



STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
RICHARD T. DEWLING, Ph.D., P.E., COMMISSIONER
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(IN THE MATTER OF CERTAIN AMENDMENTS)
(TO THE ADOPTED AND APPROVED SOLID)
(WASTE MANAGEMENT PLAN OF THE)
(HUDSON COUNTY SOLID WASTE)
(MANAGEMENT DISTRICT)

CERTIFICATION
OF THE APRIL 23, 1987,
AMENDMENT TO THE HUDSON 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.) establishes a comprehensive system for the management of solid waste in New Jersey. The Act designates all twenty-one (21) of the state's counties, and the Hackensack Meadowlands District, as Solid Waste Management Districts, and mandates that the Boards of Chosen Freeholders and the Hackensack Meadowlands Development Commission develop comprehensive plans for waste management in their respective districts.

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 the 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 the 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. Amendments to the Act found in N.J.S.A. 13:1E-136 et seq. require that, among other things, counties amend their district solid waste management plans to include an outline of the proposed uses of the moneys in the District Resource Recovery Investment Tax Fund, as well as establish a schedule for disbursement of the moneys in the fund.

On January 7, 1982, the Department approved, with modifications, the Hudson County District Solid Waste Management Plan. The Hudson County Board of Chosen Freeholders, on April 23, 1987, adopted an amendment to its approved District Solid Waste Management Plan to satisfy the requirements of N.J.S.A. 13:1E-150. The amendment proposed a plan for the use and disbursement of moneys in the Hudson County District Resource Recovery Investment Tax Fund.

The amendment was received by the Department of Environmental Protection on May 18, 1987, and copies were distributed to various state level agencies for review and comment, as required by law. The Department has reviewed this amendment, and has determined that the amendment adopted by the Hudson County Board of Chosen Freeholders on April 23, 1987 is approved as specified below as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I, Richard T. Dewling, Commissioner of the Department of Environmental Protection have studied and reviewed the April 23, 1987 amendment to the Hudson County District Solid Waste Management Plan according to the objectives, criteria, and standards developed in N.J.S.A. 13:1E-150 and the Statewide Solid Waste Management Plan and I find and conclude that this plan amendment is consistent with the Statewide Solid Waste Management Plan and N.J.S.A. 13:1E-150 in identifying a disbursement schedule and acceptable uses of moneys from the Hudson County District Resource Recovery Investment Tax Fund.

In addition, the Division of Solid Waste Management circulated the plan amendment to sixteen review agencies and solicited their review and recommendations. Pursuant to N.J.S.A. 13:1E-24a(2) and (3), these agencies included various agencies, bureaus, and divisions within the Department of Environmental Protection as well as the Board of Public Utilities. Also among these agencies were the Department of Community Affairs, the Department of the Public Advocate, the Department of Health, the Office of Recycling, the Department of Agriculture, the Department of Transportation, and the New Jersey Turnpike Authority. Of these agencies, the following did not object to the proposed plan amendment: N.J.D.E.P. Divisions of Environmental Quality, Coastal Resources and Fish, Game and Wildlife, the State Departments of Agriculture and Transportation, the Board of Public Utilities, the Office of Recycling and the New Jersey Advisory Council on Solid Waste Management. The following agencies failed to respond to our requests for comment: the Departments of the Public Advocate and Health, the U.S. Environmental Protection Agency, the New Jersey Turnpike Authority, the Green Acres Program and the Divisions of Water Resources and Parks and Forestry. The State Department of Community Affairs submitted substantive comments which are further addressed below.

The Department of Community Affairs commented that, given the lack of detailed financial specificity in the proposed amendment, the Division of Local Government Services must necessarily defer substantive comment at this time. The Department of Environmental Protection, however, is satisfied that the proposed uses are in conformance with the requirements of N.J.S.A. 13:1E-150 and finds that the disbursement schedule is in conformance within the intent of N.J.S.A. 13:1E-150 and meets reasonable content criteria.

The provisions of the "McEnroe" legislation, N.J.S.A. 13:1E-136 et seq., which establish District Resource Recovery Investment Tax Fund accounts for the state's 21 counties, set out a clear state policy objective to generate revenues in order to subsidize anticipated resource recovery tipping fees to a level which is competitive with disposal costs at landfills utilized by the counties. The subsidies created by legislation also were designated as incentives to make the transition from landfill disposal to capital intensive resource recovery technologies. Thus, the purposes of the Act are to provide financial assistance to counties in order to expedite resource recovery technology implementation and to provide user benefits through a reduction in the tipping fees at resource recovery facilities. If a county can demonstrate to the satisfaction of the Department that utilization of a resource recovery facility is not feasible for the disposal of solid waste generated in the county, then the District Resource Recovery Investment Tax Fund may be used to design, finance, construct, operate and maintain environmentally sound state-of-the-art sanitary landfill facilities.

Prior to disbursement from its District Resource Recovery Investment Tax Fund, however, a county must prepare a plan amendment which outlines the proposed uses of the moneys in its District Fund and establishes a disbursement schedule for those moneys in the fund. Two tests must be met: an eligible use test, which uses are limited to those identified in N.J.S.A. 13:1E-150b and a disbursement schedule test, which test criteria are not specifically provided in the Act.

Eligible uses of the fund are provided in Attachment 1, Part I, of this certification. In consideration of the intent and objectives of the Act outlined above and the specific limitations upon eligible uses of the fund provided in N.J.S.A. 13:1E-150, projects not formally identified in the approved district solid waste management plan shall not be funded with Resource Recovery Investment Tax Fund moneys. Therefore, in order to ensure user rate reduction and facilitate timely project implementation, disbursements from a District Resource Recovery Investment Tax Fund shall be made only to projects formally identified in the approved district solid waste management plan.

Pursuant to law, in order to provide safeguards as to how the investment tax funds are to be spent, a schedule for the disbursement of the moneys must be provided through the plan amendment process established under the New Jersey Solid Waste Management Act (N.J.S.A 13:1E-1 et seq.). In this way, a formal procedure for quantifying contributions to and withdrawals from the fund is established in order to maintain a running fund balance. Such a procedure may be followed using a variety of specific steps and methods of data presentation. In order to evaluate the adequacy of financial disbursement procedures, the Department has established criteria for evaluation. Since the disbursement schedule submitted by Hudson County provided critical information such as fund balance, fund projection, timing and recipients of disbursements, and interest earnings, it meets reasonable criteria for adequacy.

On April 23, 1987, the Hudson County Board of Chosen Freeholders adopted an amendment to their approved district plan which outlined the proposed uses of the District's Resource Recovery Investment Tax Fund and provided a schedule for disbursement of those moneys. Specifically, the proposed

amendment provides that moneys in the fund will be used for the development of the County's resource recovery facility and residual landfill, to reduce rates charged to users of the resource recovery facility, and to administer the fund.

The proposed uses of moneys from the Hudson County District Resource Recovery Investment Tax Fund are in conformance with requirements of N.J.S.A. 13:1E-150 to the extent that they reduce rates charged to all users by a resource recovery facility formally identified in the approved District Solid Waste Management Plan. Hudson County has formally identified a resource recovery facility site in its District Solid Waste Management Plan and said site was approved by the Department on December 11, 1987.

The utilization of fund moneys to offset development costs of these facilities combined with annual payments to the project vendor will reduce the total magnitude of bonding debt issued for the construction of the facility. These savings will be passed through to users of the facility and thus reduce rates to users of the facility.

The disbursement schedule is consistent with N.J.S.A. 13:1E-150 in that it provides projections of fund balances; disbursements for project development, fund administration and annual payments to the project vendor to reduce annual debt service and/or operating and maintenance costs; an estimate of interest earnings and identifies the timing and recipients of fund disbursements. The Department recognizes that the fund balance projection embodies several technical assumptions concerning the quantity of solid waste disposed of in Hudson County, and, therefore, the actual balance of the fund may vary over time. Similarly, the timing of fund disbursement is dependent upon the actual project development schedule.

Should the proposed uses of moneys in the fund identified in the County's April 23, 1987 amendment change, moneys in the fund shall not be disbursed unless and until the Department approves of a future plan amendment which outlines the proposed uses and disbursement schedule for these moneys.

C. Certification of Hudson County District Solid Waste Management Plan Amendment

I, Richard T. Dewling, Commissioner of the Department of Environmental Protection, in accordance with N.J.S.A. 13:1E-1 et seq. which establishes specific requirements regarding the contents of the district solid waste management plans, and N.J.S.A. 13:1E-150 which establishes uses and disbursement schedule requirements for District's Resource Recovery Investment Tax Fund moneys, have reviewed the April 23, 1987 amendment to the approved Hudson County District Solid Waste Management Plan and certify to the Hudson County Board of Chosen Freeholders that the April 23, 1987 amendment concerning the use and disbursement of moneys in the county's Resource Recovery Investment Tax Fund is approved.

The proposed uses of the moneys outlined in the Hudson County District Resource Recovery Investment Tax Fund Plan Amendment are in accordance with, and thereby satisfy, N.J.S.A. 13:1E-150 as they reduce the rates charged to users of the resource recovery facility formally identified in the approved district plan. The ultimate demonstration of user rate reduction shall be

the responsibility of the county. The proposed uses from the fund are hereby approved.

The provisions of the plan amendment concerning the disbursement of moneys from the fund are consistent with the requirements of N.J.S.A. 13:1E-150. The proposed schedule for the disbursement of monies from the fund 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 the within amendment to the Hudson County District Solid Waste Management Plan and which was executed prior to the approval of this amendment and subsequent to the effective date of the Solid Waste Management Act 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 of Environmental Protection and operating pursuant to a contract as herein described, shall be deemed to be in violation of this amendment and of the Hudson County District Solid Waste Management 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 of Environmental Protection, and for good cause shown, obtain an extension of time to complete such renegotiation.

2. Compliance

All solid waste facility operators and collector/haulers registered with the Department of Environmental Protection and operating within Hudson County and affected by the amendment contained herein shall operate in compliance with this amendment and all other approved provisions of the Hudson County District Solid Waste Management Plan. Any facility operator or collector/hauler 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 of Environmental Protection 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 Plans

The provisions of the Hudson County District Solid Waste Management 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. Also, all non-hazardous 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 (N.J.A.C. 7:26-6).

4. Certification to Proceed with the Implementation of Plan Amendment

This document shall serve as the certification of the Commissioner of the Department of Environmental Protection to the Hudson County Board of Chosen Freeholders and pursuant to N.J.S.A. 13:1E-24c. and f., the county shall proceed with the implementation of the approved amendment contained 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 N.J.A.C. 7:26-1.4 and -2.13.

6. Effective Date of Amendment

The amendment to the Hudson County District Solid Waste Management Plan contained herein shall take effect immediately.

7. Audit Requirements

Hudson County shall, by October 31 of each year in which moneys remain in its District Resource Recovery Investment Tax Fund, file an audit of the fund and any expenditures therefrom with the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs. The audit shall be conducted by an independent public accountant. A copy of the audit shall be provided to: Chief, Bureau of Solid Waste and Resource Recovery Financing, Division of Solid Waste Management, 401 East State Street, Trenton, New Jersey 08625.

8. Reservation of Authority

Nothing contained herein shall be construed as a limitation on any other action taken by the Department of Environmental Protection pursuant to its authority under the law. The Hudson County District Solid Waste Management 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 and rules, regulations, and orders of the Department, including the 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 Resource Recovery Investment Tax Fund
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 Sections B and C. of this certification to the Hudson County District Solid Waste Management Plan which was adopted by the Hudson County Board of Chosen Freeholders on April 23, 1987.

October 15, 1987

DATE


RICHARD T. DEWLING
COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION