

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

**CERTIFICATION
OF THE JUNE 13, 2005
AMENDMENT TO THE PASSAIC 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 (now known as the New Jersey Meadowlands Commission) develop comprehensive plans for waste management in their respective districts. On August 13, 1980, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Passaic County District Solid Waste Management Plan (County Plan).

The Act requires that all district plans be based on and accompanied by a report detailing the existing waste disposal situation in the district, and a plan which includes the strategy to be followed by the district in meeting the solid waste management needs of the district for a ten-year planning period. The report must detail the current and projected waste generation for the district, inventory and appraise all facilities in the district, and analyze the waste collection and transportation systems which serve the district. The disposal strategy must include the maximum practicable use of resource recovery techniques. In addition to this strategy, the plan must designate sufficient available suitable sites for the disposal of the district's waste for a ten-year period.

The Act further provides that a district may review its County Plan at any time and, if found inadequate, a new County Plan must be adopted. The Passaic County Board of Chosen Freeholders (County Freeholders) completed such a review and on June 13, 2005 adopted an amendment to its approved County Plan. The June 13, 2005 amendment proposes County Plan inclusion of an exemption from the County's Blanket Inclusion Policy for Vegetative Waste Composting Facilities for those governmental entities owning large tracts of heavily forested

lands who but for their governmental status might qualify as State-approved farmland and who wish to compost vegetative waste in excess of 1,000 cubic yards but equal to or less than 10,000 cubic yards.

The amendment was considered administratively complete for review by the Department on September 22, 2005 and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed this amendment, and has determined that the amendment adopted by the County Freeholders on June 13, 2005 is remanded as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the June 13, 2005 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 the amendment is inconsistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the elements relative to the June 13, 2005 amendment which are included below.

In conjunction with the review of the amendment, 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. All agencies contacted are as follows:

Division of County Environmental and Waste Enforcement, DEP
Division of Water Quality, DEP
Division of Parks and Forestry, DEP
Division of Fish and Wildlife, DEP
Solid and Hazardous Waste Management Program, DEP
Green Acres Program, DEP
Land Use Regulation Program, DEP
Office of Local Environmental Management, DEP
Office of Air Quality Management, DEP
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
Department of Transportation
Department of Community Affairs
Department of Agriculture
Department of Health and Senior Services
U.S. Environmental Protection Agency

Elements of the June 13, 2005 Amendment

Element: Blanket Inclusion Policy for Vegetative Waste Compost Facilities

On February 15, 1995, the County adopted an amendment to include the County's Blanket Inclusion Policy for Vegetative Waste Compost Facilities (Blanket Inclusion Policy) in the County Plan. This policy was restricted to any new vegetative waste compost facility with an annual capacity of less than 1,000 cubic yards, or up to 20,000 cubic yards for State-approved farm land for leaf land application or composting. The stated purpose of the February 15, 1995 amendment to the County Plan was to "encourage and facilitate the development of certain vegetative waste compost facilities by curtailing some of the more complicated and time consuming aspects of the County Plan process". The Department certified the amendment as approved on July 13, 1995.

The June 13, 2005 amendment proposes County Plan inclusion of an exemption from the County's Blanket Inclusion Policy for those governmental entities owning large tracts of heavily forested lands who but for their governmental status might qualify as State-approved farmland and who wish to compost vegetative waste in excess of 1,000 cubic yards but equal to or less than 10,000 cubic yards.

Element: Exemptions

Regulations at N.J.A.C. 7:26A-1.4 et seq. currently identify 22 recycling activities which are exempted from the requirement to obtain a general or limited approval pursuant to N.J.A.C. 7:26A-3 and, unless otherwise specified, the solid waste planning requirements at N.J.A.C. 7:26-6.10 or 6.11 provided that certain criteria are met. Yard trimmings receipt, processing, and composting as described at N.J.A.C. 7:26A-1.4(a)13 is the only one of the 22 above referenced exempt recycling activities that must be included in the solid waste management plan of the solid waste management district within which the facility is to be located prior to commencement of the exempt activity.

N.J.A.C. 7:26A-1.4(a)13v. specifically notes that the inclusion of such a facility can be accomplished by administrative action pursuant to N.J.A.C. 7:26-6.11. This policy was developed by the Department to encourage and facilitate the development and operation of smaller vegetative composting facilities, each allowed to receive, process, and compost up to 10,000 cubic yards of yard trimmings. This policy, however, is not intended to subrogate the district solid waste management process and a board of chosen freeholders or the New Jersey Meadowlands Commission, in its discretion, may hold a public hearing prior to the adoption of any administrative district solid waste plan action.

Element: North Jersey District Water Supply Commission Exempt Vegetative Waste Composting Facility

The June 13, 2005 amendment to the County Plan notes that the proposed exemption from the Blanket Inclusion Policy is based on the request by the North Jersey District Water Supply Commission (NJDWSC) for County Plan inclusion of a leaf composting facility to be located on Block 106, Lot 1 at One F.A. Orechio Drive in the Borough of Wanaque. This facility, which proposed to operate pursuant to the exemption at N.J.A.C. 7:26A-1.4(a)13, was approved as an administrative action by the Department on December 12, 2005.

Element: Lack of Enforceability of the June 13, 2005 Plan Amendment

The New Jersey Division of Law (DOL) submitted comments regarding the exemption from the County's Blanket Inclusion Policy for those governmental entities owning large tracts of heavily forested lands who but for their governmental status might qualify as State-approved farmland and who wish to compost vegetative waste in excess of 1,000 cubic yards but equal to or less than 10,000 cubic yards.

Specifically, the DOL and the Department's Solid and Hazardous Waste Management Program, Bureau of Recycling and Planning, notes that the subject plan amendment employs terms that are not quantifiable and thus are not enforceable. The terms "large tracts" and "heavily forested lands" leave room for interpretation by potential applicants to the County for County Plan inclusion that a solid waste planning body must avoid when formulating their county plan.

C. Certification of the Passaic 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 county solid waste management plans, I have reviewed the June 13, 2005 amendment to the approved County Plan and certify to the County Freeholders that the June 13, 2005 amendment is remanded as further specified below.

The June 13, 2005 amendment proposing County Plan inclusion of an exemption from the County's Blanket Inclusion Policy for Vegetative Waste Composting Facilities for those governmental entities owning large tracts of heavily forested lands who but for their governmental status might qualify as State-approved farmland and who wish to compost vegetative waste in excess of 1,000 cubic yards but equal to or less than 10,000 cubic yards is remanded to the County for further clarification of the proposed exemption. However, this remand of the exemption from the County's Blanket Inclusion Policy does not negate the County Plan inclusion of the NJDWSC Compost Facility, approved as an administrative action by the Department on December 12, 2005.

D. Other Provisions Affecting the Plan Amendment**1. Contracts**

Any contract renewal or new contract for solid waste collection or disposal which is inconsistent with this amendment to the County Plan and which was executed prior to the approval of this amendment and subsequent to the effective date of the Solid Waste Management Act (July 29, 1977), and which shall further be for a term in excess of one year, shall immediately be renegotiated in order to bring same into conformance with the terms and provisions herein set forth. Any solid waste collection operation or disposal facility registered by the Department and operating pursuant to a contract as herein described, shall be deemed to be in violation of this amendment and of the County Plan if such renegotiation is not completed within ninety (90) days of the effective date of this amendment provided, however, that any such registrant may, upon application to the Department, and for good cause shown, obtain an extension of time to complete such renegotiation.

2. Compliance

All solid waste facility operators and transporters registered with the Department and operating within the County and affected by the amendment contained herein shall operate in compliance with this amendment and all other approved provisions of the County Plan. Any facility operator or transporter who fails to comply with the provisions contained herein shall be deemed to be in violation of N.J.S.A. 13:1E-1 et seq., in violation of N.J.A.C. 7:26-1 et seq., and in violation of their registration to operate a solid waste facility or a collection system issued thereunder by the Department and shall be subject to the provisions and penalties of N.J.S.A. 13:1E-9 and 12 and all other applicable laws.

3. Types of Solid Wastes Covered by the County 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 including waste types 10, 13, 23, 25, and 27 and all applicable subcategories and shall not apply to liquid and hazardous wastes. All nonhazardous materials separated at the point of generation for sale or reuse are subject to regulation in accordance with N.J.A.C. 7:26A-1 et seq.

4. Certification to Proceed with Implementation of 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 Freeholders shall proceed with the implementation of the approved components 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 Amendment

The approved components 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, and also includes the compilation of individual district plans and amendments as they are approved.

E. Certification of Approval of the Amendment by the Commissioner of the Department of Environmental Protection

In accordance with the requirements of N.J.S.A. 13:1E-1 et seq., I hereby remand the amendment, as outlined in Section C. of this certification, to the Passaic County District Solid Waste Management Plan which was adopted by the Passaic County Board of Chosen Freeholders on June 13, 2005.

January 6, 2006

Date

Bradley M. Campbell, Commissioner
Department of Environmental Protection