pinelands National Reserve. Finally, the approval of this facility is subject to all requirements of N.J.A.C. 7:50-6.76. This includes the requirements that solid waste facilities are permitted to accept waste material from only Pinelands municipalities or from counties with at least 50% of their land within the Pinelands. The source of waste material proposed from outside Cape May County has not been identified in the Plan amendment.

This site is presently under the DEPE review for a Freshwater Wetlands Exemption. If the DEPE does not grant the exemption, then Freshwater Wetlands Permits will be required pursuant to N.J.A.C. 7:7A.

The County has proposed the imposition of numerous conditions upon the operation of the Daley's Pit recycling center. However, the DEPE has promulgated regulations concerning the construction and operation of recycling centers which supersede the authority of the County. Specifically, the Department's recycling regulations at N.J.A.C. 7:26A-1 et seq. govern all technical operational standards at recycling centers. The courts of this State have universally held that the Solid Waste Management Act and implementing regulations such as the recycling regulations generally preempt local governments from regulating the engineering design and site conditions of solid waste facilities. See, e.g. Ringlieb v. Parsippany-Troy Hills Twp., 59 N.J. 348 (1971); Little Falls Twp. v. Bardin, 173 N.J. Super 397 (App. Div. 1979); Chester Twp. v. Environmental Protec. Dept., 181 N.J. Super. 445 (App. Div. 1981); Ocean County Util. v. Planning Bd., 223 N.J. Super. 461 (App. Div. 1988). This preemption exists even where local governments are vested with independent statutory authority to regulate land use under another statute, such as the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. Id. In fact, the Appellate Division has recently upheld the Department's rejection of two technical and operational conditions imposed by Mercer County on the operation of a recycling center in the Mercer County Solid Waste Management Plan. In the Matter of Certain Amendments to the Adopted and Approved Solid Waste Management Plan of the Mercer County Solid Waste Management District, A-3448-91T1, July 2, 1993 (case pending petition for

certification by Mercer County). In that case the court concluded that the Department's rejection of the two Mercer County plan conditions was not arbitrary or unreasonable or in violation of the Solid Waste Management Act. Id. On the basis of the foregoing, the Department must reject the following conditions imposed by Cape May County on the operation of the Daley's Pit recycling center on the grounds that the conditions are inconsistent with and preempted by the recycling regulations at N.J.A.C. 7:26A-1 et seq.

- a. **Residue:** The amendment specifies that no more than fifteen (15%) of the materials received at the center shall remain after material processing as residual solid waste and no solid waste should be stored/disposed of at the facility. As per N.J.A.C. 7:26A-3.5(e)3ii, the DEPE determines, among other things, the limitation on the amount of residue which may be produced as a result of receiving, storing, processing or transferring source separated recyclable materials at the recycling center.
- b. **Storage Capacity:** The amendment specifies that no more than 1,000 tons of processed or unprocessed material received at the facility each year shall be stored on site. Storage of unprocessed and processed material at a recycling center is not subject to county control as per N.J.A.C. 7:26A-3.5(e)1. The DEPE will authorize the receipt, storage, processing or transferring of Class B materials at the recycling center.
- c. **Revocation of Approval:** The amendment specifies that any recycling center which fails to maintain consistency with the conditions listed for a continuous period of more than six (6) months shall be removed from the County Plan. The DEPE, pursuant to N.J.A.C. 7:26A-3.12, has established requirements relative to revocation of approval to operate a recycling center. Moreover, this condition subverts the Department's statutory certification authority inasmuch as the Department must certify the removal of any facility from a plan just as it must certify the inclusion of a facility in a plan. The Appellate Division upheld the Department's rejection of a similar condition in the Mercer County Plan which stated that a recycling center would be automatically removed from the plan for any violation of the plan. In the Matter of Certain Amendments to the Adopted and Approved Solid Waste Management Plan of the Mercer County Solid Waste Management District, A-3448-91T1, July 2, 1993 (case pending petition for certification by Mercer County).
- d. **Bonding:** The amendment specifies that to insure proper closure and clean-up of any recycling center, the owner/operator of such a facility must provide to the host municipality or the DEPE a performance bond or letter of credit in an amount sufficient to insure the timely removal and proper disposal of all recyclable materials and secondary product materials remaining at the facility site at the time of closure. The Department, pursuant to N.J.A.C. 7:26A-3.4(c), has established requirements relative to a performance bond and/or letter of credit.

- e. **Duration of Storage:** The amendment specifies that the storage of unprocessed materials shall be limited to a 6 month maximum period. Pursuant to N.J.A.C. 7:26-3.9(b), unprocessed Class B recyclable material can be stored for up to one (1) year.
- f. **Facility Capacity:** The Department, pursuant to N.J.A.C. 7:26A-3.5(e), will establish conditions of operation within its approval which shall be met by the recycling center. The capacity specified within the amendment is approved only if it is consistent with the capacity approved by the Department. Also, the restriction on the amount of out-of-county recyclables to be processed at the facility as well as the priority consideration given to processing recyclables generated within Cape May County is rejected insofar as N.J.A.C. 7:26A-3 does not allow for restrictions on the origins of recyclable materials as part of a recycling center approval.
- g. **Signage:** The DEPE, pursuant to N.J.A.C. 7:26A-3.5(f), has established requirements pertaining to signage.
- h. **Reporting Requirements:** The DEPE, pursuant to N.J.A.C. 7:26A-3.16, has established reporting requirements for recycling centers.
- i. **Transfer of Approval:** The DEPE, pursuant to N.J.A.C. 7:26A-3.14, has established requirements relative to the transfer of approval to operate a recycling center.

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 June 22, 1993 amendment to the approved County Plan and certify to the County Freeholders that the June 22, 1993 amendment is approved in part and rejected in part as further specified below.

The County Plan inclusion of additional materials to be recycled at the Daley's Pit recycling center, located on Block 453, Lot 3, in Upper Township, Cape May County, New Jersey is approved. Previously, in the DEPE's October 18, 1989 certification of the County's April 11, 1989 plan amendment, Daley's Pit was approved to recycle source separated asphalt and concrete construction materials. The additional materials to be recycled shall include nonchemically treated wood waste, tree parts and stumps for processing, temporary storage, and marketing. A maximum gross annual tonnage limit of 17,700 tons shall be established, subject to DEPE approval in the technical engineering review phase of the application. Regarding conditions imposed by the County upon the operation of this facility, the DEPE has promulgated recycling regulations concerning the operation and construction of recycling centers. These DEPE recycling regulations, N.J.A.C. 7:26A-1.1 et seq., supersede the authority of the County in this area for those reasons identified in Section B. above. Therefore, as noted in Section B., those conditions imposed by the County which conflict with the Department's regulations are rejected.

Although the recycling of additional materials is herein approved, such approval does not circumvent the requirement that the applicant apply to the DEPE for a modification to its Class B approval to accept additional materials.

Since this recycling center will be handling additional Class B recyclable materials, as defined at N.J.A.C. 7:26A-1.3, it must obtain a modification to an existing recycling center approval from the Department pursuant to N.J.A.C. 7:26A-3 prior to processing the additional materials. Further, pursuant to N.J.A.C. 7:26A-4.1(a)1.iii, Class A recyclable materials may be commingled only with other Class A recyclable materials. Class B recyclable materials may be commingled only with other Class B recyclable materials and only to the extent authorized in the general approval.

This certification shall not be construed as an expression of the Department's intent to issue a modification to an existing recycling center approval for Class B recyclable materials. A recycling center modification approval shall only be granted where the applicant has submitted an administratively complete application, as per N.J.A.C. 7:26A-3.5, where all substantive criteria for approval set forth in N.J.A.C. 7:26A-3.2, 3.3 and 3.4 are satisfied, where a fee has been paid in accordance with N.J.A.C. 7:26A-2, and where none of the criteria for denial of a recycling center approval are met, as per N.J.A.C. 7:26A-11 and 12. Further, a recycling center modification approval shall only be granted upon compliance with all outstanding Departmental enforcement actions.

Any residue generated as a result of the operation of this recycling center shall be disposed of pursuant to the County Plan and the Interdistrict and Intradistrict Solid Waste Flow Rules (N.J.A.C. 7:26 et seq.).

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 the approved portion of this amendment to the County Plan and which was executed prior to the approval of the approved portion 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 the approved portion of this amendment and of the County Plan if such renegotiation is not completed within ninety (90) days of the effective date of the approved portion 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 approved portion of the amendment contained herein shall operate in compliance with the approved portion of 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 Acting 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 portion of the amendment certified herein.

5. Definitions

For the purpose of the approved portion 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 and -2.13, and N.J.A.C. 7:26A-1.3.

6. Effective Date of the Amendment

The approved portion of 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 Rejection in Part of the Amendment by the Acting 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 reject in part 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 June 22, 1993.

June 13, 1993

DATE

Jeanne M. Fox
JEANNE M. FOX
ACTING COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION
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