



STATE OF NEW JERSEY
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 ROBERT E. HUGHEY, 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 NOVEMBER 18, 1985
 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.) 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 January 7, 1982, the Department approved, with modifications, the Hudson County District Solid Waste Management 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 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. The Hudson County Board of Chosen Freeholders completed such a review and on November 18, 1985, adopted an amendment to its approved district solid waste management plan. The amendment designates the Koppers Koke site, located at Block 287, Lots 60, 61, 62, 63, 70, 71, 73 and 80 in the town of Kearny, Hudson County, for the development of a 1500 ton per day resource recovery facility. The amendment further designates the Hudson County Improvement Authority to be the implementation agency for the

development of the resource recovery facility. The amendment was received by the Department of Environmental Protection on November 27, 1985 and copies were distributed to various state level agencies for review and comment, as required by law. The Department has reviewed this amendment, as well as the entire Hudson County District Solid Waste Management Plan, and has determined that the amendment adopted by the Hudson County Board of Chosen Freeholders on November 18, 1985 is approved as provided in N.J.S.A. 13:1E-24. With regard to the district plan, while the requirements of the Act concerning the report have been met, the district's plan remains seriously deficient in some important ways.

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, Robert E. Hughey, Commissioner of the Department of Environmental Protection have studied and reviewed the November 18, 1985 amendment to the Hudson County District Solid Waste Management 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 fully consistent with the Statewide Solid Waste Management Plan.

In addition, the Division of Waste Management circulated the plan amendment to seventeen 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: the New Jersey Department of Environmental Protection's Division of Parks and Forestry; the State Department of Agriculture; the Board of Public Utilities; and the Hackensack Meadowlands Development Commission. The following agencies failed to respond to our requests for comments: the N.J.D.E.P. Divisions of Green Acres, Environmental Quality, Fish, Game and Wildlife and Water Resources; the State Departments of Community Affairs, Health, Transportation and the Public Advocate; the New Jersey Advisory Council on Solid Waste Management, the Office of Recycling, the New Jersey Turnpike Authority and the U.S. Environmental Protection Agency. The N.J.D.E.P. Division of Coastal Resources submitted substantive comments which are further addressed below.

The Division of Coastal Resources had three main concerns regarding the resource recovery facility and the Koppers Koke site pertaining to the specific layout of the proposed facility site and its design, environmental safeguards necessary to avoid degradation of the coastline of the Hackensack River, and cleanup of existing site contamination. The first two concerns will be addressed at the time the county submits the environmental and health impact statement for the project in question and other technical information required to obtain the necessary permits from the Department for facility operation. The third concern is site contamination and the Department maintains that remedial action at this site will be necessary prior to the beginning of construction of the proposed facility.

In addition to the above findings, the state level review process resulted in comments presented by the Division of Waste Management which identified many serious potential difficulties in developing a resource recovery project at the Koppers site. The following is a summary of the most important deficiencies that would be likely to impact the permit process that would be undertaken for the project:

1. Previous data available to the Department indicates that virtually the entire Koppers site contains substantial amounts of hazardous waste. Groundwater analysis performed by Conestoga Rovers at the eastern end of the site in 1979 disclosed high levels of benzene (600 ppb), bis(chloroethyl) ether (1880 ppb), ethylbenzene (160 ppb), naphthalene (18,000 ppb), phenol (44,000 ppb), phthalate (29 ppb), toluene (550 ppb), endrin aldehyde (0.12 ppb) and cyanides. This study also showed the existence of a continuous layer of oil, tars and by-products left from a now-defunct coal gasification operation which is approximately ten feet thick and located between 2 and 20 feet below the surface. In addition, a soil analysis performed by the Department's Division of Water Resources in 1980 identified high levels of soil contamination. Contaminants found included petroleum hydrocarbons (4587 mg/l), benzene (6325 ppb) and toluene (6646 ppb), as well as lesser quantities of xylene, ethylbenzene, chlorinated benzene compounds, styrene and mesitylene. These data concerning concentrations and depth of contaminants would make the Koppers site one of the largest hazardous waste sites of its kind discovered in the state.
2. The exact levels of contamination at each area of the site require more extensive testing employing the most up to date testing and quality assurance methods available. The Department has been negotiating with the Koppers Company to require the company to undertake a comprehensive remedial investigation/feasibility study. Without the results of such a study (which normally takes one and one half years to complete), the Department cannot determine what form of remedial measures would be required. Therefore, the owner or prospective owners of the site cannot, at this time, determine the costs associated with remedial action.
3. The site cannot be sold or leased without being reviewed by the Department under the provisions of the Environmental Cleanup Responsibility Act (ECRA). The ECRA review would result in the imposition of necessary cleanup measures, the responsibility for which would have to be agreed to by the owner and/or prospective owner prior to a sale or lease agreement.
4. Assuming that a feasibility study were completed which indicated that construction on the Koppers site could be undertaken in a manner that was compatible with the proposed remedial measures, there are many practical difficulties in constructing a major structure over contaminated soils. For example, deep foundations or piles could penetrate into clean areas. Such excavations would have to be engineered to avoid the potential for downward movement of contaminants. In addition, the process of surcharging the site with the fill material required for the construction of heavy structures could result in the lateral or upward movement of the oily, tar-like contaminants to the surface. Therefore, as a precaution, the entire

construction process may have to be undertaken through the use of protective equipment for all on-site construction personnel. Any of the above noted measures would substantially affect construction costs.

Based on these and other examples of the difficulty of predicting the feasibility, cost, timing and legal liabilities of constructing a resource recovery facility at the Koppers site, the Department further finds and concludes that the approval of the project site is given with the following understanding:

1. The Department is under no obligation to approve any subsequent technical submissions (environmental impact statement or engineering designs) for the project.
2. The Department has reason to believe that the many serious contamination problems at the site would necessitate very costly engineering measures to enable a project to be built.
3. The Department may not be able to separate the review of the future engineering design from the future requirements of a yet to be developed comprehensive cleanup plan for the site. (Please note that the time frame for developing a cleanup plan may conflict with the time frame associated with the preparation of engineering designs.)
4. The Department recognizes that the proposed site may present substantial advantages to Hudson County with respect to facility siting. Nevertheless, these advantages do not relieve the applicant of the responsibility for resolving the problems outlined above which are associated with project development on a contaminated site.

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

I, Robert E. Hughey, Commissioner of the Department of Environmental Protection, in accordance with N.J.S.A. 13:1E-1 et seq. and N.J.S.A. 13:1E-21, which established specific requirements regarding the contents of the district solid waste management plans, have reviewed the November 18, 1985 amendment to the approved Hudson County District Solid Waste Management Plan and certify to the Hudson County Board of Chosen Freeholders that the November 18, 1985 amendment is approved as further specified below.

The designation of the Koppers Koke site, located at Block 287, Lots 60, 61, 62, 63, 70, 71, 73 and 80 in the town of Kearny, Hudson County, for the development of a 1500 ton per day resource recovery facility is approved. The designation of the Hudson County Improvement Authority as the implementation agency for the development of the resource recovery facility is also approved.

The construction or operation of any solid waste facility shall be preceded by the acquisition of all necessary permits and approvals under N.J.S.A 13:1E-1 et seq. and all other applicable laws. The issuance of construction and/or operating permits pursuant to the Solid Waste Management Act is limited to those applicants found by the Department to be fit and competent to manage such facilities.

The Department has reviewed the entire Hudson County District Solid Waste Management Plan, including this amendment, to determine whether the plan fulfills the requirements set forth in N.J.S.A. 13:1E-21. The result of that review is as follows:

1. N.J.S.A. 13:1E-21b(1) requires the designation of a Department, unit, or committee of county government . . . to supervise the implementation of the County's Solid Waste Management Plan.

Hudson County has designated the Hudson County Improvement Authority to be the implementation agency for the resource recovery project only. No additional designation has been made for the supervision of the other aspects of the county plan. Therefore, the Hudson County Solid Waste Management Plan is deficient with respect to N.J.S.A. 13:1E-21b(1)

2. N.J.S.A. 13:1E-21b(2) requires a statement of the solid waste disposal strategy to be applied . . . which strategy shall include the maximum practicable use of resource recovery procedures and a plan for using terminated landfill disposal sites . . . in the Solid Waste Management District.

The Hudson County Solid Waste Management Plan with modifications was approved on January 7, 1982. To date no updates have been submitted by the county to revise or expand the plan. A current statement of the solid waste disposal strategy and a plan for the use of terminated landfills located in the district must be developed. Therefore, the Hudson County Solid Waste Management Plan is deficient with respect to the requirements of N.J.S.A. 13:1E-21b(2).

3. N.J.S.A. 13:1E-21b(3) requires a site plan which shall include all existing solid waste disposal facilities located within the Solid Waste Management District . . . and sufficient additional available suitable sites to provide solid waste facilities to treat and dispose of the actual and projected amounts of solid waste contained in the report accompanying the plan.

The Hudson County Plan does not contain a site plan for all existing solid waste disposal facilities. The plan also does not contain the identification of sites to provide solid waste facilities to treat and dispose of all of the actual and projected amounts of solid waste produced by the county. In addition, Hudson County originally projected the resource recovery facility to be operational in 1985. It is evident that the proposed facility will not be completed until 1990 at the earliest. It is projected by the Hackensack Meadowlands Development Commission that the current disposal facility used by Hudson County will reach capacity in late 1987 or early 1988. Hudson County must identify an interim disposal site(s) for its garbage for the period after the current landfill is closed. In addition, while the approved plan amendment contained herein represents the plan inclusion of a future site for a resource recovery facility, the county has not addressed the provision of future available suitable landfill site(s) for residual ash and non-processible waste material. Therefore, the Hudson County Solid Waste Management Plan is deficient with respect to the requirements of N.J.S.A. 13:1E-21b(3).

4. N.J.S.A. 13:1E-21b(4) requires a survey of proposed collection districts and transportation routes with projected transportation costs from collection district to existing or available suitable sites for solid waste disposal facilities.

The Hudson County Plan does not contain a current survey of proposed collection districts and transportation routes with projected transportation costs from the collection districts to existing or future available suitable sites for solid waste disposal facilities. Therefore, the Hudson County Solid Waste Management Plan is deficient with respect to the requirements of N.J.S.A. 13:1E-21b(4).

5. N.J.S.A. 13:1E-21b(5) requires procedures for coordinating all activities related to the collection and disposal . . . within the Solid Waste Management District, which procedures shall include the agreements entered into as provided herein between the Board of Chosen Freeholders . . . and every such person, and the procedures for furnishing the solid waste facilities contained in the Solid Waste Management Plan.

There is currently no interdistrict agreement between Hudson County and the Hackensack Meadowlands District (H.M.D.) for the provision of disposal capacity within the H.M.D. which is required under N.J.S.A. 13:1E-21b(5). Therefore, the Hudson County District Solid Waste Management Plan is deficient with respect to the requirements of N.J.S.A. 13:1E-21b(5).

6. N.J.S.A. 13:1E-21b(6) requires a method or methods of financing solid waste management in the Solid Waste Management District pursuant to the Solid Waste Management Plan.

The Hudson County Plan does not contain the required method or methods of financing solid waste management. Therefore, the Hudson County Solid Waste Management Plan is deficient with respect to the requirements of N.J.S.A. 13:1E-21b(6).

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 (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 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 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, 10, 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 approved amendment to the Hudson County District Solid Waste Management 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 of Environmental Protection pursuant to its

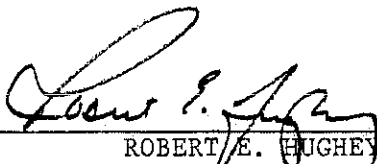
authority under the law. The Hudson County District Solid Waste Management Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan. The Department has published a Statewide Solid Waste Management Plan with appendices which includes the Department's planning 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 Amendment and Notification of Deficiencies 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 Hudson County District Solid Waste Management Plan which was adopted by the Hudson County Board of Chosen Freeholders on November 18, 1985.

In accordance with N.J.S.A. 13:1E-24, I am directing that a public hearing be conducted by the Hudson County Board of Chosen Freeholders within (45) days of the date of this certification. The hearing shall be conducted pursuant to the procedures contained in N.J.S.A. 13:1E-23. The purpose of the hearing shall be to inform the public of the deficiencies identified in the plan, to identify the county's plans for addressing these deficiencies, and to solicit public comment on these matters. Further, Hudson County is directed to amend its plan to address the deficiencies identified above. These amendments shall be adopted by the county and submitted to the Department of Environmental protection within ninety (90) calendar days from the date of this certification.

12/11/85
DATE



ROBERT E. EUGHEY
COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION