



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
ESSEX COUNTY SOLID WASTE
MANAGEMENT DISTRICT

CERTIFICATION OF THE
JUNE 11, 1997, SEPTEMBER 10, 1997,
AND JANUARY 7, 1998 AMENDMENTS
TO THE ESSEX 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 August 13, 1980, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Essex 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 Essex County Board of Chosen Freeholders (County

Freeholders) completed such a review and on June 11, 1997, September 10, 1997, and January 7, 1998, adopted amendments to its approved County Plan.

The June 11, 1997 amendment includes within the County Plan an expansion of the existing Recycling and Salvage Corporation Transfer Station/Materials Recovery Facility (TS/MRF) located in the City of Newark, the designation of this facility as an alternate weigh station for type 13C waste, and the stipulation that the facility shall not accept waste generated from within Essex County.

The September 10, 1997 amendment includes within the County Plan an upgrade to the existing Clara Maass Medical Center medical waste incinerator located in Belleville Township.

The January 7, 1998 amendment includes within the County Plan an increase in the capacity of and the site comprising the existing A. Fiore and Sons TS/MRF located in the City of Newark.

Although two of the amendments were adopted on June 11, 1997 and September 10, 1997, they were not considered administratively complete for review by the Department until January 22, 1998. The amendment adopted on January 7, 1998 was received by the Department on February 10, 1998. Copies of the three amendments were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed these amendments and has determined that the amendments adopted by the County Freeholders on June 11, 1997, September 10, 1997, and January 7, 1998 are approved 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 Amendments

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the June 11, 1997, September 10, 1997, and January 7, 1998 amendments 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 these plan amendments are consistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders and the applicants are notified of the issues of concern relative to the three amendments which are included in Sections B.2., B.3, and B.4. below.

In conjunction with the review of the amendments, the Department circulated copies to fifteen 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

1. Agency Participation in the Review of the June 11, 1997, September 10, 1997, and January 7, 1998 Amendments

The following agencies did not object to the proposed amendments:

Division of Parks and Forestry, DEP
Division of Fish, Game and Wildlife, DEP
Division of Water Quality, DEP
Office of Air Quality Management, DEP
Green Acres Program, DEP
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
Department of Agriculture
Department of Transportation
Department of Community Affairs

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

Land Use Regulation Element, DEP
Department of Health
U.S. Environmental Protection Agency

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

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

2. Issues of Concern Regarding the June 11, 1997 Amendment

Issue: Regulatory Requirements

If any operation of a solid waste facility 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 pollutant discharges prior to operation.

Solid waste facilities are subject to the provisions of N.J.A.C. 7:27-5, "Prohibition of Air Pollution." This regulation prohibits the release of odors and other air contaminants which interfere with the enjoyment of life and property.

Issue: Historical Background

On April 29, 1987, the County Freeholders adopted an amendment which included the Recycling and Salvage Corporation TS/MRF within the County Plan. The amendment, which was certified by the Department on October 26, 1987, identified the facility at a capacity of 150 tons per day. The June 11, 1997 amendment expands the facility capacity to 450 TPD, designates the facility as an alternate weigh station for type 13C waste, and stipulates that the Recycling and Salvage facility shall not accept waste generated from within Essex County.

The Department prosecuted two enforcement actions against Recycling and Salvage and its principals: In the Matter of Recycling and Salvage Corporation, Nicholas Pittas, Jonathan Deck, William Major, Jr. and Essex Recycling, OAL Docket No. EWR-9233-96N, and NJDEP v. Recycling & Salvage Corporation, Essex Recycling Corp., William Major, Jr. and Nicholas Pittas, Superior Court of New Jersey, Essex County, Docket NO. C-137-93. The Office of Administrative Law matter involved allegations regarding Recycling and Salvage's permit violations, including violations regarding the facility's capacity. The Superior Court action involved allegations regarding waste flow violations. Both matters were settled pursuant to a Consent Order effective as of January 1998. The terms of the Consent Order require Recycling and Salvage to pay penalties and for certain individuals to withdraw from the solid waste industry in New Jersey. In addition, if Recycling and Salvage has not been sold to a third party by May 1, 1998 and if the facility is not in compliance with its capacity limits, the Department may institute enforcement action to seek compliance and is currently considering such action. Therefore, while the DEP approves within Section C. of this certification a capacity increase for the Recycling and Salvage TS/MRF, such approval is with the caveat that the applicant must apply to the Department for a modification of its existing solid waste facility permit to authorize a capacity expansion and that the certification approval shall not be construed as an expression of the DEP's intent to issue a solid waste facility permit modification for this facility.

Issue: In-District Weighing

The designation of in-district weighing facilities for type 13C waste was necessary to effectuate the exemption to waste flow for transporters of this waste type which was ordered by the United States District Court in the matter of Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County effective January 31, 1996. In response to a November 10,

1997 denial of certiorari by the United States Supreme Court of the Atlantic Coast case, the Department adopted regulations on December 1, 1997 which repealed traditional waste flow regulations within New Jersey. Therefore, since adoption of the June 11, 1997 amendment predated this DEP action, the designation of in-district weighing facilities for type 13C waste is no longer needed and any DEP action relative to same within Section C. of this certification is moot.

Issue: Prohibition on Acceptance of Essex County Waste

One of the stipulations identified within the June 11, 1997 amendment relative to the continued operation of the Recycling and Salvage TS/MRF is that the facility shall not accept waste generated from within Essex County. In light of 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, a county may not impose such a waste flow condition. [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], However, Recycling and Salvage has agreed to this stipulation through the issuance of a \$25,000 Compliance Bond dated October 1, 1997. Therefore, within Section C. of this certification, the Department recognizes the contractual prohibition on the acceptance of Essex County generated solid waste at the Recycling and Salvage facility.

3. Issue of Concern Regarding the September 10, 1997 Amendment

Issue: Historical Background

Clara Maass medical waste incinerator was included in the County Plan pursuant to a "grandfather" provision found at P.L. 34, 1989, which states that every existing medical waste incinerator in operation as of January 23, 1989, is incorporated within the relevant County Plan. The Clara Maass Medical Center has modified (upgraded) its facility to provide for a more efficient incineration of medical waste and patient contact waste. Therefore, Essex County has chosen to specifically incorporate the Clara Maass Medical Center incinerator upgrade within the County Plan. Within Section C. of this certification, the Department approves the incorporation of the Clara Maass Medical Center incinerator upgrade.

4. Issues of Concern Regarding the January 7, 1998 Amendment

Issue: Regulatory Requirements

If any operation of a solid waste facility 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 pollutant discharges prior to operation.

Solid waste facilities are subject to the provisions of N.J.A.C. 7:27-5, "Prohibition of Air Pollution." This regulation prohibits the release of odors and other air contaminants which interfere with the enjoyment of life and property.

Issue: Historical Background

On January 30, 1985, the County Freeholders adopted an amendment which included within the County Plan the A. Fiore and Sons Transfer Station located at Block 434, Lots 10 and 35, in the City of Newark. The amendment was certified by the Department on August 19, 1985. Although the January 30, 1985 amendment did not identify a facility capacity, the facility has been operating at a capacity of 99 TPD pursuant to an Administrative Consent Order issued by the Department in December 1985. The January 7, 1998 amendment expands the facility capacity to 1000 TPD, and includes additional lots (Lots 45 and 47 of Block 434) to those previously approved in the County Plan. Within Section C. of this certification, the Department approves the increase in capacity of the A. Fiore and Sons facility and the incorporation of the additional lots.

C. Certification of the Essex County District Solid Waste Management Plan Amendments

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 June 11, 1997, September 10, 1997, and January 7, 1998 amendments to the approved County Plan and certify to the County Freeholders that the June 11, 1997, September 10, 1997, and January 7, 1998 amendments are approved as further specified below.

Recycling and Salvage Corporation

The County Plan inclusion of an expansion of the existing Recycling and Salvage Corporation Transfer Station/Materials Recovery Facility located at 170-180 Frelinghuysen Avenue, Blocks 2755 and 2780, Lots 1 and 28, in the City of Newark, to accept a maximum capacity of 450 TPD is approved. Also, as noted within Section B., the DEP recognizes the contractual prohibition on the acceptance of Essex County generated solid waste at the Recycling and Salvage TS/MRF.

The applicant must apply to the Department for a modification of its existing solid waste facility permit to authorize a capacity expansion. This certification shall not be construed as an expression of the Department's intent to issue a solid waste facility permit modification for this facility.

The construction or operation of any solid waste facility shall be preceded by the acquisition of all necessary permits and approvals pursuant to N.J.S.A. 13:1E-1 et seq., and all other applicable laws. The issuance of operating permits pursuant to the Solid Waste Management Act is limited to those applicants found by the DEP and the Attorney General of the State of New Jersey to be deserving of licensing under the provisions of N.J.S.A. 13:1E-126.

Clara Maass Medical Center Incinerator

The County Plan inclusion of an upgrade of the existing Clara Maass Medical Center incinerator for medical waste and patient contact waste, located at One Clara Maass Drive, Block 719, Lot 1, in Belleville Township is approved.

A. Fiore and Sons

The County Plan inclusion of an expansion of the existing A. Fiore and Sons Transfer Station/Materials Recovery Facility, located at 1230 McCarter Highway, Block 434, Lots 10, 35, 45 and 47, in the City of Newark, to accept a maximum capacity of 1000 TPD is approved.

The applicant must apply to the Department for a modification of the existing solid waste facility permit to authorize a capacity expansion. This certification shall not be construed as an expression of the Department's intent to issue a solid waste facility permit modification for this facility.

The construction or operation of any solid waste facility shall be preceded by the acquisition of all necessary permits and approvals pursuant to N.J.S.A. 13:1E-1 et seq., and all other applicable laws. The issuance of operating permits pursuant to the Solid Waste Management Act is limited to those applicants found by the DEP and the Attorney General of the State of New Jersey to be deserving of licensing under the provisions of N.J.S.A. 13:1E-126.

D. Other Provisions Affecting the Plan Amendments

1. Contracts

Any contract renewal or new contract for solid waste collection or disposal which is inconsistent with these amendments to the County Plan and which was executed prior to the approval of these amendments 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 these amendments and of the County Plan if such renegotiation is

not completed within ninety (90) days of the effective date of these amendments 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 amendments contained herein shall operate in compliance with these amendments 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 in accordance with N.J.A.C. 7:26A-1 et seq.

4. Certification to Proceed with the Implementation of the Plan Amendments

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 amendments certified herein.

5. Definitions

For the purpose of these amendments 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 Amendments

The amendments to the County Plan contained herein shall take effect immediately.

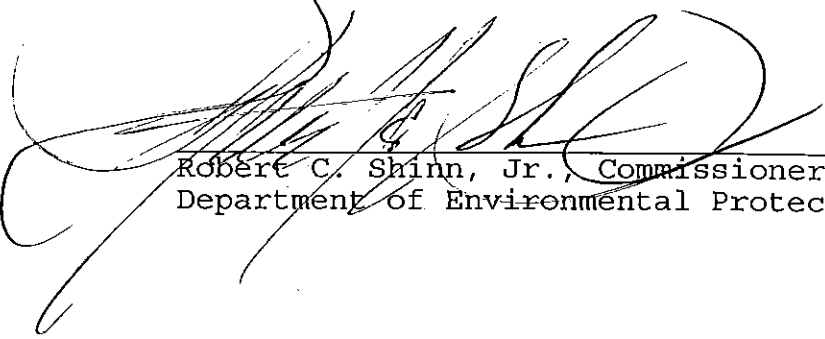
7. Reservation of Authority

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 Amendments 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 amendments, as outlined in Section C. of this certification, to the Essex County District Solid Waste Management Plan which were adopted by the Essex County Board of Chosen Freeholders on June 11, 1997, September 10, 1997, and January 7, 1998.

5/12/98
Date


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