



State of New Jersey

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

CERTIFICATION
OF THE SEPTEMBER 24, 1997
AMENDMENT TO THE BURLINGTON 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 October 27, 1980, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Burlington 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 Burlington County Board of Chosen Freeholders (County

Freeholders) completed such a review and on September 24, 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)]. 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 emergency 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 September 24, 1997 amendment proposes a market participant strategy which provides for voluntary delivery of solid waste and sludge to the Burlington County Resource Recovery Complex, and also specifies disposal rates for both sludge and solid waste.

The amendment was received by the Department on October 7, 1997, 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 September 24, 1997 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 Burlington County District Solid Waste Management Plan Amendment

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the September 24, 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 portions of this plan amendment are consistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the issues of concern relative to the amendment which are included in Section B.2. below.

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

1. Agency Participation in the Review of the September 24, 1997 Amendment

The following agencies did not object to the proposed amendment:

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

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

Division of Water Quality, DEP
Division of Fish, Game and Wildlife, DEP
Office of Air Quality Management, DEP
Land Use Regulation Element, DEP
Department of Health
Department of Transportation
Department of Treasury
New Jersey Advisory Council on Solid Waste Management
U.S. Environmental Protection Agency

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

Division of Solid and Hazardous Waste, DEP

2. Issues of Concern Regarding the September 24, 1997 Amendment

Issue: Solid Waste Disposal

Continued access to the County's solid waste management system will be made available on a voluntary participation basis to the

of solid waste within the County, and private haulers serving County businesses. Upon execution of a contract with a municipality, the County shall offer:

- *disposal capacity
- *collection, processing, and marketing of recyclables
- *access to the Household Hazardous Waste Collection Facility
- *receipt and processing of bulky recyclables and
- *program support

Municipalities which elect to deliver waste to a landfill other than the County landfill shall not receive curbside recycling collection but will be required to provide for the collection of all designated recyclable materials.

Issue: Sludge Disposal

The County is constructing a co-composting facility which has been designed to process all dewatered sludges generated within Burlington County. Therefore, the County intends to institute a program for use of the facility which provides for voluntary participation by sludge generators. Generators which choose to participate in this aspect of the County's solid waste management system must execute a service contract with the County.

Issue: Automatic Rate Increases

The amendment notes that, concerning disposal at the County Resource Recovery Complex, the solid waste disposal fee will be subject to a 3% escalator and the sludge disposal fee will be adjusted by increases in the Consumer Price Index. At this point in time, all disposal rates established by the County must be carefully scrutinized and kept as low as possible in order to ensure a competitive position and a continuing ability to attract solid waste and sludge toward retiring outstanding debt payments. Automatic escalators for solid waste or sludge are inconsistent with this continuing need to be competitive under a market participant approach. Therefore, Section C. of the certification rejects this component of the September 24, 1997 amendment.

C. Certification of the Burlington 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 September 24, 1997 amendment to the approved County Plan and certify to the County Freeholders that the September 24, 1997 amendment is approved in part and rejected in part as further specified below.

The County Plan inclusion of a market participant strategy which

provides for voluntary delivery of solid waste and sludge to the County Resource Recovery Complex, as described above in Section B.2., is approved.

The County Plan inclusion of automatic rate increases for solid waste and sludge disposal is rejected. As noted within Section B.2. above, all disposal rates established by the County must be carefully scrutinized and kept as low as possible in order to ensure a competitive position and a continuing ability to attract solid waste and sludge toward retiring outstanding debt payments. Automatic escalators for solid waste or sludge are inconsistent with this continuing need to be competitive under a market participant approach.

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 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 DEP 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 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 portion of the amendment to the County Plan shall take effect as of the date of final disposition of Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County.

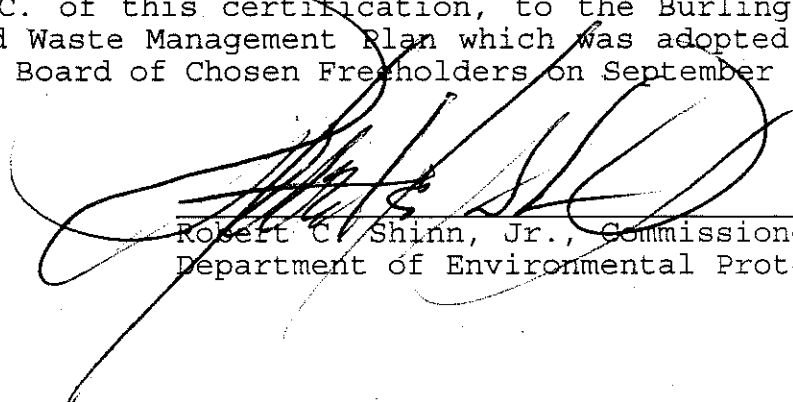
7. Reservation of Authority

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 and Rejection 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 and reject in part the amendment, as outlined in Section C. of this certification, to the Burlington County District Solid Waste Management Plan which was adopted by the Burlington County Board of Chosen Freeholders on September 24, 1997.

11/10/97
Date


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