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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
CAPE MAY COUNTY SOLID WASTE
MANAGEMENT DISTRICT

CERTIFICATION
OF THE JULY 23, 1991
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 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 plan at any time and, if found inadequate, a new plan must be adopted. The Cape May County Board of Chosen Freeholders (County Freeholders) completed such a review and on July 23, 1991, adopted an amendment to its approved County Plan.

The amendment proposed a contingency solid waste disposal alternative and schedule to comply with the Pinelands Commission (Commission) Resolution PC-4-90-90. The Commission required the County to permanently close its operating Cape May County Municipal Utilities Authority (CMCMUA) landfill, located in Woodbine Borough and Upper Township, after December 31, 1992 and to provide a contingency solid waste disposal alternative beginning January 1, 1993. Per this amendment, the County did not identify a feasible site within the County suitable for development as a long-term landfill or other in-state landfill facility available for use. Accordingly, the County designated use of out-of-state landfills beginning January 1, 1993 as its contingency solid waste disposal alternative and provided a tentative implementation schedule designed to procure out-of-state hauling and disposal capacity. Finally, the County proposed to reserve its legal rights regarding existing litigation between the CMCMUA and the Commission concerning the CMCMUA landfill .

The amendment was received by the Department of Environmental Protection and Energy (Department or DEPE) on September 10, 1991 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 July 23, 1991 is approved in part, rejected in part and modified in part as provided in N.J.S.A. 13:1E-24. Deficiencies in the County Plan have also been identified within Section C. of this certification.

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 July 23, 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 this plan amendment is partially consistent with the Statewide Solid Waste Management Plan.

In conjunction with the review of the amendment, the Department circulated copies to eighteen 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:

Division of Environmental Quality, 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
Water Supply Element, 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

1. Agency Participation in the Review of the July 23, 1991 Amendment

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

Division of Parks and Forestry, DEPE
Division of Fish, Game and Wildlife, DEPE
Green Acres Program, DEPE
Wastewater Facilities Regulation Element, DEPE
New Jersey Turnpike Authority
Department of Agriculture
Department of Transportation
Department of Community Affairs

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

Division of Environmental Quality, DEPE
Division of Coastal Resources, DEPE
Groundwater Quality Management Element, DEPE
Water Supply Element, DEPE
New Jersey Advisory Council on Solid Waste Management
Department of Health
Department of the Public Advocate
U.S. Environmental Protection Agency

The following agency submitted a substantive comment which is further addressed below:

Pinelands Commission
Division of Solid Waste Management, DEPE

2. Comments Received Regarding the July 23, 1991 Amendment

Issue: Legal Dispute between the CMCMUA and the Commission

As indicated in the proposed amendment, Condition #4 of the Commission's Resolution PC-4-90-90 stipulated that "by July 1, 1991, the CMCMUA shall submit to the Commission staff documentation including solid waste management plan amendments, regarding the solid waste disposal alternative(s) selected. Such alternatives shall preclude the landfilling of any solid waste or any residuals from any resource recovery facility

within the Pinelands Area or the Pinelands National Reserve. A schedule which demonstrates that the selected alternative(s) will be in place on or prior to January 1, 1993 shall also be provided." The proposed designation of the contingency alternative for the County's solid waste and/or residue disposal beginning January 1, 1993 and implementation schedule as contained in Section IV of this amendment is in compliance with the Commission's requirements. However, the proposed amendment also contains discussions and interpretations regarding the Commission's decisions concerning the CMCMUA landfill. Further, the CMCMUA has filed an appeal of certain provisions of the Commission's decisions with the Appellate Division of the Superior Court of New Jersey. Also, the Commission has acknowledged in a letter dated January 16, 1991 to the CMCMUA that the plan amendments required by the Commission's resolution may be adopted without prejudice to the CMCMUA's pending appeal and with full reservation of legal rights.

This legal issue of dispute between the CMCMUA and the Commission concerning the CMCMUA landfill is more appropriately resolved through the above mentioned litigation which is pending before the Superior Court. Therefore, the statements contained within the County's July 23, 1991 amendment, including discussions and/or disputes concerning the Commission's decisions, do not need to be addressed in my action on this amendment.

As noted in Section C. of this certification, my final action on the July 23, 1991 amendment addresses the designation of a contingency solid waste disposal alternative, implementation schedule and reservation of the County's legal rights in the matter of the pending litigation between the CMCMUA and the Commission. While the reservation of the County's legal rights in its pending litigation with the Pinelands Commission and its proposed implementation schedule consistent with Condition #4 of the Commission's Resolution PC-4-90-90 are approved, the contingency plan must be rejected at this time. The proposal to use out-of-state disposal until such time as the County's planned municipal solid waste composting facility is operational is inconsistent with the Department's goal of self-sufficiency in solid waste disposal capacity. While short-term out-of-state landfiling may ultimately be necessary for the County, the immediate plan amendment did not demonstrate that all feasible efforts have been made toward negotiation of an in-state regional disposal plan. It is apparent that the County's planned municipal solid waste composting facility, when operational, will have excess capacity for much of the year, based upon plant sizing to accommodate seasonal population increases during the summer months. The County must fully evaluate regional opportunities for filling this capacity in exchange for both short and long-term access to in-state disposal capacity. In this regard, I have required the County to aggressively pursue such an in-state regional agreement over the next 90 days. Further, I have modified the County's implementation schedule to insert dual timeframes for development of an in-state regional agreement, as well as the proposed out-of-state plan on a contingency basis at this time. The County, the CMCMUA and the Commission are hereby notified of this action.

Also, since the plan amendment did not identify the specific processing facility which the County would utilize for processing and transferring the County's waste for out-of-district disposal, Section C. requires the County to submit a subsequent plan amendment within 90 days which identifies the processing facility and includes a waste flow to both the interim and final disposal facilities.

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 July 23, 1991 amendment to the approved County Plan and certify to the County Freeholders that the July 23, 1991 amendment is approved in part, rejected in part and modified in part as further specified below.

1. July 23, 1991 Amendment

a. Contingency Solid Waste Disposal Alternative

The proposed amendment to designate a contingency solid waste disposal alternative which includes the use of out-of-state landfills for disposal of the County's solid waste and/or residue beginning January 1, 1993 is rejected at this time. This rejection is based upon the inconsistency of out-of-state disposal with the Department's goal of self-sufficiency and the failure on the part of Cape May County to fully evaluate in-state disposal options. In this regard, I herein require the County to immediately initiate an intensive 90-day evaluation of both short and long-term opportunities for negotiation of a regional disposal plan with another New Jersey county. This plan should involve the long-term use of planned excess capacity at the County's proposed municipal solid waste composting facility, as well as both short and long-term access for Cape May County to in-state disposal capacity in line with the December 31, 1992 deadline for the permanent closure of the CCMUA landfill.

The original milestones adopted by the County as a part of the July 23, 1991 amendment have been approved, with the exception of milestone i. which incorrectly identified an Appellate Court decision in the pending CCMUA/Pinelands Commission Case by January 1, 1992, which did not take place. The schedule has also been modified as noted below to reflect several deadlines for attempting to identify in-state disposal capacity and negotiating a regional in-state disposal agreement. As indicated above, the plan to dispose of waste out-of-state is rejected at this time and is therefore in the schedule below as a contingency plan only.

b. Implementation Schedule For Contingency Disposal Alternative

The proposed tentative implementation schedule for the contingency disposal alternative, as identified below, is approved with modification.

Action	Date
i. Initiate intensive study of opportunities for regional agreements for in-state disposal capacity.	February 17, 1992

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|---|------------------|
| ii. Complete contingency negotiations for out-of-state disposal capacity. | April 15, 1992 |
| iii. Solicit bids for additional solid waste transfer vehicles. | April 30, 1992 |
| iv. Report back to the Department on progress in reaching an in-state disposal agreement. | May 17, 1992 |
| v. Receive delivery of additional transfer vehicles (if appropriate). | August 30, 1992 |
| vi. Hire and train additional drivers for shipment out-of-county or out-of-state. | November 1, 1992 |
| vii. Commence shipment of waste to another New Jersey county or out-of-state. | January 1, 1993 |

In addition, as discussed in Section B.2. above, the County is directed to submit within 90 days a subsequent plan amendment which identifies the specific processing facility which the County would utilize for processing and transferring the County's waste out-of-county or out-of-state and which includes a waste flow to both the interim and final disposal facilities.

c. Reservation of Legal Rights

As proposed by the County, the July 23, 1991 amendment shall have no legal effect in any litigation between the Commission and the CCMUA pursuant to the Commission's January 16, 1991 letter to the CCMUA. In this regard, the County and the Commission are strongly encouraged to continue discussions in this matter and to develop an acceptable planning strategy in light of the concerns discussed above. The Department will participate in such discussions upon the request of the parties toward resolving all outstanding issues of concern and avoiding any short-term shift to out-of-state disposal.

2. Cape May County District Solid Waste Management Plan Deficiencies

On June 27, 1991, the Department certified the January 22, 1991 amendment to the County Plan. In that certification were noted deficiencies which the County was directed to address within 180 days of the certification or December 25, 1991. Specifically, these deficiencies pertain to the lack of description of the County's method of financing solid waste management and the need to address the recommendations of the Governor's Emergency Solid Waste Assessment Task Force Final Report relative to source reduction and regionalization. To date, the County has not submitted the required plan amendment. Therefore, I am again directing the County to immediately comply with this directive.

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.

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 portions of the 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 and N.J.A.C. 7:26-1.4 and -2.13.

6. Effective Date of the Amendment

The approved portions of the amendment to the County Plan contained herein shall take effect immediately.

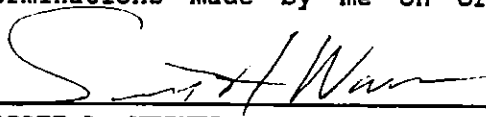
7. Reservation of Authority

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, Rejection in Part and Modification in Part of the Amendment and Notification of Deficiencies 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, reject in part and modify 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 July 23, 1991. I hereby also require, as noted in Section C., the Cape May County Board of Chosen Freeholders to immediately comply with the revised contingency plan implementation schedule and to address the noted deficiencies. This certification memorializes the determinations made by me on or before February 6, 1992.

2/13/92
DATE


SCOTT A. WEINER
COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND ENERGY