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STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
RICHARD T. DEWLING, Ph.D., P.E., COMMISSIONER
CN 402
TRENTON, N.J. 08625
609 - 292 - 2885

(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 APRIL 29, 1987
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 approved, with modifications, the Essex 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 Essex County Board of Chosen Freeholders completed such a review and on April 29, 1987 adopted an amendment to its approved district solid waste management plan.

The amendment represents a multifaceted update to the Essex County District Solid Waste Management Plan and contains the following: 1.] a glossary of terms used within the plan amendment and various resource recovery facility and ash residue contracts; 2.] an updated data base of solid waste generation, collection and disposal practices and costs and recycling rates and totals; 3.] an updated solid waste facility status report which also proposes to include in the approved plan a series of new facilities including six (6) hospital incinerators and one (1) animal shelter incinerator; 4.] a proposal to include in the approved plan a siting policy on composting and vegetative waste facilities; 5.] a proposal to include in the approved plan a mandatory district recycling plan; 6.] the district interim/short term contingency disposal plan; 7.] the district long term solid waste disposal strategy which further contains: 7.a.] an administration and enforcement strategy which includes: 7.a.1.] a policy for requiring disposal vehicle registration; 7.a.2.] an identification of specific routes for trucks using the resource recovery facility; 7.a.3.] a waste flow control strategy; 7.a.4.] a policy governing the acceptance of waste generated outside of Essex County at the resource recovery facility; 7.a.5.] a policy for the exclusion of hazardous waste and certain type 27 wastes at the resource recovery facility; 7.a.6.] a policy requiring trucks using the resource recovery facility to be equipped with exhaust silencers; 7.b.] a strategy for the management of process residue from the resource recovery facility; 8.] A waste flow policy addressing the county's control over flow to designated disposal facilities; and 9.] the county's proposal for the use of its resource recovery investment tax fund and its disbursement schedule.

The complete amendment submission was received by the Department of Environmental Protection on June 23, 1987, and copies were distributed to various state level agencies for review and comment, as required by law. The Department has reviewed this amendment and has determined that the amendment adopted by the Essex County Board of Chosen Freeholders on April 29, 1987 is approved, as modified, as provided in N.J.S.A. 13:1E-24.

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, Richard T. Dewling, Commissioner of the Department of Environmental Protection have studied and reviewed the April 29, 1987 amendment to the Essex 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, as modified, is consistent with the Statewide Solid Waste Management Plan.

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

The Green Acres Program commented that they cannot effectively review the plan amendment for consistency with programmatic objectives due to insufficient information. Of critical importance are block and lot designations (which were not supplied) for each of Essex County's existing solid waste facilities, as well as individual street map locations. The Green Acres Program further commented on the proposed compost facility siting policy and its effect on unregistered compost facilities. The Green Acres Program recommends that the plan amendment not be approved and also advises that several currently operating compost facilities may already be in violation of Green Acres rules and regulations.

The Division of Solid Waste Management responds by agreeing that the solid waste facility status report as submitted is incomplete in certain aspects and the county is being requested to rectify the deficiencies. However, as identified in Section C. 3. of this certification, the vast number of solid waste facilities noted within the plan amendment were previously incorporated within the Essex County Plan through historical plan certifications. In addition, in some cases where facilities were not previously incorporated into the plan as required by N.J.S.A. 13:1E-4(b), they possess valid operating permits and, therefore, have gone through a state level review process. This plan inclusion and permit status was not adequately reflected in the plan amendment which led, in large part, to the concern expressed by the Green Acres Program.

For those facilities which were historically included in the Essex County Plan, and for which operating permits were issued, the Green Acres Program position is not applicable. In cases where facilities were not historically included in the plan, but possess valid operating permits, plan inclusion approval is required by statute. For the newly proposed hospital/animal shelter incinerators, block and lot information is not critical at the planning stage inasmuch as these incinerators are located on established hospital/animal shelter grounds. However, in the case of compost facilities, three noted facilities have not been historically included in the plan, nor have they obtained operating permits. In that case, the Green Acres Program has a valid concern and Section C. 3. requires the county to submit full block and lot and map identification information as part of a subsequent plan amendment for state level review or to follow the newly adopted district compost policy for plan inclusion. As part of this compost policy, the full plan amendment process may not be needed. However, even under the compost siting policy, the applicants must still obtain facility permits and will be subject to the state level review process that is part of the technical phase of the Division of Solid Waste Management permit process.

In addition, the Division does not concur with the Green Acres position on the proposed compost siting policy. Said policy, as modified by the Department, does not alter the state level review component of the technical phase of the permit process. Therefore, the Green Acres Program will still be afforded an opportunity for substantive input for all new compost facilities. The proposed policy also does not legitimize unregistered compost operations which, if identified, may be subject to enforcement action and, for the purpose of the policy would, as a minimum, be treated as new facilities subject to the permit process.

The Office of Recycling commented extensively on the mandatory recycling plan contained in the plan amendment by stating:

1. The position of county recycling coordinator is not clearly designated as required in P.L. 1987, c. 102, section 3.b.
2. The amendment designates materials from the residential and commercial sectors. P.L. 1987, c. 102 requires the mandating of materials from the residential, commercial, and institutional sectors. Therefore, the designation of materials is deficient with respect to P.L. 1987, c. 102 in not addressing the institutional sector.
3. Municipalities are given "the option of designating which three materials are to be recycled, including newspaper, glass, metals and plastic." This is contrary to P.L. 1987, c. 102 section 3.b.(2) which states that the district recycling plan shall designate the recyclable materials to be source separated in each municipality.
4. The amendment mentions that all municipalities are required to recycle white goods and office paper. It is unclear if these items are designated recyclables contributing to the 25% MSW reduction goal or are in addition to that goal. A municipality must provide for collection services for the pick-up of white goods in order to classify them as one of their designated recyclable materials, contributing to the 25% MSW reduction mandate.
5. The amendment discusses the county's plans to provide "intermediate processing services for source separated but, commingled recyclables collected through municipal curbside recycling programs. " The county intends to accept and process the following materials at the recycling center: "glass food and beverage containers, newspaper, corrugated cardboard and possibly mixed plastic containers." The above satisfies the strategy requirements of section 3.b.(3) of P.L. 1987, c. 102, but again, the Office of Recycling seeks clarification of the intent of the county regarding the above as "designated recyclable materials."

According to the Recycling Implementation Schedule on page 74, the recycling center is to begin operation by the 4th quarter of 1987. The Office of Recycling would like a copy of any contracts or bid specifications associated with the county's plans for the development of this facility.

6. The inclusion of corrugated cardboard, high grade office paper, newspaper, glass and metal as designated recyclable materials in the commercial waste stream is acceptable. However, the county must note that the responsibility for the collection of designated recyclable materials belongs to each municipality, unless otherwise provided by the generator as per P.L. 1987, c. 102, section 3.b.
7. Recovery targets or "waste reduction goals" are outlined on page 68. A 15% waste reduction is targeted for 1987 and 25% for 1988. Documentation (weighing and/or composition studies, etc.) providing the basis for the determination of these recovery rates and schedules is necessary to be included in order for the Office of Recycling to determine if the goals can reasonably be expected to be met by the recycling of the materials designated.
8. This amendment indicates that each municipality must provide collection services for the pick up of designated recyclables in the residential sector. This meets the requirements of P.L. 1987, c. 102.

However, as per the conditions incorporated into the Certificate of Approved Registration and Engineering Design Approval, issued to the the American Ref-Fuel Company on 12/10/85, section 18.b.i., a curbside collection program will be coordinated between the county and the Occupational Training Center of Essex County. What is the status of this program and what plans are there for its continuation and/or expansion? The Office of Recycling would like to see proof of contracts or negotiations indicating the provision of such services within each municipality participating. If this program does exist and the county plans to expand such services, then a regional plan for providing such services must be included.

9. Language setting forth the manner in which the recycling plan may be amended or modified, if circumstances warrant such modification, were not included in this amendment as allowed in section 3.d. of P.L. 1987, c. 102.

This is an essential component to all district recycling plans. If not included in the present plan, then future modifications will require the formal solid waste management plan amendment process.

10. Enforcement of the recycling mandate involves municipal action mandating source separation ordinances and anti-scavenger ordinances. According to the amendment, these ordinances were to be enacted by the second quarter of 1987. The Office of Recycling requests one copy of each municipal ordinance.

In addition, the Office of Recycling requests a narrative description of how the county will enforce the implementation of the district recycling plan.

11. Contrary to the county's plan, P.L. 1987, c. 102, section 6.a., indicates that designated recyclables collection services are the direct responsibility of each municipality. Only one exception to this exists and this should be outlined in the plan. As per P.L.

1987, c. 102, section 6.d., each county plan shall indicate the manner by which municipalities may exempt persons or businesses from the source separation requirements.

12. As per P.L. 1987, c. 102 section 3.c., priority consideration for recycling businesses must be given to businesses already engaged in recycling as of January 1, 1986. Businesses meeting the requirements for priority consideration must be listed in the plan.
13. The amendment indicates that "ten of the twenty Essex County municipalities have DEP-permitted composting operations while several others operate sites without a permit . . . in addition the county operates two permitted facilities." As per P.L. 1987, c. 102, section 13, each district recycling plan is to identify the leaf composting facility or facilities to be utilized by each municipality within the county. The plan is deficient with respect to this requirement.
14. The determination of the recovery targets is not discussed in quantitative terms, as required in section 3.(b)(4) of P.L. 1987, c. 102. The recovery targets for each county shall be determined by calculating the sum of the municipal solid waste stream disposed of as solid waste, as measured in tons, plus the total number of tons of recyclable materials recycled.

The total of municipal solid waste disposed + total designated recyclable materials recycled = Total MSW.

$$\frac{\text{Materials Recycled}}{\text{Total MSW}} = \text{Recycling recovery rates}$$

15. Municipal publicity and education requirements outlined on page 73 of the plan satisfy the requirements of P.L. 1987, c. 102.

As a final note, the Office of Recycling requires the inclusion of the entire approved Administration and Enforcement Strategy (see American Ref-Fuel permit requirement 18.b.ii.) within the recycling plan.

The Division of Solid Waste Management responds that Essex County developed the recycling plan contained in the plan amendment prior to the enactment of the New Jersey Statewide Mandatory Source Separation and Recycling Act. As a result, gaps may exist between the requirements of P.L. 1987, c.102 and the specifics of the Essex County recycling plan. Essex County is being furnished, by way of this plan certification, with the comments of the Office of Recycling and is directed to modify the recycling plan to conform to the requirements of P.L. 1987, c.102.

The Department of Community Affairs commented that, given the lack of detailed financial specificity in the proposed amendment concerning the District Resource Recovery Investment Tax Fund, the Division of Local Government Services must necessarily defer substantive comment at this time.

The Division of Solid Waste Management responds by stating the Division shares the Department of Community Affairs' concerns with respect to the

level of detail of proposed uses of and disbursement schedules for the Essex County District Resource Recovery Investment Tax Fund. The Division itself has commented extensively in these regards as is discussed below.

The Division of Solid Waste Management comments that it is satisfied that the proposed use for capital costs and reserve start-up operating subsidy for a recycling facility is in conformance with the requirements of N.J.S.A. 13:1E-150. Similarly, site improvement and equipment cost subsidy at the district's regional leaf compost facility is also an eligible use pursuant to N.J.S.A. 13:1E-150. The initial disbursement schedule provides a projection of the fund balance through 1990, under various technical assumptions. However, since the disbursement schedule fails to provide an accurate fund balance through December 31, 1986, to identify interest earnings on the fund balance to date, to identify fund recipients, and to identify the specific recycling facility to receive funds, the Department has modified the initial disbursement schedule as set forth in Section C. below. Also, long term proposed uses and disbursement schedules shall be the subject of a future plan amendment submission.

The provisions of the "McEnroe" legislation, N.J.S.A. 13:1E-136 et seq., which establish District Resource Recovery Investment Tax Fund accounts for the state's 21 counties, set out a clear state policy objective to generate revenues in order to subsidize anticipated resource recovery tipping fees to a level which is competitive with disposal costs at landfills utilized by the counties. The subsidies created by legislation also were designated as incentives to make the transition from landfill disposal to capital intensive resource recovery technologies. Thus, the Act seeks to provide assistance to counties in order to expedite resource recovery technology implementation and to provide user benefits through a reduction in the tipping fees at resource recovery facilities. If a county can demonstrate to the satisfaction of the Department that utilization of a resource recovery facility is not feasible for the disposal of solid waste generated in the county, then the District Resource Recovery Investment Tax Fund may be used to design, finance, construct, operate and maintain environmentally sound state-of-the-art sanitary landfill facilities.

Prior to disbursement from its District Resource Recovery Investment Tax Fund, however, a county must prepare a plan amendment which outlines the proposed uses of the moneys in its District Fund and establishes a disbursement schedule for those moneys in the fund. Two tests must be met: an eligible use test, which uses are limited to those identified in N.J.S.A. 13:1E-150b and a disbursement schedule test, which test criteria are not specifically provided in the Act.

Eligible uses of the fund are provided in Attachment 1, Part I, of this certification. In consideration of the intent and objectives of the Act outlined above and the specific limitations upon eligible uses of the fund provided in N.J.S.A. 13:1E-150, projects not formally identified in the approved district solid waste management plan shall not be funded with Resource Recovery Investment Tax Fund moneys. Therefore, in order to ensure user rate reduction and facilitate timely project implementation, disbursements from a District Resource Recovery Investment Tax Fund shall be made only to projects formally identified in the approved district solid waste management plan.

Pursuant to law, in order to provide safeguards as to how the investment tax funds are to be spent, a schedule for the disbursement of the moneys must be provided through the plan amendment process established under the New Jersey Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.). In this way, a formal procedure for quantifying contributions to and withdrawals from the fund is established in order to maintain a running fund balance. Such a procedure may be followed using a variety of specific steps and methods of data presentation. In order to evaluate the adequacy of financial disbursement procedures, the Department has established criteria (see Attachment 1, Part II). Since the disbursement schedule submitted by Essex County failed to provide critical information such as fund balance, fund projection, timing of disbursements, and other critical disbursement information, it does not meet reasonable criteria for adequacy.

This plan amendment outlines proposed interim uses of the District's Resource Recovery Investment Tax Fund and provides an interim schedule for disbursement of those moneys. Specifically, the proposed amendment provides for disbursement for capital costs and reserve start up operating funds to subsidize the recycling center to be formally identified in the district plan, and for site improvement and equipment purchase for the District's regional leaf compost facility. The amendment acknowledges that this proposed interim use of the fund would reduce rates charged to all users of a resource recovery facility. Moneys deposited in the fund subsequent to December 31, 1986 shall be disbursed in an amount, manner and schedule to be determined in a future plan amendment.

The proposed interim uses of moneys from the Essex County District Resource Recovery Investment Tax Fund are in conformance with requirements of N.J.S.A. 13:1E-150 to the extent that they reduce rates charged to all users by a resource recovery facility formally identified in the approved District Solid Waste Management Plan.

The utilization of fund moneys for these interim purposes will reduce the total magnitude of construction and operating costs for these facilities. These savings will be passed through to users of these facilities and thus reduce rates to users of the facilities.

The disbursement schedule is inconsistent with N.J.S.A. 13:1E-150 since it does not provide a reasonable or complete methodology for projecting the fund balance over the life of the fund and in identifying disbursements. The schedule fails to provide an estimate of interest earnings on the fund balance or to identify the timing and recipients of fund disbursements. Interest earned on the fund balance may only be disbursed for the uses approved in this or subsequent certifications. The Department recognizes that the fund balance projection embodies several technical assumptions concerning the quantity of solid waste disposed of in Essex County, and, therefore, the actual balance of the fund may vary over time. Similarly, the timing of fund disbursement is dependent upon resource recovery project development.

In addition to the above discussion of the "McEnroe" legislation, the Division of Solid Waste Management comments that the solid waste facility status report must be further updated to reflect newly permitted or permit pending facilities and notes that the county has identified information

that is not known and needs to be identified. In addition, the Division recommended that the district compost siting policy be modified to include provisions for public input. A further clarification of truck routes from certain communities to the proposed resource recovery facility is also being requested by the Division. Finally, despite addressing contingency planning within the plan update, the Division notes that Essex County has not fully complied with my prior guidance in this regard. On February 23, 1987, I wrote to each freeholder director and county executive in the state to require the formulation of solid waste contingency plans based upon specific guidance contained within an attachment to my letter. Essex County is to be commended for addressing contingency planning within the amendment under consideration herein. However, in order to fully comply with my earlier directive, the county has been directed, within Section C. of this certification, to submit a revised contingency plan which addresses and prioritizes short and long term contingency options. In addition, the Department has modified and approved the county's long-term strategy for the use of out-of-state disposal facilities for the period 1993-1997 as a component of the county's contingency plan.

C. Certification of Essex County District Solid Waste Management Plan Amendment

I, Richard T. Dewling, Commissioner of the Department of Environmental Protection, in accordance with N.J.S.A. 13:1E-1 et seq. which established specific requirements regarding the contents of the district solid waste management plans, and 13:1E-150 which established uses and disbursement schedule requirements for the Districts' Resource Recovery Investment Tax Fund moneys, and P.L. 1987, c.102 which established specific requirements regarding the contents of the district recycling plans, have reviewed the April 29, 1987 amendment to the approved Essex County Solid Waste Management Plan and certify to the Essex County Board of Chosen Freeholders that the April 29, 1987 amendment is approved, as modified, as further specified below.

1. Glossary of Terms

The glossary of terms contained in the plan amendment reflects language found in various contracts for the resource recovery facility and ash residue disposal. The Department recognizes that the proposed glossary is part of the terms of the various contracts governing the operation of the resource recovery facility. The glossary is approved within that context. In addition, a number of terms must be addressed in more detail. Outside that context, the glossary is approved subject to any contrary or inconsistent definitions or requirements established in or pursuant to the statutes or regulations administered by the Department.

The definition of "Prohibited Waste Types" is modified to reflect the specific materials contained under condition 2 of the Certificate of Approved Registration and Engineering Design Approval for the Essex County Resource Recovery Facility, dated December 10, 1985. The definition of "Pathological Waste" is inconsistent with the existing definition of the New Jersey Department of Health. Because of this inconsistency, the county is directed to clarify its overall intention

toward the acceptance of medical waste within a subsequent amendment, focusing upon how the entire medical waste component will be handled for disposal. Finally, a typographical error has been made in the definition of "Buy-Back Center." These items shall be addressed at a public hearing concerning a subsequent plan amendment submission within forty-five days of the date of this certification.

2. Data Base

The updated data base of solid waste generation data, collection and disposal practices and costs and recycling rates and totals is accepted as preliminary planning data subject to further review.

3. Solid Waste Facilities Status

The solid waste facility status report failed to list all facilities previously incorporated into the approved plan. Also, the facilities status listed facilities not previously identified in the district plan. The facilities status is broken down into six (6) categories:

a. Landfills

The landfill status section lists landfills that once operated, but are now terminated or are not operating. All landfills listed were previously incorporated within the Essex County Plan through earlier approvals.

b. Resource Recovery Facilities

The resource recovery status section lists two permitted facilities. The plan amendment correctly lists the CEA Resource Recovery Facility as terminated. The only permitted resource recovery facility is the Essex County Resource Recovery Facility permit number 0714x, to be located on Blanchard Street, in the City of Newark. The Blanchard Street site was incorporated in the plan through an earlier planning approval, which remains unaltered.

c. Incinerators

The incinerator status section lists one hospital incinerator previously approved for inclusion into the approved plan and seven hospital/animal shelter incinerators proposed for inclusion into the district plan. The previously approved incinerator is the East Orange General Hospital Center, East Orange, Essex County. The inclusion of the following hospital/animal shelter incinerators into the district plan is approved.

The Hospital at Orange Incinerator
Orange, Essex County

Beth Isreal Hospital Incinerator
Newark, Essex County

Bloomfield Animal Shelter Incinerator
Bloomfield, Essex County

Columbus Hospital Incinerator
Newark, Essex County

Mountainside Hospital Incinerator
Montclair, Essex County

New Jersey College of Medicine and Dentistry Incinerator
Newark, Essex County

Saint Barnabas Hospital Incinerator
Livingston, Essex County

d. Chemical P&T - Hazardous Waste Facilities

The county's plan amendment identifies certain hazardous waste facilities as a part of their solid waste facilities status report. The district solid waste planning process incorporates only non-hazardous solid waste management facilities. As a result, the county's solid waste facility status report is modified to delete this subsection.

e. Transfer Stations

The transfer station facilities status report lists (6) permitted facilities or facilities previously approved for plan inclusion. Omitted from the status report are four (4) permitted facilities or facilities previously approved for plan inclusion. The omitted transfer stations are:

Maplewood Township Trash Compactor Transfer Station
Maplewood Township, Essex County

Waste Management of New Jersey Transfer Station
Newark, Essex County

Solid Waste Transfer and Recycling Transfer Station
Newark, Essex County

Solid Waste Transfer and Recycling Transfer Station
Orange, Essex County

Of the six listed facilities, two have not been previously identified in the district plan. The two newly identified facilities are: Recycling & Salvage Transfer Station, facility number 0714S; and Newark Disposal Service, facility number 0714V. Inasmuch as these two facilities were issued operating permits in the early stages of the planning process, they are herein approved for plan inclusion pursuant to N.J.S.A. 13:1E-4(a). The remaining eight transfer stations, the four listed in the county plan and the four listed above, remain in the plan without alteration.

f. Compost Facilities

The compost facilities status report lists nineteen (19) operating or terminated compost facilities. Of the nineteen (19) compost facilities listed, four (4) have not been previously listed in the district plan. The four newly identified facilities are: Roseland Compost, facility number 0718A; Bloomfield Compost Facility, no facility permit; Livingston Compost Facility, no facility permit; and Essex Fells Compost Facility, no facility permit. Inasmuch as the Roseland Compost facility has already been issued an operating permit, and was subject to a state level review as part of the technical phase of the permit process, it is approved for plan inclusion to correct this historical deficiency. However, for each of the three new and unpermitted facilities, Essex County is hereby directed to submit full block and lot and map identification information, in plan amendment form for state level review or to follow the newly adopted district policy regarding composting and vegetative waste facilities contained in Section C. 4. of this certification. In addition, each of these sites must obtain operating permits from the Division of Solid Waste Management.

With respect to all of the facility categories noted within Section C.3. above, the construction or operation of any solid waste facility shall be preceded by the obtainment of all necessary permits and approvals under N.J.S.A. 13:1E-1 et seq. and all other applicable laws. The issuance of construction and/or operating permits pursuant to the Solid Waste Management Act is limited to those applicants found by the Department and the Attorney General to be deserving of licensing under the provisions of N.J.S.A. 13:1E-126 et seq. In addition, Essex County shall submit a revised facilities status report following a public hearing to be held within forty five (45) days of the date of this certification and in plan amendment form to correct each status report category and to resolve all "unknown" status designations.

4. District Policy Regarding Composting and Vegetative Waste Facilities

The inclusion into the approved district plan of the district policy regarding composting and vegetative waste facilities is approved with modification. The proposed district policy states that any new application for a compost facility or temporary facility for the disposal of on-site generated vegetative waste within the district is consistent with the approved district plan provided it meets existing environmental design and operation standards of the Department of Environmental Protection.

The on-site vegetative waste disposal component of the policy is approved. However, the compost component of the policy does not provide for a public comment process. Therefore, the policy is modified, as per Departmental approval of previous district compost facilities inclusion policies for Cumberland County (certified on

October 9, 1986), Somerset County (certified on December 11, 1986), and Sussex County (certified March 26, 1987), as follows:

Any publicly or privately operated compost facility is consistent with the approved Essex County District Plan and no further plan amendment is required to include the facility provided that:

1. The host municipality and the solid waste management district are notified in writing (by the applicant) of the proposed application and each receive a full copy of the complete application submitted to the Department including all engineering designs, reports, maps, etc., which the Department requires of the applicant.
2. The applicant publishes two (2) notices of the proposed application, once each week for two (2) consecutive weeks, in a newspaper of general circulation within the host municipality. The district shall determine the contents of the notice which shall inform the public that this is their only opportunity within the planning stage to raise comments to the proposal.
3. No substantive objections to the site location are raised by the host municipality, the solid waste management district, or any other person; provided further, however, that if the county determines that substantive objections are raised, the proposed site and facility must be subject to the formal plan amendment process pursuant to N.J.S.A. 13:1E-23 and 24 including notice, public hearing, freeholder board approval, and subsequent DEP approval of the plan amendment. Further, prior to construction and operation the applicant must obtain from the Department Environmental Impact Statement approval and obtain a solid waste facility permit pursuant to N.J.S.A. 13:1E-4 or 5.

5. District Recycling Plan

The Essex County Recycling Plan is a multifaceted approach for the source separation and material recovery aimed mainly toward the municipal and commercial waste stream. The district recycling plan, as submitted, is approved. However, the Essex County District Recycling Plan was developed prior to the enactment of the New Jersey Statewide Mandatory Source Separation of Recycling Act, P.L. 1987, c.102. Therefore, certain requirements contained in P.L. 1987, c.102 have not been met in the district recycling plan. The Office of Recycling has reviewed, in Section B. of this certification, the district recycling plan and has identified areas that must be modified to meet the requirements of P.L. 1987 c.102. These modifications must be addressed at a public hearing to be held within 45 days of the date of this certification and submitted in plan amendment form.

6. District Contingency Plan

On July 31, 1987, Essex County, pursuant to a Judicial Consent Order, exhausted its disposal privileges within the Hackensack Meadowlands

District. In response to this situation, the county implemented its short term contingency plan through the development of three transfer station projects, two of which were operational by August 1, 1987. The county's initiative in this regard represented an unprecedented achievement in governmental leadership in the face of a potentially severe solid waste crisis. As a result, the county has already implemented its contingency plan to utilize transfer stations and out-of-state disposal for a three to five year period pending the operation of the planned resource recovery facility.

While the county has acted responsibly in addressing the implementation of its short term contingency plan, it has not fully addressed the analysis of both short and long-term contingency options as set forth in my February 23, 1987 letter to all freeholder directors and county executives in the state. Paramount to these options is an analysis of long-term residual, non-processible and bypass landfilling. The county has yet to certify through the plan amendment process an absence of available in-county landfill sites, nor has it entered into an interdistrict agreement with any other New Jersey district to provide for landfilling services. In the absence of documented efforts to locate an in-county site and/or entering such agreements, the county's use of long-term out-of-state capacity is approvable beyond 1992 solely as a component of contingency planning as further addressed in Section C. 7.b. below.

In light of the above, Essex County's contingency plan is approved, but the county is ordered to resubmit a more detailed contingency analysis addressing both short and long-term plans in accordance with the guidance set forth in the attachment to my February 23, 1987 letter to County Executive Nicholas Amato. This analysis shall be submitted to the Department following a public hearing to be held within forty five (45) days of the date of this certification and in plan amendment form.

7. Long Term Solid Waste Strategy

The main component of Essex County's long term solid waste strategy is the development of a mass burn waste to energy (resource recovery) facility to be located at Blanchard Street in Newark. This is an approved part of the district plan. In addition, the county has developed a comprehensive recycling strategy including the construction of an intermediate processing facility to serve the county. The plan inclusion of these facilities was approved in prior actions by the Department. In addition to these components, the county's amendment submission has addressed other components of its long-term strategy as further noted below:

a. An Administration and Enforcement Strategy

The administration and enforcement strategy is required due to various obligations arising from the district plan, the Host Municipality Agreement, the County Service Contract, and the permit authorizing the construction and operation of the resource recovery facility.

The purpose of the administration and enforcement strategy is to ensure delivery of all acceptable waste generated within Essex County to the resource recovery facility; establish a mandatory recycling program; establish truck routing requirements for vehicles using the resource recovery facility; prevent the delivery to the resource recovery facility of hazardous waste, unacceptable waste and non-processible waste; and to require all refuse trucks using the resource recovery facility are equipped with exhaust silencers. This administration and enforcement strategy has been broken down into six sub-categories as further addressed below:

1. Registration Requirement

The county's chief mechanism for administering and enforcing the policies mentioned above in 7.a. will be a county disposal vehicle registration system. This proposed vehicle registration system is approved. However, future submissions should outline the mechanics toward the development and implementation of this registration strategy as details become available, but in no case later than the commencement of resource recovery facility operation. In addition, the county registration system shall not supercede or impede the Departmental registration requirements as contained in N.J.A.C. 7:26-3.2.

2. Specific Routes for Trucks using the Resource Recovery Facility

The specific routes for trucks using the resource recovery facility as contained on pages 55-58 of the plan amendment are approved. However, Essex County must in a subsequent plan amendment identify the specific routes from the following municipalities to Route I-280. The municipalities requiring further route identification are: Caldwell, Cedar Grove, Essex Fells, Fairfield, Montclair, North Caldwell, Verona and West Caldwell. Also, a specific route shall be identified from the municipality of South Orange to Route I-78. Essex County shall submit a revised truck route identification, in plan amendment form, following a public hearing to be held within forty five (45) days of the date of this certification.

3. Waste Flow Control

The plan amendment states that no district haulers shall deliver acceptable waste generated within the county to any other solid waste facility (other than the Essex County resource recovery facility) or resource recovery facility within or outside the borders of the State of New Jersey unless specifically directed to do so by the county consistent with the County Service Contract or the New Jersey Department of Environmental Protection. Monitoring and enforcement will be provided by regulations of the Department and Board of Public Utilities. This waste flow

control policy is approved with modification. Whereas the plan amendment only recognizes Departmental oversight of waste flow control, in actuality this oversight responsibility is shared by the Board of Public Utilities and the Department and the amendment is modified accordingly.

4. Acceptance of Waste from Outside Essex County at the Essex County Resource Recovery Facility

The plan amendment states that if excess disposal capacity exists at the resource recovery facility, beyond the needs of Essex County, REF-FUEL is permitted to take in acceptable waste from outside the county. Further, the amendment specifies that "such acceptable waste would be acceptable under additional processing contracts, which the Service Contract and Service Agreement allow under conditions that assure the county of sufficient processing capacity to meet its needs, while permitting the Port Authority and REF-FUEL to maintain the economic viability of the resource recovery facility."

This same "Out-of-County Waste Policy" was submitted by the county and certified as approved by the Department in my June 8, 1987 Certification of the county's June 3, 1987 plan amendment submission. However, the June 3 amendment was intended to address only the county's emergency transfer station project. Through subsequent discussions with county officials, it was learned that both the "Out-of-County Waste Policy" and what the Department entitled the county's "Waste Flow Policy Statement" were submitted in the June 3, 1987 plan amendment out-of-context in light of the emergency situation confronting Essex County at that time.

On April 29, 1987, the Essex County Board of Chosen Freeholders passed the amendment currently under consideration. However, the county did not submit the full plan amendment package, including the public hearing transcript, ordinance and proof of newspaper notice, until June 12, 1987. Therefore, the "Out-of-County Waste Policy" and "Waste Flow Policy Statement" components of the June 3, 1987 amendment were submitted to amend the base plan update amendment that this Certification addresses. As a result, the June 8, 1987 Certification addressed these plan components without the benefit of the entire base plan update submission and was subsequently not considered within the overall context of that document. As a result, the county's "Out-of-County Waste Policy" and "Waste Flow Policy Statement" have been reexamined in more detail as further addressed immediately below and in Section C.8. below.

While the plan amendment, as submitted, is not totally clear on the subject of out-of-county waste acceptance, the Department interprets the county's strategy to be consistent

with state law as follows: The county's overall waste flow strategy is based upon the ability of the county to control waste flow to designated facilities as was approved in the Department's June 8, 1987 certification. Further, the strategy contains three basic steps in assuring an adequate flow of solid waste, particularly to the resource recovery facility, to ensure the economic viability of the project. First, the county has directed all acceptable solid waste to the resource recovery facility from within Essex County's municipalities once the facility is operational. Second, the county's strategy calls for the entering of reciprocal interdistrict agreements with other New Jersey counties to provide additional solid waste as needed. The April 29, 1987 amendment represents the county's portion of such an interdistrict agreement and is an open invitation to all other New Jersey counties to enter into a reciprocal arrangement subject to any required state approval. Finally, should Essex County solid waste be insufficient to meet the needs of the facility, and if acceptable waste is not available from other New Jersey districts, the county proposes to allow the facility to arrange for the acceptance of waste from outside of New Jersey.

The above strategy as it relates to waste flow control and acceptance of out-of-county solid waste is approved with modifications. Once again, the position outlined in my June 8, 1987 certification of the June 3, 1987 amendment as it pertained to arrangements for the receipt of out-of-county and out-of-state waste through the entering of interdistrict agreements subject to the plan amendment submission, review and certification process remains unchanged. In addition, in a subsequent plan amendment submission, to be made prior to facility operation, the county must submit a more detailed analysis of the mechanics of utilizing such interdistrict agreements and out-of-state arrangements to secure merchant and spot market waste. In addition, a strategy for enforcing such waste flows and for notifying the Department of specifically authorized waste flow origin and destination information must accompany this more detailed analysis. Finally, it must be stated that pursuant to Condition 25 of the Certificate of Approved Registration and Engineering Design Approval for the Essex County Resource Recovery Facility, said facility is only authorized for the processing of 835 tons per unit per day, or at a heat release rate of 340,000,000 btu per hour per unit, whichever is more limiting.

5. Exclusion of Hazardous Waste and Certain Type 27 Waste at the Resource Recovery Facility.

Essex County is required, pursuant to Conditions 2. and 26. of its resource recovery facility permit, to exclude hazardous waste and certain type 27 (dry industrial) wastes from the Essex County resource recovery facility. The

policy contained in the plan amendment for the exclusion of these wastes is approved. However, Essex County is directed to periodically submit to the Department written confirmation that the components of the waste exclusion policy, and items 2. and 26. of the Certificate of Approval Registration and Engineering Design Approval for the resource recovery facility, have been carried out.

6. Exhaust Silencers

The policy requiring all vehicles using the resource recovery facility to be equipped with exhaust silencers is approved with modification. The requirement for exhaust silencers is approved, however, the policy goes on to state that all vehicles should be maintained and operated in accordance with all applicable Department of Environmental Protection standards. This statement is modified and approved as follows. All vehicles should be maintained and operated in accordance with all applicable state standards, rules, and applicable regulations.

b. Management of Process Residue From the Essex County Resource Recovery Facility

The plan amendment contains a long-term disposal strategy whereby the process residues from the Essex County resource recovery facility and bypassed waste would be contracted for disposal at out-of-state disposal facilities for the first seven (7) years of the life of the facility. This long term disposal strategy is approved with modifications.

The use of out-of-state disposal facilities for the period between 1987 through 1992 is approved. The use of out-of-state disposal facilities as the primary disposal strategy for the disposal of residue, bypass waste and non-processible waste between 1993 and 1997 is approved solely as a component of the county's contingency plan. Essex County remains obligated to further address the provision of available suitable in-county landfill disposal sites as noted in Section C. 6. above.

8. Waste Flow Policy Statement

As indicated in C.4. above, the county's "Waste Flow Policy Statement" was submitted out-of-context as part of the June 3, 1987 Essex County Plan Amendment. I had certified approval of the basic provisions of that policy in my June 8, 1987 certification of the June 3 amendment. The policy outlines the waste flow control authority of Essex County, particularly as it pertains to the direction of acceptable waste to the planned resource recovery facility. This waste flow control policy is once again approved with modification to reflect the role of the Department and Board of Public Utilities pursuant to the Solid Waste Management Act and the Interdistrict and Intradistrict Solid Waste Flow Rules.

9. Essex County Resource Recovery Investment Tax Fund Financial Plan and Disbursement Schedule

The proposed interim uses outlined in the plan amendment are in accordance with, and thereby satisfy, N.J.S.A. 13:1E-150 as they limit disbursement to reduce the rates charged to users of a resource recovery facility serving the county. Uses and a disbursement schedule for funds accrued subsequent to December 31, 1986 shall be addressed in a future amendment to the district plan. The ultimate demonstration of user rate reduction shall be the responsibility of the county. The proposed interim uses of the fund are hereby approved.

The provisions of the plan amendment concerning the allocation of activities over time as they relate to the District Resource Recovery Investment Tax Fund moneys are partially consistent with the disbursement schedule requirements of N.J.S.A. 13:1E-150. However, a methodology for identifying and allocating interest earnings on fund balances and the timing and recipients of fund disbursement must be provided. Also, the specific site identifications of the recycling facility proposed for disbursement funds must be incorporated into the district plan. Therefore, the plan amendment is modified accordingly.

The county shall satisfy these modifications through a subsequent plan amendment following a public hearing to be held within forty-five (45) days of the date of this certification.

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 Essex 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 Essex 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 Essex County and affected by the amendment contained herein shall

operate in compliance with this amendment and all other approved provisions of the Essex 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 Essex 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. Certification to Proceed with the Implementation of Plan Amendment

This document shall serve as the certification of the Commissioner of the Department of Environmental Protection to the Essex County Board of Chosen Freeholders and pursuant to N.J.S.A. 13:1E-24c. and f., the county shall proceed with the implementation of the approved amendment contained herein.

5. Definitions

For the purpose of the approval 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.

6. Effective Date of Amendment

The amendment to the Essex County District Solid Waste Management 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 of Environmental Protection pursuant to its authority under the law. The Essex 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.

8. Audit Requirements

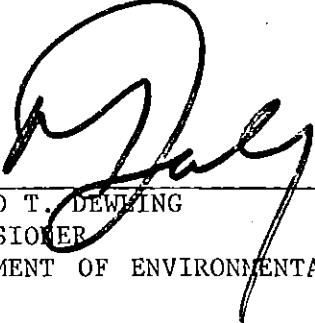
Essex County shall, by October 31 of each year in which moneys remain in its District Resource Recovery Investment Tax Fund, file an audit of the fund and any expenditures therefrom with the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs. The audit shall be conducted by an independent public accountant. A copy of the audit shall be provided to: Chief, Bureau of Solid Waste and Resource Recovery Financing, Division of Solid Waste Management, 401 East State Street, Trenton, New Jersey 08625.

E. Certification of Approval of the Amendment with Modifications 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 the amendment with modifications 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 April 29, 1987. Further, I direct the Essex County Board of Chosen Freeholders to address the modified components identified in Section C. of this certification through a subsequent plan amendment following a public hearing to be held within forty-five days of the date of this certification pursuant to N.J.S.A. 13:1E-24.

October 26, 1987

DATE



RICHARD T. DEWLING
COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ATTACHMENT I

Content and Format Criteria for District Resource Recovery Investment Tax Fund Plan Amendment Submissions, in Accordance with N.J.S.A. 13:1E-150

I. Proposed Uses

The moneys in the fund shall be disbursed only for the following purposes:

- 1) To reduce the rates charged to all users by a resource recovery facility serving the county in order to provide a gradual transition to resource recovery facility rates from sanitary landfill facility rates. A county may achieve reduction through the use of moneys in its district investment tax fund to pay directly part of the fees charged for disposal to all users of a resource recovery facility;
- 2) To design, finance, construct, operate or maintain environmentally sound state-of-the-art sanitary landfill facilities to be utilized for disposing of those solid wastes which cannot be processed by a resource recovery facility or the waste products resulting from the operation of a resource recovery facility;
- 3) To design, finance, construct, operate or maintain environmentally sound state-of-the-art sanitary landfill facilities to be utilized for disposal of those solid waste, on a long-term basis, if a county can demonstrate to the satisfaction of the department that utilization of a resource recovery facility is not feasible for disposal of the solid waste generated in that county;
- 4) To finance the closing costs for the proper closure of any terminated sanitary landfill facility located within a county whenever that county has made an investment tax rate adjustment for this purpose in accordance with the study conducted pursuant to N.J.S.A. 13:1E-146; and
- 5) To administer the investment tax fund, up to an amount not to exceed 2% of the total moneys appropriated to the fund during the fiscal year.

II. Disbursement Schedule

All disbursement schedules for District Resource Recovery Investment Tax Fund moneys shall include, but not be limited to, the following: *

- 1) Narrative which outlines the purpose, background and legislative justification of and authorization for the use of the funds;
- 2) Narrative which provides the purpose, description and objectives of the project proposed for receipt of fund moneys;
- 3) Narrative which provides specific project performance data, implementation schedules and project status;
- 4) A spread sheet or other tabular or budgetary format which provides at least the following information, over time (choice of the time interval is at the discretion of the county, but shall not be longer than annually);

- a) Initial fund balance;
- b) Additional deposits to fund based upon tax rates and projected waste generation and disposal figures, under various recycling/reduction assumptions and population/economic growth assumptions;
- c) Interest accrued on fund balance, by year;
- d) Recipients of fund moneys, by amount, by proposed use, by time interval;
- e) Use of moneys by recipients, by amount, by time interval;
- f) If available, a budget for fund disbursements.

* A model format is attached. This format is from the approved Burlington County submission and is presented as guidance and need not be strictly adhered to. The Department recognizes that the data analysis may be presented in a variety of acceptable formats. For example, the Department has received a cash flow spreadsheet format that meets the criteria. This format is available for examination by the county.

Attachment