



State of New Jersey
Department of Environmental Protection and Energy
Office of the Commissioner
CN 402
Trenton, NJ 08625-0402

Jeanne M. Fox
Acting Commissioner

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

CERTIFICATION
OF THE APRIL 21, 1993
AMENDMENT TO THE BERGEN COUNTY
DISTRICT SOLID WASTE MANAGEMENT PLAN

BY ORDER OF THE ACTING 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 October 3, 1980, the Department of Environmental Protection approved, with modifications, the Bergen 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 plan at any time and, if found inadequate, a new plan must be adopted. The Bergen County Board of Chosen Freeholders (County Freeholders) completed such a review and on April 21, 1993, adopted an amendment to its approved County Plan. The amendment designated the Bergen County Improvement Authority (BCIA) as the County's solid waste management implementation agency to replace the formerly designated Bergen County Utilities Authority (BCUA).

The amendment was received by the Department of Environmental Protection and Energy (Department or DEPE) on May 4, 1993 and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed this amendment, as well as the entire County Plan, and has determined that the amendment adopted by the County Freeholders on April 21, 1993 is approved as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the April 21, 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 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 21, 1993 amendment which are included in Section B.2 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. These agencies are the following:

Office of Energy, DEPE
Land Use Regulation Element, DEPE
Groundwater Quality Management Element, DEPE
Wastewater Facilities Regulation Element, DEPE
Division of Parks and Forestry, DEPE
Division of Fish, Game and Wildlife, DEPE
Division of Solid Waste Management, DEPE
Green Acres Program, DEPE
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 April 21, 1993 Amendment

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

Office of Energy, DEPE
Land Use Regulation Element, DEPE
Division of Parks and Forestry, DEPE
Green Acres Program, DEPE
New Jersey Turnpike Authority
Department of Agriculture

The following agencies did not respond to the Department's requests for comments:

Division of Fish, Game and Wildlife, DEPE
New Jersey Advisory Council on Solid Waste Management
Groundwater Quality Management Element, DEPE
Wastewater Facilities Regulation Element, DEPE
Department of Health
Department of Transportation
Department of Community Affairs
Department of the Public Advocate
U.S. Environmental Protection Agency

The following agency submitted substantive comments which are further addressed below:

Division of Solid Waste Management, DSWM

2. Issue of Concern Regarding the April 21, 1993 Amendment

Issue: Facility Permits

Since the BCIA will replace the former BCUA as the Bergen County implementation agency for solid waste, all existing solid waste permits, licenses, registrations, consents, or other approvals held by the BCUA must be transferred to the BCIA for purposes of its assumption, without qualification, of responsibility for all of the BCUA's solid waste operations. In this regard, the BCIA has filed a Petition for Declaratory Ruling, Docket No. MM04930006, through which proceeding the BCIA must address any qualifications or additional regulatory obligations the Department may impose for an effective transfer of ownership and responsibility.

Issue: BCUA Objections

On May 18, 1993, the Department received a letter from Larry J. McClure, Executive Director of the BCUA, contesting Bergen County's plan amendment to dissolve the BCUA and replace it with BCIA. Mr. McClure noted areas of concern including pending litigation in both the Superior Court and the Appellate Division. Actions have been brought by the BCUA that allege, among other issues, that the Bergen County Ordinance 93-13 is violative of

the Open Public Meetings Act and Right to Know Law, that the financial plan of Bergen County is violative of the New Jersey Local Bond Law, and that the decision of the Local Finance Board of approve the dissolution plan was arbitrary and capricious. Further, the BCUA indicated its objections to any consideration by the Department of the Petition for Declaratory Ruling without notice to the BCUA and an opportunity by it to be heard on the Petition as a contested case. Finally, the BCUA alleged that it would be prejudicial to the BCUA and its ratepayers and bondholders for the Department to approve the Bergen County plan amendment prior to BCIA's demonstrating that it possesses the requisite expertise and experience to implement Ordinance 93-13. On the basis of its objections, the BCUA requested that the Department either reject the Bergen County plan amendment or that the amendment be declared a contested case and made the subject of an administrative hearing.

As noted in Section C., the DEPE has considered the BCUA's objections to the designation of the BCIA as the County's solid waste management implementation agency and has rejected same as inappropriate and inconsistent with law. The DEPE also notes that the Superior Court litigation has been recently resolved by Order for Summary Judgment which disposed of most of the claims in favor of Bergen County and the BCIA. BCUA v. William P. Schuber, et al., Dkt. Nos. BER-L-3393-93, BER-L-3694-93, BER-L-4567-93 (9/15/93).

C. Certification of the Bergen 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 21, 1993 amendment to the approved County Plan and certify to the County Freeholders that the April 21, 1993 amendment is approved as further specified below.

The inclusion of the Bergen County Improvement Authority within the County Plan as the designated solid waste management implementation agency to replace the formerly designated Bergen County Utilities Authority is approved contingent upon satisfaction by the County and the BCIA of the actions noted below that are a necessary prerequisite for the effective date of the designation. Until that effective date has been reached, the BCUA shall remain the designated solid waste implementing agency in Bergen County.

The County's designation of the BCIA as the unit of County government which will supervise the implementation of the County's solid waste management plan complies with the statutory requirement at N.J.S.A. 13:1E-21b.(1). The County has prepared a detailed and effective plan for the BCIA to assume plan implementation agency responsibility for solid waste management. This is evidenced by the County's plan of dissolution submitted to the DEPE and Department of Community Affairs dated March 29, 1993, as well as an April 20, 1993 submission to the Department which outlines in detail the permits to be transferred to the BCIA or the Bergen County Water Pollution Control Utility as part of the BCUA dissolution.

The effective date of the designation of the BCIA as the implementation agency shall be the date that the BCUA is dissolved by 1) the deposit of monies that are sufficient to provide for the payment of the BCUA's obligations with an escrow agent in accordance with the terms of an Escrow Deposit Agreement, 2) the receipt by the County of an opinion by a nationally recognized bond counsel to the effect that the BCUA's obligations have been defeased, and 3) the transfer of all existing solid waste facility permits, licenses, registrations, consents or other approvals held by the BCUA to the BCIA which are deemed necessary for purposes of change of ownership and management control of the operations of the solid waste facilities from the BCUA to the BCIA, which operations shall continue substantially unaffected by the dissolution. The BCIA is to notify the DEPE within seven (7) days of the effective date that all conditions have been met, with supporting documentation of same, however, notwithstanding the above, the effective date shall be the date the conditions are met and not the date of notification. Further, should ongoing litigation or negotiations result in the determination that the BCUA shall remain the implementing agency for solid waste operations, the County of Bergen is to notify the DEPE within seven (7) days of such determination, in which event the authority of the BCUA shall remain in place without interruption.

As noted in Section B., all existing solid waste permits, licenses, registrations, consents, or other approvals held by the BCUA must be transferred to the BCIA for purposes of its assumption, without qualification, of responsibility for all of the BCUA's solid waste operations. In this regard, the BCIA and the County have jointly filed, on April 15, 1993, a Petition for Declaratory Ruling, Docket No. MM04930006, through which proceeding the BCIA must address any qualifications or additional regulatory obligations the Department may impose for an effective transfer of ownership and responsibility with respect to the BCUA's solid waste operations. Furthermore, the issuance of obligations by the County to provide the funds necessary to establish the escrow referred to above, whether issued prior to the establishing of the escrow or simultaneously therewith, is subject to the approval of the County pursuant to the provisions of the Optional County Charter Law and is further subject to the approval of the Local Finance Board within the Division of Local Governmental Services in the Department of Community Affairs as provided by order of the Local Finance Board adopted April 20, 1993. In addition, the execution of a Solid Waste Services Agreement between the County and BCIA is subject to the approval of the DEPE pursuant to N.J.S.A. 48:3-9. Finally, to ensure a smooth change in plan implementation agencies for the benefit of all County ratepayers, the BCUA is hereby obligated to work cooperatively with the BCIA during the transition period.

Also, as noted in Section B., in response to the BCUA's May 18, 1993 letter, I find that there is no basis in the allegations raised by BCUA to reject the Bergen County plan amendment. Specifically, the amendment was adopted in full compliance with statutory notice and hearing provisions set out at N.J.S.A. 13:1E-23d and 23e. Furthermore, the amendment and all necessary supporting documentation was submitted to the Department in compliance with N.J.S.A. 13:1E-23g. As noted above, the Department

reviewed the amendment in accordance with the substantive statutory criteria at N.J.S.A. 13:1E-21 and finds that the amendment constitutes a detailed and effective plan for the BCIA to assume plan implementation agency responsibility for solid waste management in the County. Accordingly, there is no basis in the Solid Waste Management Act to support BCUA's request that the plan amendment be rejected. I further reject BCUA's request that the plan amendment be declared a contested case and made the subject of an administrative hearing. Under the Act, the appropriate means for BCUA to challenge the amendment is by procedure in lieu of prerogative writs within 30 days of the amendment's adoption by the County. See N.J.S.A. 13:1E-23f. Apparently, BCUA has already taken advantage of this procedure by filing numerous actions against the County in the Law Division. Once an amendment is certified by the Department, the appropriate means to challenge it is by appeal to the Appellate Division of the Superior Court. See R. 2:2-3(a) and N.J.S.A. 52:14B-12. The Act does not provide for an administrative hearing on a plan amendment. Accordingly, I hereby reject the request presented by BCUA Executive Director Larry McClure in his May 18, 1993 letter as inappropriate and inconsistent with law.

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 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. 7:26-6, but are subject to regulation in accordance with 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 Acting 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 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 and -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. However, as noted in Section C., the effective date of the BCIA's assumption of responsibility as the implementation agency for solid waste shall be the date of the dissolution of the BCUA, as more fully defined therein.

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. The Department has published a 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 of the Amendment by the Acting Commissioner of the Department of Environmental Protection and Energy

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 Bergen County District Solid Waste Management Plan which was adopted by the Bergen County Board of Chosen Freeholders on April 21, 1993.

Sept. 30, 1993
DATE

Jeanne M. Fox
JEANNE M. FOX
ACTING COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND ENERGY