



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
MIDDLESEX COUNTY SOLID WASTE
MANAGEMENT DISTRICT

CERTIFICATION
OF THE DECEMBER 18, 1997
AMENDMENT TO THE MIDDLESEX 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 29, 1980, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Middlesex 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 Middlesex County Board of Chosen Freeholders (County

Freeholders) completed such a review and on December 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, cert. den., November 10, 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 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 December 18, 1997 amendment has four major components:

- *Market Participant Strategy
- *Assessment of Solid Waste Management Service Fees
- *Mandatory In-District Weighing for 6 Months
- *Obligations of Solid Waste Generators

The amendment was received by the Department on December 29, 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 December 29, 1997 is approved in part and modified in part as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the December 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 the 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 December 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 December 18, 1997 Amendment

The following agencies did not object to the proposed amendment:

Division of Compliance and Enforcement, DEP
Green Acres Program, DEP
Department of Agriculture

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

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

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 December 18, 1997 Amendment

Issue: Market Participant Strategy

The December 18, 1997 amendment describes the County's proposed strategy to become a market participant for the solid waste generated within Middlesex County. As such, all solid waste generated within the County may be disposed of at the Middlesex County Landfill which will continue to be operated by the Middlesex County Utilities Authority (MCUA). The MCUA will offer contracts to all 25 County municipalities and solid waste transporters operating within the County on a voluntary basis. As noted in Section C., the certification approves the County's strategy to become a market participant for solid waste generated within Middlesex County.

Issue: Assessment of Solid Waste Management Service Fees

The MCUA proposes to assess Solid Waste Management Service Fees on all solid waste generators of the County payable through transporters to the MCUA. These fees are to finance the following Countywide programs administered by the designated County agencies:

- *Enforcement by the County Health Department
- *Education/household hazardous waste collection days by the County Division of Solid Waste Management (DSWM)
- *Recycling by the Middlesex County Improvement Authority (MCIA)
- *Reporting by the MCUA

The Solid Waste Management Service Fees will be assessed on a per ton basis and the specific components are as follows:

Enforcement (Health)	\$0.77 per ton
Education (DSWM)	\$1.15 per ton
Recycling (MCIA)	\$1.85 per ton
Reporting (MCUA)	<u>\$0.50</u> per ton
Total	\$4.27 per ton

The Solid Waste Management Service Fees will be included within the tipping fee charged transporters who dispose of solid waste at the County Landfill. Transporters who dispose of waste out-of-county will be subject to in-district weighing by reporting to the County Landfill for payment of fees. As noted in Section C., the certification approves the County's assessment of Solid Waste Management Service Fees.

Issue: Mandatory In-District Weighing

As noted above, the County proposes the assessment of Solid Waste Management Service Fees to be imposed upon all solid waste generators in the County payable through transporters to the MCUA.

These fees will be included within the tipping rate charged transporters who dispose of solid waste at the County Landfill. Transporters who dispose of waste out-of-county will be subject to in-district weighing by reporting to the County Landfill for payment of fees. The Department recently adopted regulations at N.J.A.C. 7:26-6.10(b)2. which restrict such in-district weighing to a 6 month period and require the submission of a subsequent plan amendment which identifies an alternative long-term strategy for collection of solid waste management fees. Cognizant of this DEP requirement, the December 18, 1997 amendment specifies that within 6 months of certification of this amendment, the MCUA shall develop a program for haulers transporting Middlesex County waste to an out-of-district facility to self-report waste tonnages and remit the associated Solid Waste Management Service Fees without weighing at the County Landfill. The amendment also specifies that any hauler failing to comply with required recordkeeping, reporting, and payment obligations will be subject to enforcement sanctions. Within Section C. of the certification this component of the amendment is approved.

Issue: Obligations of Solid Waste Generators

The December 18, 1997 amendment requires all solid waste generators to engage the services of a solid waste hauler duly licensed by the State of New Jersey for collecting and transporting solid waste to a disposal facility of choice which complies with applicable law. The amendment imposes enforcement sanctions on generators who fail to use a hauler who complies with the provisions of the amendment. The unintended effect of this provision is to make the generator of solid waste responsible for the solid waste hauler's subsequent failure to comply with the requirements of the amendment. As noted in Section C., the certification approves with modification this component of the amendment by requiring that all contracts between solid waste generators and solid waste haulers specify that the hauler is required to comply with the County Plan. The certification also deletes the penalty provisions of the amendment which apply to solid waste generators.

C. Certification of the Middlesex 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 December 18, 1997 amendment to the approved County Plan and certify to the County Freeholders that the December 18, 1997 amendment is approved in part and modified in part as further specified below.

Market Participant Strategy

The County Plan inclusion of the strategy of the MCUA to become a

market participant for solid waste generated within Middlesex County is approved.

Solid Waste Management Service Fees

The County Plan inclusion of the assessment of Solid Waste Management Service Fees to finance various Countywide programs is approved.

Mandatory In-District Weighing

The County Plan inclusion of mandatory in-district weighing to collect Solid Waste Management Service Fees is approved. As noted in Section B., this in-district weighing requirement will only be effective for 6 months from the date of DEP certification of the December 18, 1997 amendment. Thereafter, the MCUA will develop an alternative program for collecting tonnage data and remittance of Solid Waste Management Service Fees. This alternative program must be submitted to the Department in a subsequent County Plan amendment. Such action may be initiated as an Administrative Action pursuant to N.J.A.C. 7:26-6.11.

Obligations of Solid Waste Generators

The County Plan inclusion of enforcement sanctions on generators who fail to use a hauler who complies with the provisions of the amendment is approved with modification to require that all contracts between solid waste generators and solid waste haulers specify that the hauler is required to comply with the County Plan. The amendment is further modified by deleting the penalty provisions which apply to solid waste generators.

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 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 amendment to the County Plan contained herein shall take effect immediately.

7. Reservation of Authority

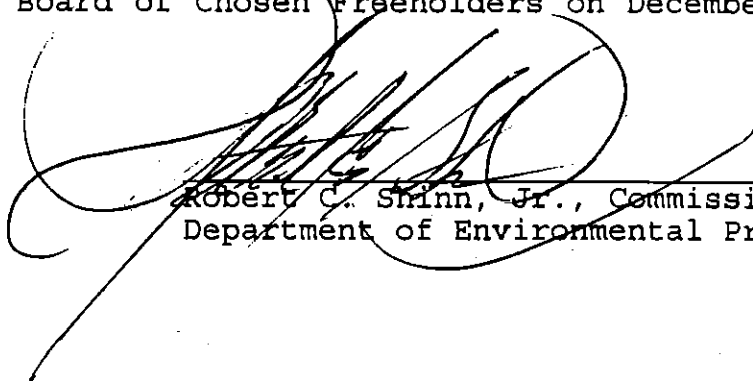
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's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

1/21/98
Date



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