



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection

Robert C. Shinn, Jr.
Commissioner

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

**CERTIFICATION
OF THE JANUARY 11, 1995
AMENDMENT TO THE ESSEX 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 August 13, 1980, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Essex 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, 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 County Plan at any time and, if found inadequate, a new County Plan must be adopted. The Essex County Board of Chosen Freeholders (County Freeholders) completed such a review and on January 11, 1995 adopted an amendment to its approved County Plan.

As adopted, the amendment proposed the County Plan inclusion of a Memorandum of Understanding (MOU) signed August 23, 1994 by the Morris County Municipal Utilities Authority (MCMUA) and the Essex County Utilities Authority (ECUA) authorizing the delivery of 225,000 tons annually of Morris County processible waste to the Essex County Resource Recovery Facility (ECRRF) for a 25 year period commencing January 1, 1995.

The January 11, 1995 amendment was received by the Department on March 1, 1995 and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed this amendment and has determined that the amendment adopted by the County Freeholders on January 11, 1995 is approved with modification as provided in N.J.S.A. 13:1E-24. As explained in Section B.2. of this certification, modification of the amendment is necessary insofar as the MOU cannot, by itself, result in the redirection of Morris County waste to the ECRRF. In order for the MOU to take effect, several specific preconditions must be met including further approvals by the Department.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the January 11, 1995 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 January 11, 1995 amendment which are included in Section B.2. below.

In conjunction with the review of the amendment, the Department circulated copies to fifteen 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 Solid Waste Management, DEP
Division of Water Quality, DEP
Division of Enforcement, 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
U.S. Environmental Protection Agency

1. Agency Participation in the Review of the January 11, 1995 Amendment

The following agencies did not object to the proposed amendment:

Division of Parks and Forestry, DEP
Division of Enforcement, DEP
Division of Water Quality, DEP
Green Acres Program, DEP
New Jersey Turnpike Authority
Department of Agriculture
Department of Transportation
Department of Community Affairs

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

Division of Fish, Game and Wildlife, DEP
Office of Air Quality Management, DEP
Land Use Regulation Element, DEP
New Jersey Advisory Council on Solid Waste Management
Department of Health
U.S. Environmental Protection Agency

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 January 11, 1995 Amendment

Issue: Terms of the MOU

The August 23, 1994 MOU contains "Section 11. Conditions Precedent to Implementation of Interdistrict Agreement." Specifically, this section states that "All rights, obligations and liabilities of the parties hereunder shall be subject to the satisfaction of each of the conditions precedent set forth below..." A total of 14 separate conditions are identified within this section. Among other things, these conditions include:

- * execution of an interdistrict agreement between the ECUA and the MCMUA;
- * adoption of amendments by Essex and Morris Counties including the

- agreement and DEP certification of same;
- * execution of an MOU and an interdistrict agreement between the ECUA and a third county to provide additional waste to the ECRRF;
- * adoption of amendments by Essex County and the county providing additional waste including the agreement and DEP certification of same;
- * approval of the ECUA/MCMUA MOU and interdistrict agreement and the additional waste MOU and interdistrict agreement by the Port Authority and American Ref-Fuel;
- * execution by the ECUA of an agreement providing for disposal of bypassed waste, nonprocessable waste, and ash residue at the ECUA designated landfill and DEP approval of same;
- * issuance of a modified permit by the DEP to allow the ECRRF to process 985,500 tons per year; and
- * DEP approval of the MCMUA/Waste Management out-of-state landfill disposal agreement for that Morris waste not delivered to the ECRRF.

Pursuant to the provisions of the Solid Waste Management Act, specifically N.J.S.A. 13:1E-24b., the Department has 150 days to approve, modify, or reject the January 11, 1995 amendment. However, as noted above, the MOU contains conditions that can not be satisfactorily addressed prior to the close of the DEP's legislatively mandated 150 day review period on July 28, 1995. Therefore, within Section C. of the certification, the Department approves with modification the amendment so that the MOU may take effect only when all conditions precedent set forth in the MOU are satisfactorily met.

Issue: April 24, 1995 Court Order

Since adoption of the January 11, 1995 plan amendment, a plan amendment adopted by the Morris County Freeholders on November 22, 1994 including the provisions of the MOU was the subject of an action in the Law Division of the Superior Court of New Jersey which was brought by Waste Management of Pennsylvania, Inc. (WMPA). This action sought to block the adoption of the MOU because its terms were allegedly inconsistent with the terms of the easement (disposal) agreement executed by the MCMUA and WMPA for the provision of landfill space. On April 24, 1995, Judge Reginald Stanton, A.J.S.C., in Waste Management of Pennsylvania, Inc. v. Morris County Board of Chosen Freeholders, et al, Docket No. MRS-L-4409-94 P.W., ruled that the terms of the disposal agreement between WMPA and the MCMUA allowed for processible Morris County waste to be delivered to the ECRRF, but that the prorata share of ash residue attributable to Morris County as well as all bypass and nonprocessable waste generated in Morris County must be disposed of at WMPA landfills pursuant to the terms of the easement agreement. The court directed the Morris County Freeholders and the MCMUA to amend the County Plan to incorporate these requirements and to seek DEP approval of the plan amendment and the easement agreement as modified. Therefore, in a May 12, 1995 certification the DEP

approved in part and remanded in part the November 22, 1994 Morris amendment by approving the delivery of up to 225,000 tons annually of processible waste generated within Morris County to the ECRRF while the remaining portions of the amendment were remanded to the freeholders for modification in accordance with the court order.

Finally, the court barred the execution of any terms within the MOU which are inconsistent with the April 24, 1995 order. Therefore, as noted above, since one of the conditions precedent of the MOU is the execution of an interdistrict agreement between the ECUA and the MCMUA, this agreement when finalized must incorporate the requirements relative to ash, bypass, and nonprocessible waste stipulated by Judge Stanton in his April 24, 1995 court order.

Issue: Regulatory Approvals

Prior to the full implementation of the terms of the MOU, numerous DEP approvals are required. While some of these approvals are identified above within the enumeration of the conditions precedent, all of these required DEP approvals are noted below:

- * certification of amendments by Essex and Morris Counties including the interdistrict agreement;
- * certification of amendments including an MOU/interdistrict agreement by Essex County and a third county providing additional waste to the ECRRF;
- * approval of a revised Service Agreement (contract) between Essex County, American Ref-Fuel, and the Port Authority of New York and New Jersey to provide new financial and waste delivery terms;
- * certification of an Essex County amendment and issuance of a modified permit to provide for the expansion of the ECRRF from 914,000 tons per year to 985,000 tons per year;
- * approval of the ECUA out-of-state landfill disposal contract; and
- * approval of a revised tariff rate for the ECRRF.

Issue: Waste Flow Rule Change

The Department is supportive of the MOU since the delivery of Morris County waste to the ECRRF promotes the State's critical public policy goal of disposal self-sufficiency by reducing the reliance on out-of-state disposal of Morris waste, by maximizing the use of in-state disposal infrastructure, and by avoiding the ancillary impacts of long-haul transport on vehicle emissions, noise, traffic congestion, and safety. Therefore, to expedite the delivery of Morris waste to the ECRRF, upon certification of this document the DEP will initiate formal rulemaking procedures to embody this waste flow change within N.J.A.C. 7:26-6.5(g) and (o). Accordingly, upon satisfaction of all conditions precedent, the Department may authorize the commencement of delivery of Morris waste to the ECRRF.

C. Certification of the January 11, 1995 Essex 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 January 11, 1995 amendment to the approved County Plan and certify to the County Freeholders that the January 11, 1995 amendment is approved with modification as further specified below.

The County Plan inclusion of the August 23, 1994 ECUA/MCMUA Memorandum of Understanding is approved with modification so that the MOU may take effect only when all conditions precedent set forth in the MOU are satisfactorily met. The County is hereby directed to address all conditions precedent and to apply for all required Department approvals noted above as soon as possible.

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 Plan

The provisions of the County 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. All nonhazardous 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 set forth at 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. 7:26A-1.3.

6. Effective Date of the Amendment

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

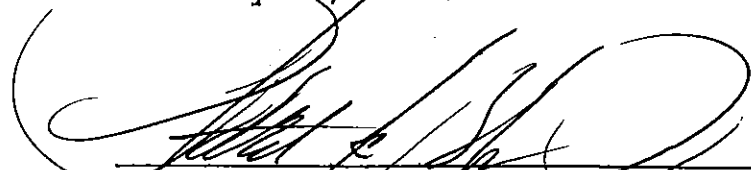
7. Reservation of Authority

Nothing contained herein shall be construed as a limitation on any other action taken by the DEP 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 DEP, 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 with Modification 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 with modification the amendment, as outlined in Section C. of this certification, to the Essex County District Solid Waste Management Plan which was adopted by the Essex County Board of Chosen Freeholders on January 11, 1995.

7/21/95
Date


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