



STATE OF NEW JERSEY
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 CHRISTOPHER J. DAGGETT, COMMISSIONER
 CN 402
 TRENTON, N.J. 08625-0402
 (609) 292-2885
 Fax: (609) 984-3962

(IN THE MATTER OF CERTAIN AMENDMENTS)	CERTIFICATION OF THE
(TO THE ADOPTED AND APPROVED SOLID)	JANUARY 25, 1989
(WASTE MANAGEMENT PLAN OF THE)	AMENDMENT TO THE
(ESSEX COUNTY SOLID WASTE)	ESSEX COUNTY SOLID
(MANAGEMENT DISTRICT)	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 Board of Chosen Freeholders and the Hackensack Meadowlands Development Commission develop comprehensive plans for waste management in their respective districts. On August 13, 1980, the Department approved, with modifications, the Essex County District Solid Waste Management 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 the 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 the 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.)

Amendments to the Act found in N.J.S.A. 13:1E-1 et seq., specifically N.J.S.A. 13:1E-99.11 et seq., require that counties amend their district solid waste management plans to include a district recycling plan. The Essex County Board of Chosen Freeholders adopted the district recycling plan on April 29, 1987. The district recycling plan was approved with modifications by the Commissioner of the Department of Environmental Protection on October 27, 1987. The Essex County Board of Chosen Freeholders adopted an amendment to the approved district solid waste management plan on January 25, 1989, which addressed the modifications required pursuant to the October 27, 1987

certification. The January 25, 1989 amendment was distributed for state level review to the N.J.D.E.P. Green Acres Program and Division of Solid Waste Management, the two state level review agencies which commented, along with the Office of Recycling, on the April 29, 1987 district recycling plan, necessitating the January 25, 1989 plan amendment.

The amendment proposes to incorporate modifications to the district recycling plan into the approved district solid waste management plan as per the requirements of the New Jersey Statewide Mandatory Source Separation and Recycling Act N.J.S.A. 13:1E-99.11 et seq., (herein referred to as the "Recycling Act").

The amendment was received by the Department of Environmental Protection on June 6, 1989. The Department has reviewed this amendment and has determined that the amendment adopted by the Essex County Board of Chosen Freeholders on January 25, 1989 is approved with the modifications herein included, as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24.f and N.J.S.A. 13:1E-99.13, I, Christopher J. Daggett, Commissioner of the Department of Environmental Protection have studied and reviewed the January 25, 1989 amendment to the Essex County District Solid Waste Management Plan according to the objectives, criteria, and standards developed in the Statewide Solid Waste Management Plan and N.J.S.A. 13:1E-99.11 et seq., and I find and conclude that this plan amendment is consistent as modified herein with these requirements.

The Division of Solid Waste Management commented that a review of the Essex County district recycling plan and the Division's Facility Directory dated May 26, 1989, shows some inconsistencies which require correction. The Directory lists Cedar Grove Township Compost Facility #0704B located on Ridge Road as an operating facility. However, the district recycling plan does not list this site. The County site on South Orange Avenue, Millburn, is shown as #0712C in the Directory, while Essex County identifies it as #07120. The Directory also lists West Caldwell Compost #1, Bloomfield Avenue, as operating under facility #0721A, but the County does not list this site. A review of the Essex County composting facilities shall be undertaken and a corrected list forwarded to the Department within 30 days of the date of this certification.

The Green Acres Program found the Essex County recycling plan to be inconsistent with the plans and programs administered by their agency. Specifically, Green Acres commented that "one existing albeit approved leaf composting site is on land which is encumbered by Green Acres contract and restricted to outdoor recreation and conservation uses." The composting facility in question is #0719A, located on Walton Avenue in South Orange. It was included in the district solid waste management plan on January 30, 1985. Essex County is advised that the Division of Solid Waste Management will evaluate the impact of this comment on the facility's current permit.

The Office of Recycling commented on the district recycling plan as follows:

1. Section 2.3.1.3 of the Essex County district recycling plan amendment of January 25, 1989, indicates that due to an increase of private sector involvement in recycling services, Essex County no longer considers it advisable to invest public funds in this area. This section continues, stating that "the County now recommends that municipalities desiring such services negotiate with vendors for processing of commingled containers... with technical assistance provided by the County." However, the plan fails to identify these providers of recycling services. All recycling centers shall be included in the Essex County district recycling plan as per N.J.S.A. 13:1E-99.13 (b) (3).
2. Section 2.3.1.5.A., detailing exemptions to mandatory source separation ordinances, states that "Persons (residential generators) may get an exemption from the municipal source separation requirement only if the person is physically handicapped or otherwise unable to perform the separation activity." The Office of Recycling understands Essex County's concerns of placing an undue burden on the handicapped. Please be advised, however, that the municipality is required to provide collection services for all residents, including the handicapped. In such instances, the municipality shall provide an alternative method of collection (e.g. the recycling collector could pick up recyclables from the doorstep of the handicapped, mirroring arrangements made for solid waste collection in many cases). This section continues, stating "Businesses (commercial and institutional generators) may get an exemption from the requirement to source separate only if the nature of the business is such that the designated recyclables are contaminated and unfit for recycling." This section of the Essex County district recycling plan does not comply with N.J.S.A. 13:1E-99.16(d), which provides an exemption for the commercial and institutional sectors only "if those persons have otherwise provided for the recycling of the recyclable materials designated in the district recycling plan from solid waste generated at those premises. To be eligible for an exemption pursuant to this subsection, a commercial or institutional solid waste generator annually shall provide written documentation to the municipality of the total number of tons recycled." The Essex County district recycling plan is amended to comply with N.J.S.A. 13:1E-99.16(d).
3. Section 1.4.2 of the plan lists those recycling plan changes considered to be minor modifications to the recycling plan. Later, in section 2.2.2 of the plan, the procedure for municipal application to mandate additional materials in a municipality is detailed.

This section states that a municipality which wishes "to add recyclable materials to the table of County-designated materials for that municipality... shall request a minor plan modification via a municipal resolution and send such resolution to the County Recycling Coordinator. The resolution shall include a reference to the local ordinance which mandates the separation of said material(s), provides for collection and provides for penalties for non-compliance by a generator. A copy of said ordinance and a description of the collection methodology (collecting agent, point of collection or drop-off, frequency of pickup or hours available for drop-off, market(s) to be used, and any other relevant information) must be attached to the resolution when submitted to the County Recycling Coordinator...Proposals will be reviewed by the County Recycling Coordinator and if approved will be processed as a minor plan amendment as provided for in Section 1.4.2 of this Recycling Plan." To add clarity to this language as it appears in the Essex County district recycling plan, the Office of Recycling recommends that the final sentence quoted above be modified to read "Proposals will be reviewed by the County Recycling Coordinator based on the above criteria and if approved will be processed as a minor plan amendment as provided for in Section 1.4.2 of this Recycling Plan."

In addition, it is not specified in the Essex County district recycling plan whether this is the procedure for review of all minor plan amendments, or only for this particular type of minor plan amendment (i.e. inclusion of additional recyclable materials by a municipality to the list of county designated recyclable materials). This point shall be clarified to the Department in a subsequent submission by Essex County. Aside from the resolution of this request, however, minor plan amendments such as a change in the marketing agreements for designated recyclable materials, change in the provider(s) of curbside collection service, and change in the operation of recycling depots (e.g. hours, etc.) shall be included in the plan upon satisfaction of the following requirements: recommendation of the Essex County Solid Waste Advisory Council at a meeting for which a public notice has been published at least once in a newspaper of general circulation, no less than ten days prior to the meeting, and upon affirmative resolution of the Essex County Board of Chosen Freeholders. Essex County is advised that the plan is amended to include the above requirement.

4. Section 2.3.1.2.A of the Essex County district recycling plan includes responses to comments made by the Office of Recycling in the October 27, 1987 certification of the district recycling plan regarding priority consideration for recycling businesses, per N.J.S.A. 13:1E-99.13(c). Essex County states that "because Section 32 of the Act exempts the sale or marketing of recyclable materials from the bid process, municipalities are not required to provide priority to markets existing before January 1, 1986 when negotiating contracts for the marketing of recyclable materials." Please be advised that the Department does not agree with this statement. Priority consideration and exemption of the sale or

marketing of recyclable materials from the bid process are two distinct provisions of the Recycling Act. Essex County's citation of the exemption provision is correct. This provision, however, has no bearing on the separate issue of priority consideration, and should not be interpreted as superceding the priority consideration requirement of N.J.S.A. 13:1E-99.13(c). Essex County is required, therefore, to delete these errant statements from the district recycling plan.

5. In addition to the comments of the Division of Solid Waste, and the Green Acres Program, regarding the Essex County leaf composting arrangements for the district, the Office of Recycling has additional comments to offer in this regard:

In the process of reviewing the N.J.D.E.P. permit for the composting site on Walton Avenue in South Orange (#0719A), a discrepancy has been found regarding the capacity of this site as detailed in Table 7 of the district recycling plan. The Essex County district recycling plan lists the acreage of this site as being "3 to 4 acres." However, the permit allows for composting on this site only within a 150 foot by 200 foot area (roughly 2/3 of an acre). This discrepancy shall be addressed by the county in the report, detailing the Essex County composting facilities required above.

In addition, section 2.3.1.3 A. of the Essex County district recycling plan states that "Essex County operates two permitted regional sites (0715A and 0720C) to serve the needs of the remaining 13 municipalities. These sites are planned to be closed to municipalities in October 1989."

The ambiguity of the information submitted detailing composting capacity in Essex County prevents a thorough review by the Department. Therefore, Essex County shall, within thirty days of the date of the certification of this amendment, prepare and submit a report which shall include the following:

A) A list setting forth the leaf composting facilities, vegetative waste composting facilities, or leaf composting operations to be utilized by each Essex County municipality, including the thirteen municipalities presently utilizing the two regional composting sites to be closed in October, 1989.

It should be noted that the new rules established at N.J.A.C. 7:26-1.7 and 7:26-1.11 exempt leaf composting facilities from solid waste facility permitting if the owner or operator of the facility adheres to the requirements of either of the above rules. It should also be noted that, pursuant to new rule N.J.A.C. 7:26-1.12, leaf composting facilities that engage in leaf mulching operations on agricultural or horticultural lands are exempt from the Department's solid waste facility permitting process if the specific standards under the rule are met.

B) A copy of the contract to be used by the county to execute services on behalf of municipalities for the proper collection and transportation of source separated leaves to permitted or authorized leaf composting facilities, vegetative waste composting facilities, or to leaf composting facilities that engage in leaf mulching operations on agricultural or horticultural lands, during the mandatory leaf collection period of September 1 to December 31 of each year as required by N.J.S.A. 13:1E-99.22.

C) An indication of the steps to be taken (with a timeline setting forth the dates associated with those identified steps) to execute B above, with an execution date to be indicated no later than September 1, 1989.

D) Inspection procedures to be performed at the county transfer stations and the future resource recovery facility between September 1 and December 31 of each year to determine compliance with the provisions of N.J.S.A. 13:1E-99.21, as well as facility operator or county actions to be taken if a municipality is found to be noncompliant.

C. Certification of Essex County District Solid Waste Management Plan Amendment

I, Christopher J. Daggett, Commissioner of the Department of Environmental Protection, in accordance with N.J.S.A. 13:1E.1 et seq., and N.J.S.A. 13:1E-21, which established specific requirements regarding the contents of the district solid waste management plans, have reviewed the January 25, 1989 amendment to the approved Essex County District Solid Waste Management Plan and certify to the Essex County Board of Chosen Freeholders that the January 25, 1989 amendment is approved with the modifications identified in Section B of 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 Essex County District Solid Waste Management 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 of Environmental Protection and operating pursuant to a contract as herein described, shall be deemed to be in violation of this amendment and of the Essex County District Solid Waste Management 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 of Environmental Protection, and for good cause shown, obtain an extension of time to complete such renegotiation.

2. Compliance

All solid waste facility operators and collector/haulers registered with the Department of Environmental Protection and operating within Essex County and affected by the amendment contained herein shall operate in compliance with this amendment and all other approved provisions of the Essex County District Solid Waste Management Plan. Any solid waste facility operator or collector/hauler 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 of Environmental Protection 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 Plans

The provisions of the Essex County District Solid Waste Management 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. Also, all non-hazardous materials separated at the point of generation for recycling or reuse are excluded from the waste flows designated in the Interdistrict and Intradistrict Solid Waste Flow Rules (N.J.A.C. 7:26-6).

4. Certification to Proceed with the Implementation of Plan Amendment

This document shall serve as the certification of the Commissioner of the Department of Environmental Protection to the Essex County Board of Chosen Freeholders and pursuant to N.J.S.A. 13:1E-24c. and f., the county shall proceed with the implementation of the approved amendment contained 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 N.J.A.C. 7:26-1.4 and N.J.A.C. 7:26-2.13 and N.J.S.A. 13:1E-99.12.

6. Effective Date of Amendment

The Amendment to the Essex County District Solid Waste Management Plan contained herein shall take effect immediately.

7. Reservation of Authority

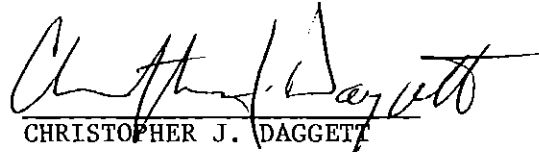
Nothing contained herein shall be construed as a limitation on any other action taken by the Department of Environmental Protection pursuant to its authority under the law. The Essex County District Solid Waste Management Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan. The Department has published a Statewide Solid Waste Management Plan with appendices which includes the Department's planning guidelines and rules, regulations, and orders of the Department, including the 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
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 with modification the amendment as outlined in Section C of this certification, to the Essex County District Solid Waste Management Plan which was adopted by the Essex County Board of Chosen Freeholders on January 25, 1989.

JULY 5, 1989
DATE


CHRISTOPHER J. DAGGETT
COMMISSIONER