



## State of New Jersey

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

CERTIFICATION  
OF THE APRIL 28, 1998  
AMENDMENT TO THE CAPE MAY 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 February 4, 1981, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Cape May 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 Cape May County Board of Chosen Freeholders (County Freeholders) completed such a review and on April 28, 1998, adopted

an amendment to its approved County Plan.

The amendment represents the County's supplemental response to the May 1, 1997 decision of the United States Court of Appeals for the Third Circuit which declared unconstitutional New Jersey's historic system of solid waste flow control. [See Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County et al. 112 F.3d 652 (3d Cir. 1997, cert. den., November 10, 1997.)] Specifically, each solid waste management district must reevaluate its solid waste disposal strategy in light of this recent court decision and, if necessary, initiate appropriate amendments thereto.

In general, the Department refers the County to the solid waste regulations at N.J.A.C. 7:26-1 et seq. to the extent they relate to specific procedural and substantive issues addressed in this and subsequent plan amendments. In addition, this certification is in no way intended by the DEP to represent a legal determination regarding the effect of the Atlantic Coast decision on any specific contract between public and/or private parties.

The April 28, 1998 amendment proposes an alternative strategy to the collection of an Environmental Investment Charge (EIC) through mandatory in-district weighing. The strategy adopted by the County proposes that all Cape May County generated solid waste not disposed of at the Cape May County Municipal Utilities Authority (CMCMUA) Landfill shall be transported to one of six out-of-district facilities for weighing and recordkeeping prior to disposal. These facilities will then provide the CMCMUA with customer specific data for billing and collection of the EIC.

The amendment was received by the Department on May 8, 1998, 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 April 28, 1998 is approved as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the April 28, 1998 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 is consistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the issues of concern relative to the April 28, 1998 amendment which are included in Section B.2. below.

In conjunction with the review of the amendment, the Department circulated copies to sixteen federal and state 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 Parks and Forestry, DEP  
Division of Fish, Game and Wildlife, DEP  
Division of Compliance and Enforcement, DEP  
Division of Solid and Hazardous Waste, DEP  
Division of Water Quality, 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  
Department of Transportation  
Department of Community Affairs  
U.S. Environmental Protection Agency  
Pinelands Commission

1. Agency Participation in the Review of the April 28, 1998 Amendment

The following agencies did not object to the proposed amendment:

Division of Parks and Forestry, DEP  
Division of Compliance and Enforcement, DEP  
Division of Water Quality, DEP  
Green Acres Program, DEP  
New Jersey Turnpike Authority  
Department of Agriculture  
Department of Transportation  
Department of Community Affairs  
Pinelands Commission

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

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

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

Division of Solid and Hazardous Waste, DEP

## 2. Issues of Concern Regarding the April 28, 1998 Amendment

### **Issue: Previously Adopted Atlantic Coast Amendment**

On October 2, 1997, the County adopted an amendment which represented its initial response to the Atlantic Coast decision. This amendment, among other things, required that all solid waste generated within Cape May County be weighed at one of two designated weigh stations for the collection of an EIC prior to disposal. The Department, in its certification of November 10, 1997, approved with modification this component of the amendment. Specifically, pursuant to N.J.A.C. 7:26-6.10(b)2., such in-district weighing is restricted to a 6 month period and requires the submission of a subsequent plan amendment which identifies a long-term strategy for the collection of outstanding debt that examines reasonable available alternatives. Following the submission of this amendment, the County may continue to collect any charges through mandatory in-district weighing pending the Department's review of the alternative method of collection. The April 28, 1998 amendment responds to the Department's November 10, 1997 directive by proposing a long-term strategy for the collection of outstanding debt that examines reasonable available alternatives.

### **Issue: Available Alternative Strategies**

In response to the November 10, 1997 DEP directive, the County has examined within the April 28, 1998 amendment several alternatives to mandatory in-district weighing. These alternatives are as follows:

#### County Taxes

Although this alternative would appear to be the most convenient and direct method of allocating and collecting funds to repay the CMCMUA's debt, there is little or no correlation between solid waste generation and property values used for tax assessment. The County has a highly variable seasonal population with a total year-round population of about 100,000 persons which increases to more than 600,000 persons during the peak summer season. Also, while certain municipalities are relatively stable year-round, other towns experience a 10 fold increase in population. Not only would the allocation of cost through the county tax base be inequitable, this disparity is further compounded by the fact that residential property values represent 82% of the County's total equalized assessment but residential properties only generate 50% of the County's total solid waste requiring disposal. Therefore, the alternative strategy of utilizing county taxes to repay the CMCMUA debt is inequitable and, consequently, unacceptable.

#### Direct Billing to Municipalities Based on Historical Tonnage

Under this alternative, each municipality would be charged its

proportionate share of outstanding CMCMUA debt based upon historical tonnage records. Although this approach would address the disparity between total solid waste generation by a town compared to a municipality's tax rateable base, it would not address the significant cost burden on residential property owners as a result of the difference between residential waste generation and assessed property values for residential properties. As noted above, residential property values represent 82% of the County's total equalized assessment but residential properties only generate 50% of the County's total solid waste requiring disposal. As a result, residential property owners would be repaying a disproportionate share of debt thus subsidizing commercial property owners. Therefore, since direct billing represents an inequitable strategy, this alternative is also unacceptable.

#### Direct Billing to Municipalities and Commercial Establishments

This alternative would charge each municipality its proportionate share of the total outstanding CMCMUA debt based upon historical tonnage records for disposal deliveries made by or on behalf of the municipality. The remaining privately collected portion of the municipality's solid waste generation would be allocated to each commercial solid waste generator within the municipality through direct billing. However, such generation varies significantly among commercial businesses and neither the DEP nor the CMCMUA compile data regarding the actual waste generation of businesses within Cape May County. Consequently, direct billing to commercial businesses would be based upon estimates. To further complicate this theoretical assessment is the realization that many of the commercial establishments within the County operate on a seasonal basis with significant variations in solid waste generation. Therefore, direct billing to commercial establishments within the County is considered an impractical strategy.

#### In-District Weighing

Since November 11, 1997, the CMCMUA has implemented its mandatory in-district weighing requirement. Specifically, all solid waste generated within Cape May County must be weighed at one of two CMCMUA weighing stations (or an approved in-district alternative weighing facility). These two in-district weighing facilities are the CMCMUA Transfer Station located in Burleigh (Middle Township) and the CMCMUA Landfill in Woodbine Borough. Transporters also have the option of tipping waste at the Burleigh Transfer Station for ultimate disposal at the CMCMUA Landfill or disposal at the CMCMUA Landfill following weighing. The effectiveness of this debt collection strategy is demonstrated by the fact that there is no evidence of a reduction in the actual quantity of solid waste disposed at the CMCMUA Landfill since November 11, 1997. However, the requirements of N.J.A.C. 7:26-6.10(b)2. preclude the CMCMUA from continuing with this EIC collection strategy.

**Issue: Selected Alternative Strategy**

Cognizant of the fact that while mandatory in-district weighing has effectively worked but is regulatorily prohibited from continuing, the April 28, 1998 amendment proposes that all solid waste generated from within Cape May County but not disposed of at the CMCMUA Landfill shall be weighed (with the option of disposal) at the scales of one of the following publicly owned out-of-district located facilities:

- \*Atlantic County Utilities Authority Solid Waste Complex located in Pleasantville, Atlantic County
- \*Burlington County Landfill located in Florence Township, Burlington County
- \*Camden County Pollution Control Financing Authority Landfill located in Pennsauken Township, Camden County
- \*Cumberland County Improvement Authority Landfill located in Deerfield Township, Cumberland County
- \*Gloucester County Improvement Authority Landfill located in South Harrison Township, Gloucester County
- \*Salem County Utilities Authority Landfill located in Alloway Township, Salem County

Additional out-of-district weighing facilities may be included within the County Plan. The Department has received copies of letters from management of each of these six facilities acknowledging that they agree to weigh and record customer specific data. Upon receipt of this data, the CMCMUA will utilize this information for billing and collection of the EIC.

In addition to these out-of-district facilities, transporters continue to have the option of voluntarily utilizing the previously designated in-district weighing facilities (the CMCMUA Transfer Station in Burleigh and the CMCMUA Landfill), or tipping waste at the Burleigh Transfer Station for ultimate disposal at the CMCMUA Landfill, or disposal at the CMCMUA Landfill following weighing.

The County asserts that allocating the cost for repayment of outstanding CMCMUA debt is most efficiently and equitably accomplished based on actual solid waste tonnage weighed and recorded at a County approved weighing facility. Since mandatory in-district weighing is precluded from continuing by DEP regulations, the County considers out-of-district weighing to be a logical extension and permissible method to continue to collect the EIC.

The Department has reviewed the weighing strategy proposed within the April 28, 1998 amendment and the rationale for excluding alternative strategies. Since the adopted strategy does not conflict with DEP regulations and affords the regulated community sufficient locations to weigh Cape May County generated solid waste for the collection of an EIC, within Section C. of this

certification the out-of-district weighing strategy is approved.

**Issue: Pending Litigation**

While the Department was reviewing the April 28, 1998 amendment, a June 18, 1998 letter was received submitted by the National Solid Waste Management Association, the Waste Management Association of New Jersey, BFI Waste Systems of New Jersey, Inc., Super Kwik, Inc., USA Waste of New Jersey, Inc., and Waste Management of New Jersey, Inc. The letter opposed the amendment and noted that the signatories were plaintiffs in several lawsuits which challenge the legality of efforts by various counties and their authorities to impose EICs and mandate in-district weighing as a means of assessing EICs. The letter concluded by noting that "We seek a legislative solution that will address the legitimate needs of counties while at the same time ensuring that the State makes a full and complete transition to a free market system in solid waste management." The Department acknowledges these comments, notes that this certification is subject to whatever final decisions are issued in the numerous legal challenges to the imposition of EICs, and also supports a comprehensive legislative solution to the problems resulting from the loss of flow control in New Jersey.

**C. Certification of the Cape May 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 April 28, 1998 amendment to the approved County Plan and certify to the County Freeholders that the April 28, 1998 amendment is approved as further specified below.

The County Plan inclusion of the requirement that all solid waste generated within Cape May County but not disposed of at the CMCMUA Landfill shall be transported to one of six out-of-district facilities (as identified within Section B.2.) for weighing and recordkeeping prior to disposal for billing and collection of the EIC by the CMCMUA is approved. Transporters continue to have the option of voluntarily utilizing the previously designated in-district weighing facilities (the CMCMUA Transfer Station in Burleigh and the CMCMUA Landfill), or tipping waste at the Burleigh Transfer Station for ultimate disposal at the CMCMUA Landfill, or disposal at the CMCMUA Landfill following weighing.

**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 this certification 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 District Solid Waste Management Plan**

The provisions of the District 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 waste. All nonhazardous materials separated at the point of generation for sale or reuse are subject to regulation pursuant to N.J.A.C. 7:26A-1 et seq.

## **4. Certification to Proceed with 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 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 amendment to the County Plan contained herein shall take effect immediately.

7. Reservation of Authority

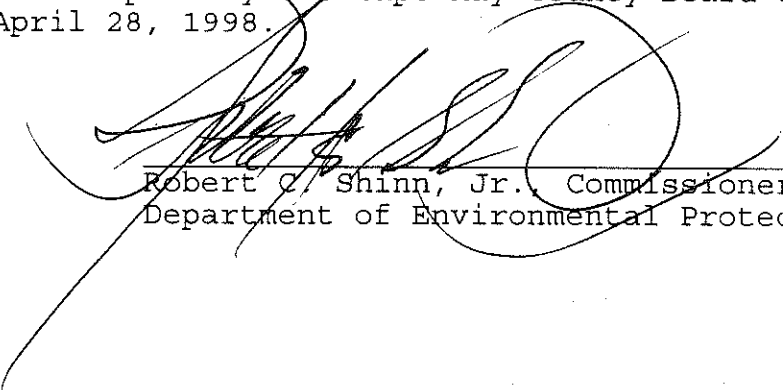
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's 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 approve the amendment, as outlined in Section C. of this certification, to the Cape May County District Solid Waste Management Plan which was adopted by the Cape May County Board of Chosen Freeholders on April 28, 1998.

Date

10/5/98

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

