



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL
PROTECTION

CHRISTINE TODD WHITMAN
Governor

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 DECEMBER 8, 1993
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:Le-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 (DEP or Department) 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 December 8, 1993, adopted an amendment to its approved County Plan.

The December 8, 1993 amendment outlined the County's initial strategy for addressing the State's requirements concerning source reduction, recycling and regionalization planning.

The amendment was received by the Department on March 28, 1994 and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed this amendment, and the entire County Plan, and has determined that the amendment adopted by the County Freeholders on December 8, 1993, is approved in part and rejected in part as provided in N.J.S.A. 13:1E-24. Also, longstanding deficiencies within the County Plan have been identified within Section C. of the certification. Finally, the Department is aware that the County has prepared and submitted a comprehensive draft solid waste management strategy document that addresses source reduction, recycling and regionalization planning as well as an overall disposal strategy. The Department is also aware of and encouraged by the recent agreement entered between Essex and Morris Counties for long-term use of the Essex County Resource Recovery Facility (ECRRF) and is requiring the submission of both the comprehensive strategy document and interdistrict agreement within 180 days of this certification, as noted in Section C. below.

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 December 8, 1993, 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 approved, is consistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the issue of concern relative to the December 8, 1993 amendment which is included in Section B.2 below.

In conjunction with the review of the amendment, the Department circulated copies to fifteen 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 Air Quality Management, DEP
Division of Parks and Forestry, DEP
Division of Fish, Game and Wildlife, DEP
Division of Solid Waste Management, DEP

Green Acres Program, DEP
Land Use Regulation Element, DEP
Wastewater Facilities 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
Department of the Public Advocate
U.S. Environmental Protection Agency

1. Agency Participation in the Review of the December 8, 1993 Amendment

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

Office of Air Quality Management, DEP
Division of Parks and Forestry, DEP
Division of Fish, Game and Wildlife, DEP
Green Acres Program, DEP
Wastewater Facilities Regulation Element, DEP
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
Department of Agriculture
Department of Transportation

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

Land Use Regulation Element, DEP
Department of Health
Department of Community Affairs
Department of the Public Advocate
U.S. Environmental Protection Agency

The following agency provided substantive comments as shown in Section B. of the certification document:

Division of Solid Waste Management, DEP

2. Issue of Concern Regarding the December 8, 1993 Amendment

Issue: County Response to the State Requirements Concerning Source Reduction, Recycling and Regionalization Planning.

In the Department's January 21, 1992 certification of the September 12, 1990 amendment to the County Plan, the Department initially directed the County to address the State requirements concerning source reduction, recycling and regionalization planning within 180 days or by July 21, 1992. Further, the Department's February 22, 1993, May 7, 1993 and December 10, 1993 certifications of

subsequent amendments to the County Plan noted the continued failure of the County to meet the submission date and directed the County to address these requirements in a plan amendment as soon as possible. The Department has reviewed the December 8, 1993 amendment within the context of the adopted Solid Waste Management State Plan Update: 1993-2002 and relevant State law. The following is an overview of the County's responses to the State's requirements concerning source reduction, recycling, and regionalization planning.

Source Reduction

a. Source Reduction Goals

The County does not address the State's goal for source reduction of solid waste which calls for capping the per capita generation rate for waste at 1990 levels, capping total waste generation by 1995, and reducing total waste generation by the year 2000. The County must address these source reduction goals in a subsequent plan amendment submission.

b. Waste Audits

The County plans to implement an annual mercantile registration system to gather data for a solid waste and recycling survey of all businesses and industries in Essex County. This system will require that all businesses and industries describe their waste generation, disposal and recycling activities once each year. The County will also institute an Origin and Destination (O&D) form modelled after the Department's O&D form for solid waste for all recyclable materials so that the County can maintain a current and comprehensive profile of recycling and solid waste activities by businesses and industries. The Department is concerned with each County adopting its own reporting form for recyclables. The DEP has instituted one statewide reporting system comprising the tonnage grant reporting form for recyclables and the O&D reporting form for solid waste. Therefore, such an O&D reporting system is unnecessary and will impose an additional recordkeeping burden on the regulated community. Consequently, as noted within Section C., the Department must reject the County's proposed O&D reporting system for recyclables. Additionally, the County will also develop a recordkeeping system to manage all solid waste data, and will provide the information to municipalities to be used to enforce their recycling ordinances. Finally, the County will assist businesses and industries with the preparation of waste audits. The amendment does not, however, require that waste audits be performed by each municipality or by the private sector. In a subsequent plan amendment submission, the County must develop a more comprehensive program for administering waste audits on a broader basis and in line with a specified schedule.

c. Per Container Fee System

The County does not address in the plan amendment the implementation of a per container fee system as an impetus to greater recycling and waste avoidance. The County should pursue on a pilot basis a per container fee system in at least one municipality and report such progress in a subsequent plan amendment submission.

d. Yard Waste Management

The County does not address in the amendment the implementation of a yard waste management program. In a subsequent plan amendment submission, the County should adopt a countywide yard waste management program. It should include an education component promoting the Department's "Grass - Cut It and Leave It" program as well as provide information on how to compost yard waste in residential backyards.

e. Household Hazardous Waste

The County does not provide plans for expanding existing household hazardous waste (HHW) collection programs or for developing a permanent HHW collection facility. In a subsequent plan amendment submission, the County must address plans for expanding its HHW program and developing a permanent HHW facility. In this same regard, the County is reminded that in the Department's May 7, 1993 certification of its September 9, 1992 amendment, Essex County was directed to submit by September 7, 1993 a report which outlined plans and specific timetables for the removal of materials of concern (e.g. mercury) from the incoming solid waste stream of the ECRRF. To date, this report has not been submitted. Such a submission need not be in plan amendment form.

f. Education

The County does not address the implementation of an education campaign to demonstrate to County residents how to produce less waste. In a subsequent plan amendment submission, the County should address the development of a program for encouraging solid waste source reduction.

g. Procurement

The County does not address the development of a program for encouraging county agencies, municipalities and businesses to purchase products which contain recycled material content. The County must consider adopting a recycled product procurement and waste reduction policy which will recommend that purchasing practices favor recycled products, where possible. In this regard, on April 22, 1993, P.L. 1993, Chapter 109 was enacted which establishes specific goals for the purchase of recycled paper and

allows preferential purchase of recycled nonpaper finished products for New Jersey state agencies. Also, Executive Order 91 on the procurement of recycled products was signed on May 3, 1993. The County must consider the scope of these state level programs, as well as the state's cooperative purchasing program and state distribution and support services program for recycled products, for application at the County level. Further, the County must consider programs or strategies to achieve municipal participation in the purchase of recycled products through the adoption of state and county practices. Finally, the County must provide in a subsequent plan amendment submission a schedule for the adoption and implementation of the County's recycled product procurement policy.

Recycling

a. Recycling Goals

The County has endorsed the State goal, pursuant to P.L. 1992, c. 167, of recycling 60% of the total waste stream by December 31, 1995. However, the County has not endorsed the State's requirement of recycling 50% of the municipal waste stream by December 31, 1995. The County must within a subsequent plan amendment submission provide specific tonnage targets by material to indicate achievement of both these statutory goals.

b. Designated Recyclable Materials

The County addresses the issue of expanding the list of designated recyclable materials to increase the recycling rate by indicating that mandating designated materials is not necessary and that an all inclusive approach must be used for determining the overall recycling rate. The County's rationale for adopting this approach is that historical state policy changes made in 1990 abandoned the concept of designated materials in favor of an all inclusive approach to recycling an overall 60% rate of the total waste stream. The Department does not concur with this conclusion. The DEP, in its 1991 Solid Waste Policy Guidelines, recommended that counties consider designating additional materials as part of existing separation programs and local mandatory ordinance programs. Also, P.L. 1987, c.102 required the designation of at least three materials, in addition to leaves, while P.L. 1992, c.167 required the same plus the 50% and 60% recycling rates. Therefore, it is inaccurate for the County to assume that the achievement of these recycling rates can be accomplished through an approach of requiring designated recyclables to include all recyclable materials. Finally, the DEP has developed a recycled materials tonnage credit matrix which identifies 33 separate materials which, when recycled, will count toward achievement of the 50% and 60% recycling goals. Consequently, as noted above, in a subsequent plan amendment submission the County must identify what specific materials from this list will be designated as

mandated recyclables to achieve the 50% municipal waste recycling and 60% total waste recycling rates.

c. Education

The amendment indicates that the County will work with municipalities to design an educational program to increase recycling rates although specifics regarding these County efforts are not provided. The County must provide within a subsequent plan amendment submission specifics regarding its recycling educational program.

d. Enforcement

The County acknowledges the need to increase the recycling rate of multi-family housing units as these units comprise a large percentage of the housing for county residents and would greatly impact the county's overall recycling rate. The amendment proposes that all municipalities be required to include a provision in their municipal recycling ordinances that requires owners/operators of multi-family housing units to provide for the collection and storage of recyclable materials, and that municipalities must enforce programs at the point of generation. The County is hereby reminded that a model ordinance for requiring the establishment of facilities for the collection or storage of recyclable material in all new multi-family housing developments containing three or more dwellings was prepared by the DEP and has been distributed to all municipalities. The County, through the amendment, also seeks to establish procedures for surcharging the solid waste disposal fees of those municipalities that do not enact and enforce comprehensive recycling ordinances. This surcharge will be billed on a monthly basis to these municipalities that do not enact or enforce comprehensive recycling ordinances or programs. However, the County is hereby advised that all surcharges included within the County's rate structure must be approved by the Department. Additionally, the County will test a system of notification, warning and penalties for recycling violations at the SWTR Transfer Station and the Essex County Resource Recovery Facility (ECRRF). Finally, in a subsequent plan amendment submission, the County must identify in greater detail the methods and frequency of enforcement and resources needed to implement and maintain a proper enforcement program.

Regionalization

On February 25, 1994 the Department issued an Emergency Redirection Order (ERO) to address a shortfall of solid waste to the ECRRF. The ERO directed additional solid waste from Bergen and Passaic Counties to the ECRRF for periods of 30 and 60 days, respectively, during which time a long-term waste flow agreement was to be negotiated between Essex County and some other county(ies). However, subsequent discussions between the Department and Passaic

County disclosed that the February 25, 1994 ERO would result in an undue financial hardship to Passaic County municipalities which would have to direct haul their waste to the ECRRF. Therefore, the Department issued a second ERO on March 29, 1994 which reduced the Passaic waste flow to the ECRRF and directed a portion of Hudson County's waste to the facility. The waste flows set forth in the ERO will be in effect until December 31, 1994. The Department executed the ERO to avert an economic hardship to County ratepayers and to provide Essex County the opportunity to negotiate a long-term interdistrict agreement for disposal of waste at the ECRRF with one or more New Jersey counties, thereby advancing the Department's primary public policy goal of disposal self-sufficiency. By way of the ERO and this amendment, the Department is once again reminding Essex County that it is their obligation to negotiate with other New Jersey counties to secure necessary long-term agreements to ensure that the ECRRF operates at full capacity. In this regard, the Department is aware of and encouraged by the recent agreement with Morris County which, if formally executed, would account for a majority of the ECRRF waste processing shortfall. The County is also strongly encouraged to continue negotiations to secure additional base loadings to the facility, as well as interruptible flow arrangements for periods of low generation.

Finally, the County is once again reminded of the need to also secure a long-term agreement for the in-state disposal of ash, bypass and nonprocessibles from the operation of the ECRRF. The County's continued reliance on out-of-state disposal is inconsistent with the primary public policy goal of disposal self-sufficiency. Therefore, in a subsequent plan amendment submission, the County must also identify a long-term (more than five years) interdistrict agreement with another New Jersey county to provide for the in-state disposal of this waste.

As noted within Section C. of the certification, the DEP has approved in part and rejected in part the County's responses pertaining to source reduction and recycling. Specifically, the DEP approves the County's strategy for conducting waste audits, recycling 60% of the total waste stream, designating additional mandatory recyclables, and developing recycling education and enforcement programs, but requires greater specificity for each of these tasks. However, the County has failed within the December 8, 1993 amendment to address regionalization as well as developing source reduction goals, a yard waste management program, a permanent household hazardous waste collection facility, a source reduction education program, and procurement guidelines. Therefore, Section C. notes that the County must within 180 days in a subsequent plan amendment submission provide greater specificity for those tasks which are approved as well as addressing those issues which are deficient. Finally, Section C. rejects the County's proposal to implement an O&D reporting system for recyclables.

C.

Certification of the 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 December 8, 1993 amendment to the approved County Plan and certify to the County Freeholders that the December 8, 1993 amendment is approved in part and rejected in part as further specified below.

Source Reduction, Recycling and Regionalization Planning Requirements

a. Source Reduction

The County's strategy to conduct waste audits, exclusive of implementing an O&D reporting system for recyclables, is approved. As noted within Section B., this reporting system is rejected as being unnecessary and imposing an additional recordkeeping burden on the regulated community. Also, as noted within Section B., the County must provide within 180 days in a subsequent plan amendment submission greater specificity for conducting waste audits as well as identifying its source reduction strategy relative to adopting source reduction goals, adopting a yard waste management program, developing a permanent household hazardous waste collection facility, adopting a source reduction education program, and developing a procurement program.

b. Recycling

The County's strategy to recycle 60% of the total waste stream by December 31, 1995, to designate additional mandated recyclables, and to develop recycling education and enforcement programs, is approved. However, as noted in Section B., the County must provide within 180 days in a subsequent plan amendment submission greater specificity for accomplishing these tasks as well as providing specific tonnage targets by material to indicate achievement of the statutory 50% and 60% goals.

c. Regionalization Planning

As noted in Section B., the County has not addressed the regionalization planning requirement. Therefore, within 180 days in a subsequent plan amendment submission, the County must submit its draft interdistrict agreement with Morris County and provide a report on its continuing efforts to negotiate with other New Jersey counties to secure long-term interdistrict agreements to ensure that the ECRRF operates at full capacity and that ash, bypass and nonprocessibles from the facility are landfilled in-state. Any such agreements shall be made a component of the Essex County Plan.

Finally, as noted in Section A., the County has drafted a comprehensive solid waste management strategy document that addresses source reduction, recycling, and regionalization planning as well as an overall disposal strategy. Therefore, the County is hereby directed to adopt and submit this document as an amendment within 180 days to address the above noted deficiencies.

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 Waste 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. 7:26A-1 et seq.

4. Certification to Proceed with the Implementation of the Plan 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 approved portions of the amendment 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 approved portions of the amendment to the County Plan contained herein shall take effect immediately.

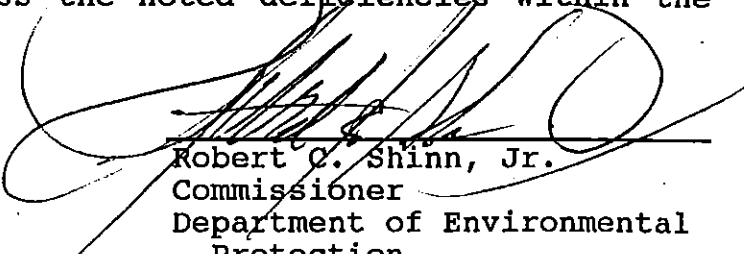
7. Reservation of Authority

Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's planning guidelines, rules, regulations, orders of the Department, 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 in Part and Rejection in Part of the Amendment and Notification of Deficiencies by the Commissioner of the Department of Environmental Protection

In accordance with the requirements of N.J.S.A. 13:1E-1 et seq., I hereby approve in part and reject in part 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 December 8, 1993. I hereby also require, as noted in Section C., the Essex County Board of Chosen Freeholders to address the noted deficiencies within the timeframe specified.

8/18/94
Date


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