



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection

Robert C. Shinn, Jr.
Commissioner

Office of the Commissioner
P.O. Box 402
Trenton, NJ 08625-0402
Tel. # 609-292-2885
Fax. # 609-292-7695

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

**CERTIFICATION
OF THE JANUARY 12, 2000
AMENDMENT TO THE WARREN 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 (HMDC) develop comprehensive plans for waste management in their respective districts. On October 16, 1981, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Warren 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 Warren County Board of Chosen Freeholders (County Freeholders) completed such a review and on January 12, 2000, adopted an amendment to its approved County Plan. The January 12, 2000 amendment proposes: additional

designated recyclable materials; a new recycling center for Class A materials; and revised solid waste disposal and financing strategies.

The amendment was considered administratively complete for review by the Department on January 31, 2000 and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed this amendment and has determined that the amendment adopted by the County Freeholders on January 12, 2000 is approved in part and rejected in part as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the January 12, 2000 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 approved components of this plan amendment are consistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the issues of concern relative to the January 12, 2000 amendment which are 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. All agencies contacted are as follows:

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

1. Agency Participation in the Review of the January 12, 2000 Amendment

The following agencies did not object to the proposed amendment:

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

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

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

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

Division of Solid and Hazardous Waste, DEP
Division of Compliance and Enforcement, DEP

2. Issues of Concern Regarding the January 12, 2000 Amendment

Issue: Designation of Additional Recyclable Materials

Newly designated recycling materials have been proposed to be included within the County Plan. The County's revised list of mandated materials to be recycled by all residential, commercial, institutional, and industrial waste generators is as follows:

Container glass (clear, green and brown)
Aluminum cans
Steel cans
Plastic bottles (PET and HDPE)
Newsprint
Magazines and mixed paper
Corrugated cardboard
High grade office paper (white)
Computer paper *
White goods
Waste oil
Tires
Textiles

Leaves and yard waste
Scrap metal (including junked autos)
Automotive batteries (lead acid)
Household batteries
Construction and demolition waste comprising metal, concrete bricks, and non-treated wood
Latex paint
Asphalt and concrete pavement
Computers *
Polycoated materials (If accepted by the PCFA) *
Laser and inkjet cartridges *
Fluorescent tubes *
Carpet *

* Newly added materials

Within Section C. of the certification this component of the January 12, 2000 amendment is approved.

Issue: Newly Designated Class A Recycling Center

The amendment identifies in tabular form the recycling centers for Class A materials currently operating within the County. A review of DEP's files indicates that one facility, Sanico's Harmony Township site, was not previously included within the County Plan. Therefore, within Section C. of the certification, this facility is formally included within the County Plan.

Issue: Revised Solid Waste Disposal/Financing Strategy

Prior to the Atlantic Coast court decision [Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic et al., 112 F.3d 652 (3rd Cir. 1997) cert denied November 10, 1997] Warren County had developed a comprehensive solid waste disposal strategy. This strategy designated the Pollution Control Financing Authority (PCFA) of Warren County as the implementing agency for the County Plan which comprises recycling, and utilization of the Warren County Resource Recovery Facility (RRF), with associated interdistrict agreements with Hunterdon and Somerset Counties, and the Warren County District Landfill (WCDL).

In response to the Atlantic Coast decision which declared New Jersey's historic system of solid waste flow control unconstitutional, the PCFA has reduced the tip fees at both the RRF and WCDL to compete in a free marketplace. However, with the reduction in tip fees, revenues continue to be insufficient to provide both operating and bond debt service for these two facilities. The RRF, which began operations in July 1988, provides solid waste disposal services based on an operating contract through the year 2008. Ash from the RRF, disposal needs arising from downtime at the RRF, and materials that must bypass the RRF are deposited at the WCDL. The WCDL was designed to serve the disposal needs of Warren County residents for at least 20

years.

The PCFA is seeking permission from the DEP to expand the landfill vertically by 50 feet. This expansion would increase its capacity by 85% which is not consistent with the County Plan (as stated within the January 12, 2000 amendment). Also, the RRF operator has applied to the DEP for a capacity expansion for the RRF. Both capacity expansions will significantly increase the potential revenue supply to each facility. In order to meet budgetary obligations, the PCFA has significantly increased the quantity of waste delivered to the WCDL. The quantity of waste delivered to the RRF can not be increased without a permit modification issued by the DEP.

In June 1997, the PCFA presented three options to pay its solid waste debt comprising: (1) increasing permitted capacity at the RRF by 100 tons per day; (2) importing ash from other incinerators; and (3) imposing a tax on Warren County residents to pay-off stranded debt. On August 7, 1997, the Warren County Solid Waste Advisory Council (SWAC) advised the County Freeholders of its opposition to all three options. On September 10, 1997, the County Freeholders adopted a resolution supporting the SWAC's recommendations and opposing all three options. This resolution stated that increasing throughput capacity at the RRF and importing ash for disposal at the WCDL could have detrimental environmental impacts and reduce the life of the landfill from 2042 to 2020, thereby creating the need to site another landfill earlier.

In February 1999, the PCFA filed with the DEP for a permit renewal and modification to continue operating the WCDL and to expand the WCDL by 50 feet vertically, respectively. The County Freeholders have determined that a plan amendment is necessary to provide for this vertical expansion and, as of the date of adoption of the January 12, 2000 amendment, the PCFA had not petitioned the County Freeholders for adoption of said amendment. (It must be noted that soon-to-be-proposed regulations by the DEP will require plan amendments for substantive vertical or lateral landfill expansions). Within the January 12, 2000 amendment, the County Freeholders proposed limits on the amount of waste to be delivered to the WCDL to meet the objectives of the County Plan (i.e., that the WCDL is available to ensure long-term disposal needs for Warren County's solid waste). These limits stipulate that the WCDL will accept all ash output of the RRF and bypass and nonprocessable waste up to 90,000 tons per year with a daily limit of 640 tons.

The January 12, 2000 amendment inadequately addresses the financing and disposal strategies Warren County must develop in response to the Atlantic Coast decision. The amendment, after acknowledging that the PCFA is unable to pay-off its outstanding debt but rejecting the options proposed by the PCFA to address its debt obligations, states that "The statewide solid waste system needs a statewide solution." Further, the amendment states "It is the position of the County that the State of New Jersey has the obligation to provide sufficient financial assistance to the PCFA to continue with the County's plan as outlined. The State of New Jersey should abandon its insistence that a condition of such aid be the increased throughput of facilities in the county and the resultant abandonment of long-term plans." Finally, the amendment states "...that the law protects the County from PCFA's failure to meet its financial obligations..."

A May 12, 2000 opinion of the Appellate Division has rejected similar arguments put forth by Camden County in an amendment adopted in 1997 absolving that county of its debt responsibilities and obligating the State to pay for incurred solid waste debt. Specifically, in IMO Certain Amendments to the Adopted and Approved Solid Waste Management Plan of the Camden County Solid Waste Management District, Appellate Division, Docket Nos. A-2411-97T2 and A-7274-97T3, the Court required Camden County to undertake specific, substantive planning for the means of financing that county's solid waste system, despite the fact that the county may not be responsible for the debt service incurred by its pollution control financing authority. The Department has received clear guidance from the Court in that matter to reject and remand that portion of the Camden County plan amendment which called for a statewide solution paid for by the State. The Department can do no less in this instance. Therefore, within Section C. of this certification, the strategy of obligating the State to finance Warren County's solid waste debt is rejected and remanded to the County for reconsideration and readoption. A revised financing strategy containing a comprehensive plan for addressing all debt obligations of the County's existing solid waste disposal facilities must be adopted in response to the Atlantic Coast decision and submitted to the Department for review within 180 days of the date of this certification.

Concerning the revised disposal strategy, Section C. of this certification approves in part and rejects in part this strategy. Specifically, the strategy of allowing both the RRF and WCDL to operate as market participants, consistent with the parameters specified within their respective DEP permits, is approved. However, the strategy of imposing limits on the amount of waste accepted for disposal at the WCDL is rejected. The Department rejects any strategy which limits the PCFA's use of its permitted landfill capacity to address its debt obligations.

Finally, the Department notes that the State has established means for assisting Warren County including (1) participation in an audit program which in turn allowed Warren County to receive a subsidy for debt service (a payment of \$1,021,434 was made by the State to Warren County on November 30, 1999) from a fund created by the Appropriations Act and (2) receipt of \$8,550,000 in loan forgiveness for State loans as approved at the November 3, 1998 general election. Warren County, however, remains statutorily obligated in the first instance to articulate a financial plan for financing the County solid waste plan which it has set forth.

Issue: Revised Service Agreement

The PCFA financed the acquisition, design, construction, and installation of the RRF through the issuance of a series of Resource Recovery Project Revenue Bonds. Under a financing agreement with Warren Energy Resource Company, L.P. (WERC), debt service on these bonds is being paid by WERC. To finance the WCDL, the PCFA issued a series of Landfill Revenue Bonds. Debt service on these bonds is paid from the tipping fees charged at the RRF and WCDL. The January 12, 2000 amendment notes that the PCFA is negotiating a restructured agreement for the RRF with WERC and the State of New Jersey. Under the PCFA's proposed new service agreement (previously approved by the DEP pursuant to the "McEnroe Act" found at N.J.S.A.

13:1E-136 et seq.) with WERC, additional capital funding for RRF facilities/programs will be the responsibility of WERC. This proposed restructured agreement is designed to allow the RRF and the WCDL to function in the free market environment that has emerged since the Atlantic Coast decision. Although the amendment does not provide details concerning the restructured service agreement, the purpose and concept for restructuring this agreement is a DEP approvable action. However, formal approval of same must be accomplished through a "McEnroe filing" with the Department. Additionally, pursuant to N.J.S.A. 13:1E-163(a), this revised service agreement must be consistent with the district solid waste management plan. Said consistency may be accomplished as an administrative action pursuant to N.J.A.C. 7:26-6-11(b)10. Therefore, in the absence of a submitted administrative action, Section C. of the certification takes no position relative to this proposed restructured service agreement.

Issue: Validity of Interdistrict Agreements

Under its historic waste flow plan, the PCFA had entered into agreements (interdistrict agreements) with Hunterdon County and Somerset County for the delivery of waste to the RRF. The January 12, 2000 amendment states that "The PCFA and the County maintain that the agreements are still valid contracts and that shipments from both counties must be honored." The Department notes that a recent court decision, Pollution Control Financing Authority of Warren County v. County of Somerset, 324 N.J. Super. 391 (App. Div. 1999) affirmed a summary judgment decision which held the agreements to be invalid. Therefore, within Section C. of this certification that portion of the amendment which relies on the incorrect premise that these contracts are valid is rejected.

Issue: Consistency with the County Environmental Health Act (CEHA) Work Plan for Warren County

The DEP's Division of Solid and Hazardous Waste, Compliance and Enforcement Program, commented that the January 12, 2000 amendment was inconsistent with the CEHA work plan for Warren County due to the County's failure to include any description of the relationship between the Warren County Health Department and the PCFA, the former of which is authorized under CEHA to conduct inspections/investigations and initiate enforcement. The Warren County Health Department is responsible for overseeing the solid waste enforcement activities of the PCFA and works with Warren County counsel to initiate actions in court.

The Division of Solid and Hazardous Waste, Compliance and Enforcement Program, recommends that a copy of the interlocal service agreement between the Warren County Department of Health and the PCFA be appended to the County Plan and made a part thereof. It is also recommended that the County Plan append the applicable section of the Warren County CEHA solid waste work plan, since this document describes the roles and responsibilities of each agency as well as the enforcement process in sufficient detail. The CEHA work plan also states that the Warren County Health Department is responsible for inspecting solid waste facilities throughout Warren County, which is currently absent in the County Plan.

The Department notes that there is no requirement to outline a county's enforcement strategy in the county plan. However, the January 12, 2000 amendment does outline certain aspects of an enforcement program in various portions of the document. Therefore, the Department is modifying its standard language within Section D.7. of this certification to clarify that the January 12, 2000 amendment will be read to be consistent with all existing Department documents including CEHA agreements.

Issue: Regulated Medical Waste Disposal

The January 12, 2000 amendment briefly addresses the disposal of regulated medical waste (RMW) generated from within Warren County. Specifically, "It is the plan of Warren County that RMW generators shall dispose of RMW outside of Warren County." The Department responds to this policy statement by noting that, although there are no permitted RMW disposal facilities operating within the County, such policy may not be construed to be a permanent prohibition on the siting and development of any RMW disposal facilities within Warren County. Therefore, Section C. of the certification takes no position relative to this RMW policy. If such facility is proposed for the County, the County Freeholders must consider said application on the basis of its merits.

C. Certification of the Warren 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 January 12, 2000 amendment to the approved County Plan and certify to the County Freeholders that the January 12, 2000 amendment is approved in part and rejected in part as further specified below.

The County Plan inclusion of the newly designated recycling materials listed in Section B. of this certification is approved.

The County Plan inclusion of the Sanico, Inc. Class A recycling center located on Block 8, Lot 15 in Harmony Township is approved.

The County Plan inclusion of a revised financing strategy of obligating the State to finance Warren County's solid waste debt is rejected and remanded for reconsideration and readoption. As noted within Section B. of this certification, Warren County is statutorily obligated to articulate a financial plan for financing the County solid waste plan which it has implemented. A revised financing strategy containing a comprehensive plan for addressing all debt obligations of the County's existing solid waste disposal facilities must be adopted in response to the Atlantic Coast decision and submitted to the Department for review within 180 days of the date of this certification.

The County Plan inclusion of a revised disposal strategy is approved in part and rejected in part. Specifically, as noted in Section B., the strategy of allowing the RRF and the WCDL to operate

as market participants in response to the Atlantic Coast decision is approved. However, the strategy of imposing limits on the amount of waste accepted for disposal at the WCDL is rejected since it restricts the ability of the PCFA to address its debt obligations.

The County Plan inclusion of the statement which maintains that the interdistrict agreements the PCFA entered into with Hunterdon County and Somerset County are valid is rejected based upon the recent court decision, Pollution Control Financing Authority of Warren County v. County of Somerset.

The Department notes that nothing contained herein shall be construed to be a tacit approval of other policies identified by Warren County within the January 12, 2000 amendment which are not specifically addressed within 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 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

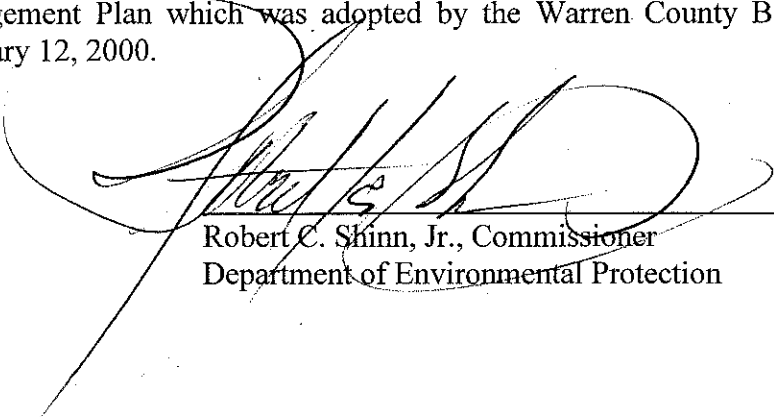
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's planning guidelines, rules, regulations, orders of the Department, CEHA interagency agreement, Warren County Environmental Health work program, CEHA grant agreement(s), and also includes the compilation of individual district plans and amendments as they are approved.

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

In accordance with the requirements of N.J.S.A. 13:1E-1 et seq., I hereby approve in part and reject in part the amendment, as outlined in Section C. of this certification, to the Warren County District Solid Waste Management Plan which was adopted by the Warren County Board of Chosen Freeholders on January 12, 2000.

Date

6/28/00


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