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STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF THE COMMISSIONER
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(IN THE MATTER OF CERTAIN AMENDMENTS)
(TO THE ADOPTED AND APPROVED SOLID)
(WASTE MANAGEMENT PLAN OF THE)
(SOMERSET COUNTY SOLID WASTE)
(MANAGEMENT DISTRICT)

CERTIFICATION
OF THE JUNE 21, 1988
AMENDMENT TO THE SOMERSET 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 31, 1980, the Department of Environmental Protection (the Department) approved, with modifications, the Somerset 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 Somerset County Board of Chosen Freeholders completed such a review and on June 21, 1988, adopted an amendment to its approved district solid waste management plan. The amendment proposed the removal from the county plan of Middlebush Compost, Inc., (MCI) located on Lot 6.03, Block 36 in Franklin Township, Somerset County.

The completed amendment package was received by the Department of Environmental Protection on July 29, 1988, 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 Somerset County District Solid Waste Management Plan, and has determined that the amendment adopted by the Somerset County Board of Chosen Freeholders on June 21, 1988, is rejected 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 deficient in some important ways.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I, Christopher J. Daggett, Acting Commissioner of the Department of Environmental Protection have studied and reviewed the June 21, 1988, amendment to the Somerset 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 inconsistent with the Statewide Solid Waste Management Plan.

In addition, the Division of Solid Waste Management circulated the plan amendment to fifteen 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 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 Department's Divisions of Environmental Quality, Water Resources, Fish, Game and Wildlife, Parks and Forestry, and Coastal Resources; the State Departments of Agriculture, Community Affairs and Transportation, the Board of Public Utilities, the Green Acres Program, the New Jersey Turnpike Authority, and the New Jersey Advisory Council on Solid Waste Management. The following agencies failed to respond to our requests for comments: the State Departments of Health and the Public Advocate, and the U.S. Environmental Protection Agency. The Division of Solid Waste Management (DSWM) raised substantive comments which are further addressed below.

DSWM noted that the proposed plan amendment failed to provide a substantive basis for the deletion of the MCI facility. Pursuant to the New Jersey Statewide Mandatory Source Separation and Recycling Act (the Recycling Act), N.J.S.A. 13:1E-99.12 et seq. and amending certain other statutes, "within 12 months of the effective date of this amendatory and supplementary act, all leaves collected by a municipality . . . shall be transported to a leaf composting facility." In addition, the Recycling Act states that "each district recycling plan shall identify the leaf composting facility or facilities to be utilized by each municipality within the county." As indicated in the certification of the August 4, 1987 amendment to the Somerset County District Solid Waste Management Plan, the county has failed to identify these facilities as required above.

Somerset County has also failed to submit for Department approval, a plan amendment setting forth the above within the forty-five day time frame specified in the certification of the August 4, 1987 amendment, as required by N.J.S.A. 13:1E-1 et seq.

Further, the proposed amendment indicated that the 21 municipalities of Somerset County have provided leaf composting facilities of their own, thereby negating the need for a regional compost facility. DSWM has reviewed correspondence between the Somerset County Office of Solid Waste Management and various Somerset County municipalities regarding municipal plans for leaf deposition. This correspondence indicates that the majority of Somerset County municipalities do not have Department permitted leaf composting facilities of their own or access to such facilities elsewhere. Therefore, there is an obvious need for a regional composting facility, such as Middlebush Compost, Inc. Additionally, in light of the statewide need for such facilities, the DSWM believes that the Middlebush Compost, Inc. facility can provide public benefit whether or not it is the Somerset County designated regional compost facility.

Finally, DSWM questioned the removal of an approved, permitted, and operating compost facility from the county plan since Somerset County does not have sufficient composting capacity to process the leaves in its municipalities.

The Department concurs with the DSWM's comments. Somerset County's plan amendment did not include a substantive basis for removal of MCI, nor did it offer assurances that other in-county facilities are available to replace this site. Further, the MCI facility is beneficial even if it is not the county's designated regional compost facility.

C. Certification of the Somerset County District Solid Waste Management Plan Amendment

I, Christopher J. Daggett, Acting 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 June 21, 1988, amendment to the approved Somerset County District Solid Waste Management Plan and certify to the Somerset County Board of Chosen Freeholders that the June 21, 1988 amendment is rejected as further specified below.

1. Somerset County's June 21, 1988 plan amendment which proposes the removal from the Somerset County Solid Waste Management Plan of the Middlebush Compost, Inc. facility located at Lot 6.03, Block 36 in Franklin Township, Somerset County is hereby rejected.

On August 6, 1985 Somerset County adopted an amendment to their county plan which, in part, proposed incorporating a blanket compost facility policy into the plan. This policy statement indicated that any application for a composting facility is consistent with the Somerset Plan, provided the applicant complies with a number of public notification requirements and no objections to the site location are

raised. The Department approved this amendment on December 11, 1985. In conformance with this policy, Middlebush Compost, Inc. submitted applications to the Department, Somerset County, and Franklin Township, and provided proof of two (2) public notices. No objections to the project were received within the comment period. Therefore, the formal plan amendment process and public hearing were not required, and the site was later permitted and constructed, and is currently operating. The county did not provide a technical basis for removal of this facility. The rationale used by the county in its proposal to delete the MCI facility from the Somerset plan is that all twenty-one (21) municipalities of Somerset County have provided leaf composting facilities of their own and none utilize the MCI facility. The Department's records indicate that this is not correct, and to date, Somerset County has failed to provide the Department with information substantiating their claim. Further, the MCI facility can provide public benefit regardless of whether or not it is the Somerset County designated regional compost facility. Therefore, the Department cannot justify the removal of an approved, operating facility from the County Plan.

In addition, the Department has reviewed the entire Somerset 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(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 Somerset County Solid Waste Management Plan is deficient with regard to the identification of leaf composting facilities to be utilized by each municipality in the county, the official designation of recyclable materials in the commercial and industrial sectors, and the establishment of specific municipal recycling mandates. These deficiencies were further outlined in the June 15, 1988 certification of the August 4, 1987 Amendment to the Somerset County District Solid Waste Management Plan. Somerset County has yet to correct these deficiencies as required by that certification document. Therefore, I find the Somerset County District Solid Waste Management Plan deficient with respect to N.J.S.A. 13:1E-21b(2) in that the county has not maximized its use of resource recovery procedures.

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

Since the Somerset Plan does not include a survey of proposed collection districts and transportation routes with projected transportation costs from collection districts to existing or available suitable sites for solid waste disposal, I find that the Somerset Plan remains deficient with respect to the requirements of N.J.S.A. 13-1E21b(4).

3. 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 Somerset Plan includes a conditionally approved use of the Resource Recovery Investment Tax fund, but no approved comprehensive financial plan for solid waste management. Therefore, the Somerset plan remains deficient in regard to 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 Somerset 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 Somerset 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 Somerset County and affected by the amendment contained herein shall operate in compliance with this amendment and all other approved provisions of the Somerset 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 Somerset 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. 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.

5. Effective Date of Amendment

The amendment to the Somerset County District Solid Waste Management Plan contained herein is rejected; therefore, the Middlebush Compost, Inc. facility continues to be an approved part of the Somerset County Plan.

6. 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 Somerset 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 Rejection 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 reject the amendment as outlined in Section C. of this certification to the Somerset County District Solid Waste Management Plan which was adopted by the Somerset County Board of Chosen Freeholders on June 21, 1988, and further direct the Somerset County freeholders to remedy the deficiencies outlined in Section C. of this certification as soon as possible.

NOVEMBER 24, 1988
DATE


CHRISTOPHER J. DAGGETT
ACTING COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION