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Scott A. Weiner  
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  
FEBRUARY 13, 1991 AND JULY 24, 1991  
AMENDMENTS 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 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 plan at any time and, if found inadequate, a new plan must be adopted. The Essex County Board of Chosen Freeholders (County Freeholders) completed such a review and on February 13, 1991 and July 24, 1991 adopted amendments to its approved County Plan.

As adopted, the February 13, 1991 amendment proposes plan inclusion of Advanced Enterprises Recycling, Inc. located at 540 Doremus Avenue, Block 5070, Lot 43 and part of Lot 25, in Newark, Essex County, as a recycling facility for Class B materials. The July 24, 1991 amendment proposes plan inclusion of the Millburn Compost Facility, located on Block 5401, Lot 1, in the Township of Millburn, Essex County, as the Township's municipally owned and operated leaf composting facility.

The February 13, 1991 and July 24, 1991 amendments were not received by the Department of Environmental Protection and Energy (Department or DEPE) until November 18, 1992 and October 5, 1992, respectively. At that time, copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed these amendments, as well as the entire County Plan, and has determined that the amendments adopted by the County Freeholders on February 13, 1991 and July 24, 1991 are approved as provided in N.J.S.A. 13:1E-24. While the immediate plan amendments have been approved, serious deficiencies in the County Plan have been identified within Section C. of this certification.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the February 13, 1991 and July 24, 1991 amendments 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 these plan amendments are consistent with the Statewide Solid Waste Management Plan. In this regard, however, the County Freeholders and the applicant are notified of the issues of concern relative to the February 13, 1991 and July 24, 1991 amendments which are included below.

In conjunction with the review of these amendments, the Department circulated copies to sixteen 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. These agencies are the following:

Office of Energy, DEPE  
Division of Parks and Forestry, DEPE  
Division of Fish, Game and Wildlife, DEPE

Division of Solid Waste Management, DEPE  
Green Acres Program, DEPE  
Land Use Regulation Element, DEPE  
Groundwater Quality Management Element, DEPE  
Wastewater Facilities Regulation Element, DEPE  
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 the Public Advocate  
U.S. Environmental Protection Agency

1. Agency Participation in the Review of the February 13, 1991 Amendment

The following agencies did not object to the proposed plan amendment:

Division of Fish, Game and Wildlife, DEPE  
Green Acres Program, DEPE  
New Jersey Turnpike Authority  
Department of Agriculture  
Department of Transportation

The following agencies did not respond to the Department's requests for comments:

Office of Energy, DEPE  
Land Use Regulation Element, DEPE  
Groundwater Quality Management Element, DEPE  
Wastewater Facilities Regulation Element, DEPE  
Division of Parks and Forestry, DEPE  
New Jersey Advisory Council on Solid Waste Management  
Department of Health  
Department of Community Affairs  
Department of the Public Advocate  
U.S. Environmental Protection Agency

The following agency submitted substantive comments which are further addressed below:

Division of Solid Waste Management, DEPE

2. Agency Participation in the Review of the July 24, 1991 Amendment

The following agencies did not object to the proposed plan amendment:

Green Acres Program, DEPE  
New Jersey Turnpike Authority  
New Jersey Advisory Council on Solid Waste Management  
Department of Agriculture  
Department of Transportation  
Division of Parks and Forestry, DEPE

The following agencies did not respond to the Department's requests for comments:

Groundwater Quality Management Element, DEPE  
Wastewater Facilities Regulation Element, DEPE  
Department of Health  
Department of Community Affairs  
Department of the Public Advocate  
U.S. Environmental Protection Agency

The following agencies submitted substantive comments which are further addressed below:

Office of Energy, DEPE  
Division of Fish, Game and Wildlife, DEPE  
Division of Solid Waste Management, DEPE  
Land Use Regulation Element, DEPE

4. Issues of Concern Relative to the February 13, 1991 Amendment

Issue: Permit Requirements

Recycling centers are subject to the provisions of N.J.A.C. 7:27-5, "Prohibition of Air Pollution," which prohibits odors and other air contaminants which interfere with the enjoyment of life or property. Furthermore, recycling centers are subject to N.J.A.C. 7:27-8.2(a)16 which requires air pollution control permits for any equipment used to vent a solid waste facility directly or indirectly into the outdoor atmosphere. Also, stationary conveying equipment which cause fugitive emissions of air contaminants are subject to the provisions of N.J.A.C. 7:27-8.2(a)11. Further, if access onto a State Highway is required, an Access Application and possibly a Drainage Application must be filed.

Additionally, because the proposed recycling center will be handling Class B recyclable materials, as defined at N.J.A.C. 7:26A-1.3, it must obtain a recycling center approval from the Department pursuant to N.J.A.C. 7:26A-3 prior to operation. Also, pursuant to N.J.A.C. 7:26A-4.1 (a) 1.iii, Class B recyclable materials may be commingled only with other Class B recyclable materials and only to the extent authorized in the general approval.

Issue: Siting

While the plan amendment submission included only Lot 43 of Block 5070 as the facility site, the administrative review disclosed that a section of a storage building and the facility's ingress and egress routes are located on Lot 25, which is contiguous with Lot 43. The omission of Lot 25 from the plan amendment was an oversight which has been resolved through conversations with the applicant and the County. The inclusion of Lot 25 within the County plan at this time is considered a minor Departmental modification and requires no further action by the Essex County Freeholders except that the additional lot be acknowledged in a subsequent plan amendment submission.

5. Issues of Concern Relative to the July 24, 1991 Amendment

**Issue: Permit Requirements**

Composting facilities are subject to the provisions of N.J.A.C. 7:27-5, "Prohibition of Air Pollution." As noted above, this regulation prohibits odors and emissions of air contaminants which interfere with the enjoyment of life or property. Additionally, air pollution control permits are required for equipment used to vent a solid waste facility to the ambient atmosphere in accordance with N.J.A.C. 7:27-8.2(a)16. Further, stationary conveying equipment which cause fugitive emissions of air contaminants require air pollution control permits pursuant to the provisions of N.J.A.C. 7:27-8.2(a)11.

A compost facility permit shall only be granted where the applicant has submitted an administratively complete application, as per N.J.A.C. 7:26-3.5, where all substantive criteria for approval set forth in N.J.A.C. 7:26-3.2, 3.3 and 3.4 are satisfied, where a fee has been paid in accordance with N.J.A.C. 7:26-2, and where none of the criteria for denial of a compost facility approval have been met, as per N.J.A.C. 7:26-11 and 12.

**Issue: Siting**

In the event that this facility is located in the Canoe Brook floodplain and associated wetlands, it may potentially exacerbate wetland impacts and/or the displacement of composted materials during flood events. Prior to site implementation, it should be determined that the facility is not in the floodplain and does not contain any freshwater wetlands. This issue will be addressed during the technical engineering review phase of the proposal.

C. Certification of the Essex County District Solid Waste Management Plan Amendments

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 13, 1991 and July 24, 1991 amendments to the approved County Plan and certify to the County Freeholders that the February 13, 1991 and July 24, 1991 amendments are approved as further specified below.

1. February 13, 1991 Amendment

The inclusion within the County Plan of Advanced Enterprises Recycling, Inc., located at 540 Doremus Avenue, Block 5070, Lot 43 and part of Lot 25, in Newark, Essex County, as a recycling facility to process Class B materials (wood) is approved. Also, while the plan amendment submission included only Lot 43 of Block 5070 as the facility site, the administrative review disclosed that a section of a storage building and the facility's ingress and egress routes are located on Lot 25, which is

contiguous with Lot 43. The omission of Lot 25 from the plan amendment was an oversight which has been resolved through conversations with the applicant and the County. The inclusion of Lot 25 within the County plan at this time is considered a minor Departmental modification and requires no further action by the Essex County Freeholders except that the additional lot be acknowledged in a subsequent plan amendment submission.

Additionally, because the proposed recycling center will be handling Class B recyclable materials, as defined at N.J.A.C. 7:26A-1.3, it must obtain a recycling center approval from the Department pursuant to N.J.A.C. 7:26A-3, prior to operation. Also, pursuant N.J.A.C. 7:26A-4.1 (a) 1.iii, Class B recyclable materials may be commingled only with other Class B recyclable materials and only to the extent authorized in the general approval.

This certification shall not be construed as an expression of the Department's intent to issue a recycling center approval to any recycling center for Class B recyclable materials. A recycling center approval shall only be granted where the applicant has submitted an administratively complete application, as per N.J.A.C. 7:26A-3.5, where all substantive criteria for approval set forth in N.J.A.C. 7:26A-3.2, 3.3 and 3.4 are satisfied, where a fee has been paid in accordance with N.J.A.C. 7:26A-2, and where none of the criteria for denial of a recycling center approval are met, as per N.J.A.C. 7:26A-11 and 12.

2. July 24, 1991 Amendment

The inclusion within the County Plan of the Millburn Compost Facility located on Block 5401, Lot 1, Township of Millburn, Essex County, as the Township's municipally owned and operated leaf compost facility is approved.

The construction or operation of any solid waste facility shall be preceded by the acquisition of all necessary permits and approvals pursuant to N.J.S.A. 13:1E-1 et seq., and all other applicable laws. The issuance of operating permits pursuant to the Solid Waste Management Act is limited to those applicants found by the Department and the Attorney General of the State of New Jersey to be deserving of licensing under the provisions of N.J.S.A. 13:1E-126.

3. Essex County District Solid Waste Management Plan Deficiencies

I have reviewed the entire Essex County Plan to determine whether the Plan fulfills the requirements set forth in N.J.S.A. 13:1E-21, as well as the recommendations of the Emergency Solid Waste Assessment Task Force Final Report accepted by the Governor on November 16, 1990. In this regard, the County is reminded that the Department's January 22, 1992 certification of the County's September 12, 1990 plan amendment noted detailed deficiencies which the County was required to address in a subsequent plan amendment by July 21, 1992. In this regard, the Department has not received the required amendment to date. Specifically, the certification required the

County's pursuit of in-state landfill arrangements; the identification of specific truck routes to the County incinerator; and the submission of a plan amendment addressing the provisions of the Task Force Final Report and recommendations including source reduction, achievement of at least a 50% recycling rate for the municipal waste stream and a 60% recycling rate for the total waste stream, and a plan for long-term regionalization of the County's incinerator. Further, consideration must also be given to regional plans for materials processing, recycling, transfer and disposal facilities. Additionally, if it is the intent of the County to utilize the Essex County Utilities Authority (ECUA) as the County's implementation agency, then the County must formally designate the ECUA as its implementation agency to oversee the entire County Plan in a subsequent plan amendment submission.

Certain outstanding areas noted above represent serious plan deficiencies which must be addressed immediately. At this point in time, Essex is one of several remaining counties which have not submitted any formal plan to advance statewide goals in the critical areas of source reduction, expanded recycling and system regionalization. Further, while the County has a regional agreement for the acceptance and processing of Bergen County solid waste, this arrangement is short-term in nature, expiring on March 1, 1994. No specific long-term regional partnership has been formalized at this time. Finally, even with current incinerator operations, approximately 358,000 tons per year of the County's nonprocessable, bypass and residual solid waste is being exported for out-of-state disposal contrary to the DEPE's self-sufficiency objectives. Therefore, the County is directed to submit the required amendment as soon as possible to address these and the other noted deficiencies. Please be advised that the failure of the County to comply with this directive may result in the withholding and reallocation of the County's Solid Waste Services Tax moneys and the withholding of the County's Resource Recovery Investment Tax moneys.

D. Other Provisions Affecting the Plan Amendments

1. Contracts

Any contract renewal or new contract for solid waste collection or disposal which is inconsistent with these amendments to the County Plan and which was executed prior to the approval of these amendments 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 these amendments and of the County Plan if such renegotiation is not completed within ninety (90) days of the effective date of these amendments 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 amendments contained herein shall operate in compliance with these amendments 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 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. 7:26-6, but 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 Amendments

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 amendments certified herein.

5. Definitions

For the purpose of these amendments 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 and -2.13, and N.J.A.C. 7:26A-1.3.

6. Effective Date of the Amendments

These amendments 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. The Department has published a Statewide Solid Waste Management Plan, with appendices, which includes the Department's planning guidelines, rules, regulations, orders of the Department, interdistrict and intradistrict waste flow rules, and also includes the compilation of individual district plans and amendments as they are approved.

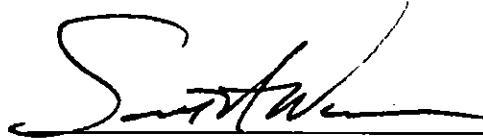


E. Certification of Approval of the Amendments and Notification of Deficiencies by the Commissioner of the Department of Environmental Protection and Energy

In accordance with the requirements of N.J.S.A. 13:1E-1 et seq., I hereby approve these amendments, as outlined in Section C. of this certification, to the Essex County District Solid Waste Management Plan which were adopted by the Essex County Board of Chosen Freeholders on February 13, 1991 and July 24, 1991. I hereby also require, as noted in Section C., the Essex County Board of Chosen Freeholders to address the noted deficiencies as soon as possible.

**FEB 22 1993**

DATE



SCOTT A. WEINER  
COMMISSIONER  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AND ENERGY

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