



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection

Robert C. Shinn, Jr.
Commissioner

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 JULY 11, 1995
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, 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 Cape May County Board of Chosen Freeholders (County Freeholders) completed such a review and on July 11, 1995, adopted an amendment to its approved County Plan.

As adopted, the amendment would provide for an increase in both the daily and weekly tonnage capacities for material accepted at the existing Action Supply, Inc. recycling center for Class B material located in Upper Township, Cape May County while maintaining the overall yearly tonnage at the currently approved level. This adjustment would allow for daily and weekly fluctuations in the amount of material received at the facility.

The amendment was received by the Department on July 21, 1995, 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 July 11, 1995 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 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 July 11, 1995 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 portion of this plan amendment is consistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders and the applicant are notified of the issues of concern relative to the July 11, 1995 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:

Office of Air Quality Management, DEP
Division of Parks and Forestry, DEP
Division of Fish, Game and Wildlife, DEP
Division of Solid and Hazardous Waste, DEP
Division of Enforcement, DEP
Division of Water Quality, 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
Pinelands Commission
U.S. Environmental Protection Agency

1. Agency Participation in the Review of the July 11, 1995 Amendment

The following agencies did not object to the proposed amendment:

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

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

Office of Air Quality Management, DEP
Division of Fish, Game and Wildlife, DEP
Division of Enforcement, 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
Division of Water Quality, DEP
Pinelands Commission

2. Issues of Concern Regarding the July 11, 1995 Amendment

Issue: Permitting Requirements for Recycling Centers

Recycling centers are subject to the provisions of N.J.A.C. 7:27-5, "Prohibition of Air Pollution." This regulation prohibits odors and other air contaminants which interfere with the enjoyment of life and property. Also, recycling centers are subject to the regulations set forth at N.J.A.C. 7:26A-1 et seq. which include but are not limited to operational standards and general rules for recycling centers which receive, store, process, or transfer Class A and/or Class B recyclable materials.

If any operation of a recycling center will discharge pollutants as defined in N.J.A.C. 7:14-1.9, said operation must secure a New Jersey Pollutant Discharge Elimination System Permit and/or a Treatment Works Approval for pollution discharge prior to operation.

Issue: Pinelands Comprehensive Management Plan

The existing Action Supply, Inc. Class B recycling center is located in a Regional Growth Area. For purposes of conformance with the Pinelands Comprehensive Management Plan, this facility is classified as a transfer station. Pursuant to the provisions of N.J.A.C. 7:50-6.76, a transfer station is a permitted use in this management area provided that all waste accepted is either from Pinelands municipalities or from counties with at least 50% of their land area located within the Pinelands.

However, it must be noted by the DEP that it continues to be the Department's position that the Pinelands Comprehensive Management Plan should not prohibit recycling centers in the same way it prohibits solid waste facilities. In this regard, it must also be noted that the Pinelands Commission has proposed amendments to its existing regulations. These proposed regulations, while continuing to consider a recycling center to be solid waste facility, will not impose upon recycling centers the restriction that all materials to be accepted be either from Pinelands municipalities or from counties with at least 50% of their land area located within the Pinelands. The Department supports this proposed change to the Pinelands Commission's regulations.

Issue: Periodic Capacity Averaging

The Action Supply, Inc. recycling center was included within the County Plan in an amendment of October 27, 1992. The amendment, which was certified on April 21, 1993, authorized the facility to accept 9,360 tons per year (or 35 tons per day and 200 tons per week) of source separated concrete. On December 22, 1993, the Department issued an approval to Action Supply, Inc. to operate a recycling center for Class B materials.

While recycling centers for Class B materials are permitted with specifically defined capacities, in actuality the amount of materials delivered to these centers is dependent on a number of factors that are beyond the control of the individual businesses. Among these influences are weather, seasonal population fluctuations, contractor work schedules, availability of transportation and/or demolition equipment on site, and labor union contracts. As a result of these and other factors, the rate and amount of delivery of materials at recycling centers for Class B materials is best represented as a series of peaks and valleys with undetermined frequency rather than a steady and constant stream.

Therefore, to allow the necessary flexibility to address daily and weekly fluctuations in the amount of material received at the facility, Action Supply, Inc. has requested of the County an increase in its daily and weekly tonnage capacity while leaving unchanged its currently approved yearly tonnage. Due to the mentioned fluctuations, the actual daily and weekly totals when

averaged across the year should equal the currently approved yearly capacity of 9,360 tons. Any increase in this approved total yearly capacity will require a subsequent plan amendment adoption.

Finally, the County and the applicant are hereby notified that the Department in granting an approval to operate a recycling center for Class B materials specifies a daily, not a weekly or annual, capacity.

Issue: County Imposed Operational Conditions

The amendment identifies numerous conditions which the County has imposed upon the operation of Action Supply, Inc. for the existing Class B recycling facility to remain in conformance with the County Plan. The County has imposed these conditions upon recycling centers for Class B materials in prior amendments. In the certifications of these amendments the DEP has consistently rejected those conditions which conflict with regulations adopted by the Department for the operation of a recycling center for Class B materials. Specifically, the Department's recycling regulations found at N.J.A.C. 7:26A-1.1 et seq. govern all technical operational standards at recycling centers and supersede the authority of the County in this area. The DEP continues to take the position that certain conditions imposed by the County exceed its authority and are matters for the Department to address as part of the technical review phase of the Class B approval process. Conditions rejected in prior certifications for being inconsistent with and preempted by the recycling regulations which are also specified within the July 11, 1995 amendment include reporting, transfer of approval, on-site storage, revocation of approval, and allowable residue.

Therefore, the certification approves in part and rejects in part the amendment by approving the increase in daily and weekly capacities, but rejecting those conditions which conflict with Department regulations for the operation of a Class B recycling center.

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 July 11, 1995 amendment to the approved County Plan and certify to the County Freeholders that the July 11, 1995 amendment is approved in part and rejected in part as further specified below.

The County Plan inclusion of an increase in the daily and weekly tonnage capacities for material accepted at the existing Action Supply, Inc. recycling center for Class B materials located on

Block 565, Lot 54 in Upper Township, Cape May County is approved. Specifically, the facility proposes to receive and process 350 tons per day and 2,100 tons per week of concrete while not exceeding the currently approved capacity of 9,360 tons per year. This adjustment will allow for daily and weekly fluctuations in the amount of material received at the facility.

Regarding conditions imposed by the County upon the operation of Action Supply, Inc., the DEP has promulgated regulations for the operation of recycling centers for Class B materials. These regulations found at N.J.A.C. 7:26A-1.1 et seq. supersede the authority of the County in this area. Therefore, as noted in Section B., those County imposed conditions identified within the July 22, 1995 amendment pertaining to reporting, transfer of approval, on-site storage, revocation of approval, and allowable residue conflict with the Department's regulations and are, accordingly, rejected.

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 portion 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 portion of the amendment contained herein shall take effect immediately.

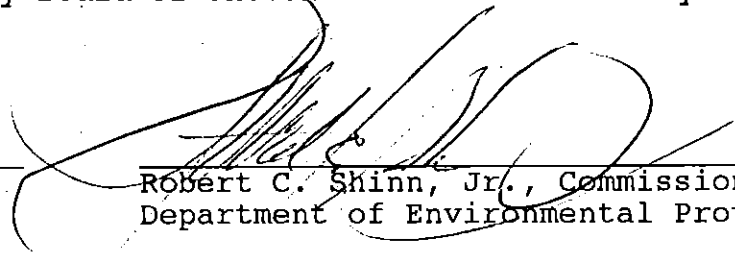
7. Reservation of Authority

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 DEP, 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 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 Cape May County District Solid Waste Management Plan which was adopted by the Cape May County Board of Chosen Freeholders on July 11, 1995.

10/3/95
Date


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