



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 NOVEMBER 28, 1995
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 November 28, 1995, adopted an amendment to its approved County Plan. The amendment proposed:

- * Continued operation and future expansion of the Cape May County Municipal Utilities Authority (CMCMUA) Landfill in Woodbine Borough;
- * A landfill gas recovery project at the CMCMUA Landfill;
- * Deletion of all references and provisions of the previously approved plan amendments which require the permanent closure of the CMCMUA Landfill on or prior to a specified date;
- * Deletion of all previously approved plan amendment provisions incorporating the terms of a Settlement Agreement between the Pinelands Commission and the CMCMUA date July 29, 1992; and
- * Deletion of all references and previously approved plan amendments which provide for the development of a materials recovery/composting facility as set forth in a County Plan amendment adopted on January 22, 1991.

The amendment was received by the Department on December 11, 1995, 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 November 28, 1995 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 November 28, 1995 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 issue of concern relative to the November 28, 1995 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. All agencies contacted are as follows:

Division of Water Quality, DEP
Division of Parks and Forestry, DEP
Division of Fish, Game and Wildlife, DEP
Division of Enforcement, DEP
Division of Solid and Hazardous Waste, DEP
Green Acres Program, DEP
Land Use Regulation Element, DEP
Office of Air Quality Management, 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
U.S. Environmental Protection Agency
Pinelands Commission

1. Agency Participation in the Review of the November 28, 1995 Amendment

The following agencies did not object to the proposed amendment:

Division of Parks and Forestry, DEP
Division of Enforcement, DEP
Division of Fish, Game and Wildlife, DEP
New Jersey Turnpike Authority
Department of Transportation
Department of Agriculture
Department of Community Affairs

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

Office of Air Quality Management, DEP
Green Acres Program, DEP
Land Use Regulation Element, DEP
Division of Water Quality, DEP
New Jersey Advisory Council on Solid Waste Management
Department of Health
U.S. Environmental Protection Agency
Pinelands Commission

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

Division of Solid and Hazardous Waste, DEP

2. Issue of Concern Regarding the November 28, 1995 Amendment

Issue: Historical Background

On March 1, 1983, the County Plan was amended to include the CCMUA Landfill in Woodbine Borough. This amendment was certified by the

DEP on May 5, 1983. Pursuant to the Pinelands Comprehensive Management Plan (CMP) all landfills located within the Pinelands were to cease operation on August 8, 1990. However, in 1983 the Pinelands Commission issued a waiver to the CMCMUA to allow the landfill to continue operation after that date for the acceptance of ash/residual/bypass waste from the operation of a planned CMCMUA resource recovery facility. The planned resource recovery facility was never developed.

On July 13, 1990, the Pinelands Commission adopted Resolution No. PC4-90-90 which allowed the CMCMUA Landfill to continue operation until December 31, 1992. This extension was included within the County Plan in a March 12, 1991 amendment which was certified on September 6, 1991. Subsequently, a Settlement Agreement dated July 29, 1992 between the Pinelands Commission and the CMCMUA extended the closure date of the CMCMUA Landfill until May 1, 1996. This latter extension was included within the County Plan in a January 26, 1993 amendment which was certified on July 23, 1993.

On June 30, 1994, the New Jersey State Legislature passed the Solid Waste Disposal Capacity Assurance Act (Assembly Bill A-480) which provided for the continued use and expansion of the CMCMUA Landfill beyond the previously established closure date of May 1, 1996. Governor Whitman conditionally vetoed this legislation so that it would be effective only upon approval of the Secretary of the Interior pursuant to the provisions of Section 502 of the National Parks and Recreation Act of 1978. Secretary Babbitt disapproved the New Jersey Solid Waste Disposal Capacity Assurance Act on the basis that it constituted a modification of the Federally approved CMP in a manner inconsistent with the normal procedures for amending the CMP. He recommended the CMCMUA petition the Pinelands Commission for a waiver of strict compliance or for an amendment to the CMP.

At the suggestion of Governor Whitman, the Pinelands Commission and the CMCMUA agreed to submit the matter for dispute resolution with the DEP. After a series of mediation sessions attended by representatives of the CMCMUA, the Pinelands Commission, and the Department, on June 19, 1995 an Agreement was reached and signed by a representative of each agency. On July 5, 1995, the CMCMUA accepted the terms of the Agreement contingent upon the Pinelands Commission's approval. On July 14, 1995, the Pinelands Commission approved the Agreement and directed the Commission's staff to prepare amendments to the CMP to implement the terms of the Agreement.

Briefly, the terms of the Agreement authorize the CMCMUA to continue landfilling beyond the May 1, 1996 landfill closure date. Specifically, the CMCMUA is authorized to complete the use of the existing 1C landfill cell and thereafter create additional cells in the future on 42 adjacent acres. A deed restriction must be placed on the remaining property thereby precluding any other landfilling

on this site. The Agreement also provides for a financial payment to be made by the CMCMUA to the Pinelands Commission.

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 November 28, 1995 amendment to the approved County Plan and certify to the County Freeholders that the November 28, 1995 amendment is approved as further specified below.

- * The County Plan inclusion of the continued operation and future expansion of the CMCMUA Landfill in Woodbine Borough is approved;
- * The County Plan inclusion of a landfill gas recovery project to be located on Lot 2, Block 123 of the CMCMUA Landfill in Woodbine Borough is approved;
- * The County Plan deletion of all references and provisions of the previously approved plan amendments which require the permanent closure of the CMCMUA Landfill on or prior to a specified date is approved;
- * The County Plan deletion of all previously approved plan amendment provisions incorporating the terms of a Settlement Agreement between the Pinelands Commission and the CMCMUA dated July 29, 1992 is approved; and
- * The County Plan deletion of all references and previously approved plan amendments which provide for the development of a materials recovery/composting facility as set forth in a County Plan amendment adopted on January 22, 1991 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 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 waste, construction and demolition waste, sewage sludge, septage, and hazardous waste. 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

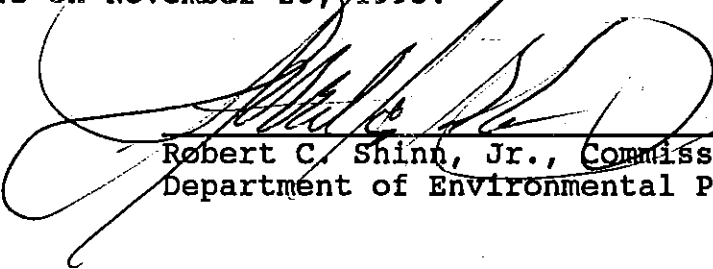
other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's planning guidelines, rules, regulations, orders of the Department, 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 November 28, 1995.

Date

3/15/94



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