



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection

Robert C. Shinn, Jr.
Commissioner

Office of the Commissioner
P.O. Box 402
Trenton, NJ 08625-0402
Tel. # 609-292-2885
Fax. # 609-292-7695

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

**CERTIFICATION
OF THE SEPTEMBER 18, 1997
AMENDMENT TO THE CAMDEN 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 July 17, 1980, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Camden 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 Camden County Board of Chosen Freeholders (County Freeholders) completed such a review and on September 18, 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 address in this and subsequent plan amendments. In addition, this certification is in no way intended by the Department to represent a legal determination regarding the effect of the Atlantic Coast decision on any specific contract between public and/or private parties.

The amendment has three components:

- *Administration of a New Nondiscriminatory Process for Procurement of Disposal Services
- *Imposition (as an optional contingency measure) of an Environmental Investment Charge (EIC)
- *Interim Flow Control Strategy

The amendment was received by the Department on September 30, 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 one component of the amendment adopted by the County Freeholders on September 18, 1997 is approved with modification in part, rejected in part, and remanded in part as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the September 18, 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 this plan amendment, as modified, 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 September 18, 1997 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 18, 1997 Amendment

The following agencies did not object to the proposed amendment:

Division of Water Quality, DEP
Division of Parks and Forestry, DEP
Division of Compliance and Enforcement, DEP
Department of Agriculture
Office of Air Quality Management, DEP

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

Green Acres Program, DEP
Land Use Regulation Element, DEP
Division of Fish, Game and Wildlife, DEP
Department of Health
Department of Transportation
Department of Community Affairs
Department of Treasury
New Jersey Turnpike Authority
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 18, 1997 Amendment

Issue: New Nondiscriminatory Process for the Procurement of Disposal Services

The County proposes to continue to regulate the movement of all solid waste generated within its boundaries and a reprocurement process for this waste will be undertaken. At the request of the Department, the County submitted the following additional information relative to the schedule for this procurement process which was not contained within the August 21, 1997 amendment.

<u>Activity</u>	<u>Date</u>
Advertise Bid Specifications	August 29 to September 1, 1997
Pre-Bid Conference	October 1, 1997
Receipt of Bids	November 17, 1997
Contract Award	November 17 to January 16, 1998
Commence Performance of Work	To be determined

Upon completion of the nondiscriminatory procurement process, the Pollution Control Financing Authority of Camden County (PCFACC) may enter into contracts of varying terms with one or more disposal facilities. If the location(s) of the contracted disposal facility(ies) is not conveniently located for the delivery of waste by collection vehicles, the PCFACC shall also provide or contract for local transfer facilities and long distance transportation. Since this procurement process has not yet been completed, within Section C. of the certification this component of the amendment is approved with modification contingent upon receipt by the DEP of a subsequent plan amendment or administrative action which documents awarding a nondiscriminatory bid contract(s) to provide disposal and, if needed, transfer and transportation services.

Also, the Department is concerned that if the contract(s) awarded for disposal services does not provide for materials recovery, it may have an adverse impact upon the recycling rates achieved by the County and may conflict with the allowance for procurement of recycling services afforded to commercial waste generators [see N.J.S.A. 99.16(d)]. If this is the case, the County must amend the County Plan to identify its strategy to ensure the continuing availability of materials recovery services toward complying with this statutory exemption for the commercial sector. Such action may be initiated as an Administrative Action pursuant to N.J.A.C. 7:26-6.11(b)6.

Issue: Environmental Investment Charge

The PCFACC has incurred debt in implementing the County solid waste system including the development of the Camden Resource Recovery Facility and the County Landfill. To meet these debt service obligations, the amendment states that an EIC may be imposed. Since the PCFACC has not yet determined if an EIC will be imposed, and has not identified specific dollar amounts, sub-component categories, or the exact method of collection, the amendment adopted by the County Freeholders on September 18, 1997 does not contain a definitive EIC. Therefore, within Section C. of the certification, the Department remands for further evaluation and reconsideration the County's proposal for recovering environmental investment costs until the County Freeholders make a final decision and adopt a subsequent plan amendment setting forth the specific aspects of its plan.

Any future amendment adopted by the County Freeholders which assesses an EIC should include detailed methodology as to the calculation of the EIC, including but not limited to, the following:

- i. Analysis of current tip fee to determine various EIC components;
- ii. Analysis of how costs of various EIC components could be reduced;
- iii. Determination of means of calculating an EIC;
- iv. Determination of billing agency and mechanism for collecting an EIC;
- v. Analysis to demonstrate justness and reasonableness of the final EIC and the ability to meet debt obligations.

Finally, the Department would like to stress that any revised strategy adopted by the County must set forth the means of financing the solid waste management strategy, including how outstanding debt of the PCFACC will be addressed. The Department also refers the County to the emergency regulations at N.J.A.C. 7:26-1 et seq. to the extent that assessment of an EIC is dependent on in-district weighing.

Interim Flow Control Strategy

The DEP is concerned with the requirement contained within the amendment that specifies "The PCFACC shall direct the disposal of waste during the period between the judicial abrogation of current disposal contracts and the implementation of the new strategy." The Department has determined that such an interim flow control

requirement cannot be enforced due to the November 10, 1997 denial of petition by the U.S. Supreme Court and subsequent lifting of the stay of the Federal Court's injunction against the enforcement of waste flow. Therefore, within Section C. of the certification, the Department rejects this component of the amendment.

C. Certification of the Camden 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 18, 1997 amendment to the approved County Plan and certify to the County Freeholders that the September 18, 1997 amendment is approved with modification in part, rejected in part, and remanded in part as further specified below.

Administration of a New Nondiscriminatory Procurement of Disposal Services Process

The County Plan inclusion of a nondiscriminatory procurement process to solicit bids for the disposal of the County's solid waste is approved with modification contingent upon receipt and approval by the DEP of a subsequent plan amendment or administrative action adopting the results of the nondiscriminatory procurement process.

Imposition of an Environmental Investment Charge

The County Plan inclusion of the possible imposition of an EIC is remanded for further consideration and evaluation by the County. Should the County decide to impose an EIC, Section B. outlines the specific data to be contained within a subsequent amendment which is needed for the Department to review and act upon the imposition of an EIC.

Interim Flow Control Strategy

The County Plan inclusion of the interim flow control strategy covering that time between the judicial abrogation of current disposal contracts and implementation of the new disposal strategy is rejected. The Department has determined that with the November 10, 1997 denial of petition of the U.S. Supreme Court the stay of the Federal Court's injunction against the enforcement of waste flow has been lifted and the County's proposed strategy is not enforceable. Consequently, the PCFACC may not control the flow of waste within the County during this time period.

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 waste, sewage sludge, septage, 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 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, 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 portions of the amendment to the County Plan contained herein shall take effect immediately.

7. Reservation of Authority

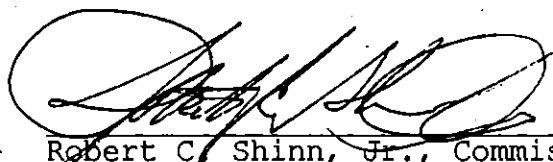
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's 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 with Modification, Rejection, and Remand 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 with modification in part, reject in part, and remand in part the amendment, as outlined in Section C. of this certification, to the Camden County District Solid Waste Management Plan which was adopted by the Camden County Board of Chosen Freeholders on September 18, 1997.

Date

11/14/97



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