



State of New Jersey

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Department of Environmental Protection

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

CERTIFICATION
OF THE FEBRUARY 25, 1998
AMENDMENT TO THE BURLINGTON 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 October 27, 1980, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Burlington 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 Burlington County Board of Chosen Freeholders (County Freeholders) completed such a review and on February 25, 1998, adopted an amendment to its approved County Plan.

The amendment represents the County's revised 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 February 25, 1998 amendment proposes an economic flow control strategy encompassing in-district weighing with imposition of an Environmental Investment Cost (EIC) to repay outstanding debt obligations.

The amendment was received by the Department on March 5, 1998, 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 February 25, 1998 is approved in part, remanded in part, and modified in part as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the February 25, 1998 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 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 Treasury
Department of Community Affairs
U.S. Environmental Protection Agency

1. Agency Participation in the Review of the February 25, 1998 Amendment

The following agencies did not object to the proposed amendment:

Division of Compliance and Enforcement, DEP
Division of Parks and Forestry, DEP
Green Acres Program, DEP
Department of Community Affairs
Department of Transportation
Department of Agriculture

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

Division of Water Quality, DEP
Division of Fish, Game and Wildlife, DEP
Office of Air Quality Management, DEP
Land Use Regulation Element, DEP
Department of Health
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 February 25, 1998 Amendment

Issue: Revised Atlantic Coast Strategy

On September 24, 1997, the County Freeholders adopted an amendment which proposed a market participant strategy which provided for voluntary delivery of solid waste and sludge to the County Resource

Recovery Complex located in Florence and Mansfield Townships. The DEP approved this amendment on November 10, 1997. Since adoption of this earlier amendment, the United States Supreme Court on November 10, 1997 denied the Department's appeal in the Atlantic Coast case thereby rendering New Jersey's historic system of solid waste flow control unconstitutional. Since this ruling, the County, even with a competitive tipping fee of about \$50 a ton, has experienced a significant decrease in delivery of solid waste to its Resource Recovery Complex culminating in a 20% decrease in January 1998 as compared to January 1997. With this significant decrease in waste disposal, the County can no longer be assured of generating sufficient revenue to pay for debt service on the bonds secured to finance the Resource Recovery Complex. Therefore, the February 25, 1998 amendment proposes an economic flow control strategy which is approved in Section C. of this certification.

Issue: Imposition of an EIC

In view of the potential financial difficulties resulting from the loss of waste, the County was directed to appear before the Department of Community Affairs' (DCA) Local Finance Board (LFB) on January 28, 1998. After hearing the County present a financial overview, the LFB determined and ordered that it was both necessary and appropriate for the County to impose an EIC for calendar year 1998 of \$29.95 per ton. The February 25, 1998 amendment was proposed in compliance with and to effectuate the requirement placed upon the County by the LFB. The amendment also proposes an EIC to be imposed for calendar year 1999. The EIC components for each year are as follows:

	Calendar Year 1998	Calendar Year 1999
Debt Service	\$10,029,000	\$10,800,000
Enforcement	375,000	375,000
Closure Costs	<u>827,000</u>	<u>851,000</u>
Total	\$11,230,000	\$12,027,000
Estimated Tonnage	375,000	375,000
EIC Per Ton	\$29.95	\$32.07

According to the County, the anticipated closure costs entail leachate treatment and methane gas collection. Pursuant to the DEP's August 1997 Guidance Document in Response to the May 1, 1997 Court Decision on Solid Waste Flow Control, such closure costs can be considered standby operating costs (costs required to maintain a facility regardless of its operating status) which are an eligible EIC expense. Therefore, within Section C. of this certification, the DEP approves the imposition of an EIC of \$29.95

per ton for calendar year 1998. However, the LFB directed the County to reappear before it in December 1998 for a financial review prior to approval of an EIC for calendar year 1999. Consequently, in compliance with the DCA order, Section C. of this certification does not approve an EIC for calendar year 1999. This Departmental decision will allow the County sufficient time to ascertain tonnage collection for 1998 and to modify its projected 1999 EIC accordingly. Should the County opt to reinstitute an EIC in 1999, after approval by the LFB, this may be accomplished via an Administrative Action (N.J.A.C. 7:26-6.11(b)10.), unless an alternative collection method is selected which would require adoption of a subsequent amendment.

Issue: In-District Weighing

To effectuate the collection of an EIC, the February 25, 1998 amendment requires that all solid waste vehicles collecting/transporting solid waste generated within Burlington County report to the scalehouse at the Resource Recovery Complex for weighing and assessment of an EIC. Thereafter, collectors/transporters may choose to transport solid waste to an out-of-county disposal facility or dispose of waste at the Resource Recovery Complex landfill. The amendment also provides collectors/haulers with the option to deliver solid waste to a transfer station and notes that it shall be the obligation of the transfer station owner/operator to transport all solid waste received from generators within Burlington County to the scalehouse at the Resource Recovery Complex for weighing and assessment of the EIC. When a transfer station receives solid waste from multiple counties, the transfer station shall keep a record of the solid waste received from each county and transport a volume of waste equal to that received from sources within Burlington County to the Resource Recovery Complex. This transfer station requirement is not consistent with a county's economic flow control strategy. In essence, the County has proposed to reinstate the "Mixed Loads Rule" requirements which the Department has deleted from its regulations since they represented a form of unconstitutional flow control. A county adopting an economic flow control strategy may require a transporter to deliver waste to a designated facility for in-district weighing and collection of an EIC but may not require the operator of a transfer station to deliver residue after processing back to an in-district weighing facility. A county may, however, designate a transfer station to become an in-district weighing facility to collect an EIC. To date, this has not occurred in Burlington County. Therefore, within Section C. of this certification, the transfer station waste delivery option is remanded to the County for further consideration and evaluation. The County may amend this option consistent with economic flow control through an Administrative Action (N.J.A.C. 7:26-6.11(b)10.).

Finally, the Department adopted regulations at N.J.A.C. 7:26-6.10(b)2. which restrict in-district weighing to a 6 month period and require the submission of a subsequent plan amendment which identifies a long-term strategy for collection of outstanding debt that examines all reasonable available alternatives. Therefore, within Section C. of this certification, the in-district weighing requirement is approved with modification contingent upon the submission of a subsequent plan amendment which identifies an alternative method for collection of outstanding debt. This amendment shall be submitted within 6 months of the date of this certification. Following the submission of this plan amendment, the County may continue to collect any fees through in-district weighing pending the Department's review of the alternative method of collection.

C. Certification of the Burlington 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 February 25, 1998 amendment to the approved County Plan and certify to the County Freeholders that the February 25, 1998 amendment is approved in part, modified in part, and remanded in part as further specified below.

Revised Disposal Strategy

The County Plan inclusion of an economic flow control strategy revising the market participant strategy embodied within the September 24, 1997 amendment is approved.

Imposition of an EIC

The County Plan inclusion of the assessment of an EIC of \$29.95 per ton for calendar year 1998 is approved.

In-District Weighing

The County Plan inclusion of the in-district weighing requirement directing all Burlington County generated solid waste to the County Resource Recovery Complex for weighing prior to disposal is modified in part and remanded in part. Specifically, as noted within Section B., the transfer station waste delivery option is remanded to the County for further consideration and evaluation consistent with an economic flow control strategy and may be amended through an Administrative Action (N.J.A.C. 7:26-6.11(b)10.). Also, consistent with DEP regulations, in-district weighing is modified to restrict it to a 6 month period and requires the submission of a subsequent amendment which identifies an alternative long-term strategy for collection of outstanding debt. This amendment shall be submitted within 6 months of the

date of this certification. Following the submission of this amendment, the County may continue to collect any fees through in-district weighing pending the DEP's review of the alternative method of collection.

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 including waste types 10, 13, 23, 25, and 27 and all applicable subcategories and shall not apply to liquid 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 Implementation of the 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 amendment, as modified, 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. 7:26-1.3.

6. Effective Date of the Amendment

The amendment, as modified, to the County Plan contained herein shall take effect immediately.

7. Reservation of Authority

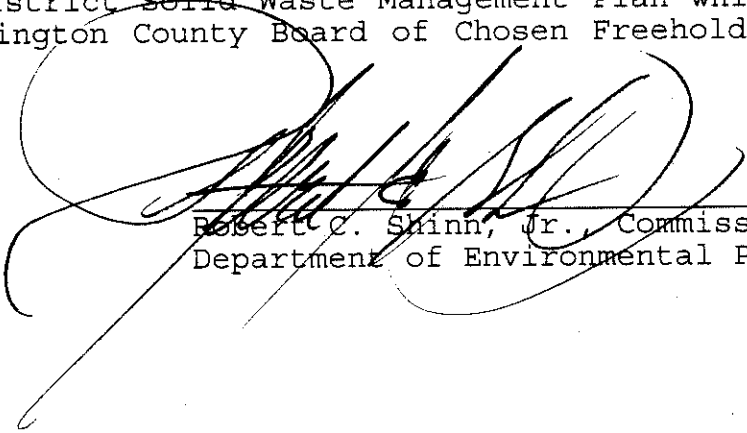
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's 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, Modification, 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 in part, modify in part, and remand in part the amendment, as outlined in Section C. of this certification, to the Burlington County District Solid Waste Management Plan which was adopted by the Burlington County Board of Chosen Freeholders on February 25, 1998.

Date

4/29/98


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