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Scott A. Weiner
Commissioner

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 27, 1990
AMENDMENT 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 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, 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 Essex County Board of Chosen Freeholders (County Freeholders) completed such a review and on June 27, 1990 adopted an amendment to its approved County Plan.

As proposed, the amendment incorporated the County Freeholders' former contract with Eastern Waste, Inc. for out-of-state ash disposal services for the first seven years of the County resource recovery incinerator (County incinerator) operation. Further, the amendment includes the County's portion of a "blanket" interdistrict agreement to acquire out-of-county processible waste for the incinerator and authorization to American Ref-Fuel, the operator of the incinerator, to enter into arrangements for the delivery of processible waste from out-of-state sources.

The amendment was initially received by the Department of Environmental Protection and Energy (Department or DEPE) on August 3, 1990. However, at that time the plan amendment was deemed administratively incomplete due to the lack of inclusion of the required public hearing transcripts. Subsequently, after waiting for the missing component, on November 2, 1990 the County was notified in writing by the Department that the plan amendment remained incomplete and would not be distributed for administrative review until the missing component was received. Another deficiency reminder was sent by the Department to the County on December 19, 1990. Although the County finally submitted the outstanding transcripts to the Department on July 1, 1991, the County also reported to the Department on July 17, 1991 that the subject plan amendment no longer represented an amendment that the County desired to pursue due to changes in their solid waste management planning system. Specifically, the County reported that they were directly negotiating an interdistrict agreement with Bergen County and the Bergen County Utilities Authority (BCUA) to direct Bergen County's processible waste to the County incinerator and to provide for ash removal and disposal under contract of the BCUA.

As a result, the Division of Solid Waste Management consulted with the Division of Law to determine the procedure for a county to withdraw a plan amendment. Accordingly, the Department notified the County on October 11, 1991 that, unless the Department received a resolution to rescind the amendment, the Department would have no alternative but to proceed with the administrative review and certification process. Subsequently, no resolution was received and, on October 21, 1991, the County plan amendment of June 27, 1990 was determined administratively complete and was 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 June 27, 1990 is approved with modification in part and remanded for modification in part as provided in N.J.S.A. 13:1E-24. Furthermore, deficiencies in the County Plan have been identified within Section C. of this certification.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the June 27, 1990 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 inconsistent with the Statewide Solid Waste Management Plan.

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:

Division of Environmental Quality, DEPE
 Division of Coastal Resources, DEPE
 Division of Parks and Forestry, DEPE
 Division of Fish, Game and Wildlife, DEPE
 Division of Solid Waste Management, DEPE
 Green Acres Program, DEPE
 Groundwater Quality Management Element, DEPE
 Wastewater Facilities Regulation Element, 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 June 27, 1990 Amendment

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

Division of Environmental Quality, DEPE
 Division of Parks and Forestry, DEPE
 Division of Fish, Game and Wildlife, DEPE
 Green Acres Program, DEPE
 New Jersey Turnpike Authority
 New Jersey Advisory Council on Solid Waste Management
 Department of Agriculture
 Department of Transportation
 Department of Community Affairs
 U.S. Environmental Protection Agency

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

Division of Coastal Resources, DEPE
Groundwater Quality Management Element, DEPE
Wastewater Facilities Regulation Element, DEPE
Department of Health
Department of the Public Advocate

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

Division of Solid Waste Management, DEPE

2. Issues of Concern Regarding the June 27, 1990 Amendment

Issue: Eastern Waste, Inc. and Ash Management Contract

The Eastern Waste, Inc. agreement with the County was to be in effect for the first seven years of operation of the County incinerator. However, pursuant to a May 1, 1991 Memorandum of Understanding (MOU) between Essex and Bergen Counties, Bergen County is currently coordinating the disposal of the residue from the County incinerator for the term of the MOU which expires March 1, 1994. In this regard, the Essex County Division of Solid Waste Management indicated to the Department by letter dated July 17, 1991, that the Eastern Waste, Inc. contract with the County is currently a matter of litigation and, as such, has never been executed. Therefore, in consideration of the current disposal arrangements in Essex County and pending final resolution of this matter in litigation, Section C. of this certification requires Essex County to amend its plan to reflect its intended disposal arrangements. Also, since this issue will significantly affect the Essex County waste management system, it is considered to be a major modification to the County plan and subject to public notice and hearing prior to freeholder adoption.

Issue: Acceptance of Waste from Outside Essex County

This plan amendment includes the County's portion of an interdistrict agreement and authorizes American Ref-Fuel to enter into arrangements for the delivery of waste from out-of-state sources. Furthermore, this "blanket" provision provides that another solid waste district may enter into arrangements with American Ref-Fuel for delivery of waste from out-of-county spot markets that may be in effect for as short as one day.

This proposed amendment which authorizes solid waste districts to enter into arrangements with American Ref-Fuel is inconsistent with the Department's policy that provides that the planning and management of solid waste, including waste flows is a county responsibility requiring state review and approval.

Also, with regard to the acceptance of out-of-state waste at the Essex Incinerator, the Department remains concerned that a significant portion of New Jersey's solid waste is still being exported to out-of-state disposal facilities. Therefore, Essex County must make every effort to secure in-state waste disposal toward achievement of New Jersey's goal of becoming self-sufficient.

C. Certification of the Essex 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 June 27, 1990 amendment to the approved County Plan and certify to the County Freeholders that the June 27, 1990, amendment is remanded for modification in part and rejected in part as further specified below.

1. June 27, 1990 Amendment

Eastern Waste, Inc. and Ash Management Contract:

The inclusion of the contract with Eastern Waste, Inc. for out-of-state incinerator ash disposal services for a period of seven years must be modified by the County. As specified in Section B., the County stated in a letter to the Department on July 17, 1991 that ash from the incinerator is currently being disposed of pursuant to a Memorandum of Understanding with Bergen County through March 1, 1994. Furthermore, the plan amendment only includes reference to the Eastern Waste, Inc. and Essex County agreement, but does not identify specific details. Also, the Eastern Waste Contract is currently in litigation. Therefore, the Department remands for modification this component of the plan amendment. Specifically, Essex County is required to submit a subsequent amendment within 90 days to reflect its intended resource recovery incinerator ash disposal arrangements. Also, since this issue will significantly affect the Essex County waste management system, it is considered to be a major modification to the County plan and subject to public notice and hearing prior to freeholder adoption.

Acceptance of Waste from Outside Essex County:

The inclusion in the plan of the overall concept to include the County's portion of an interdistrict agreement to acquire out-of-county processible waste for the County incinerator and authorization to American Ref-Fuel to enter into arrangements for the delivery of merchant and spot market waste from in-state and out-of-state sources is rejected. As noted in Section B, this proposed amendment which authorizes solid waste districts to enter into arrangements with American Ref-Fuel is inconsistent with the Department's policy that provides that the planning and management of solid waste, including waste flows, is a county responsibility requiring state review and approval.

2. Essex County District Solid Waste Management Plan Deficiencies

The entire County Plan has been reviewed to determine whether the plan fulfills the requirements set forth in N.J.S.A. 13:1E-21 as well as the recommendations of the Emergency Solid Waste Assessment Task Force Final Report accepted by the Governor on November 16, 1990. In this regard, the County is reminded that the January 22, 1992 certification of its September 12, 1990 plan amendment addressed detailed deficiencies which the County was required to address within 180 days, or by July 21, 1992, in a subsequent plan amendment.

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 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 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 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 remand for modification portion of this 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 and 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 remand for modification in part and rejection in part of this 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. The Department has published a Statewide Solid Waste Management Plan, with appendices, which includes the Department's planning guidelines, rules, regulations, orders of the

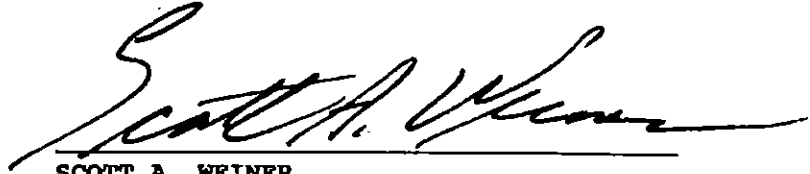
Department, interdistrict and intradistrict waste flow rules, and also includes the compilation of individual district plans and amendments as they are approved.

E. Certification of Remand for Modification in Part and Rejection in Part of the Amendment and Notification of Deficiencies by the 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 remand for modification in part and reject in part 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 June 27, 1990. I hereby also remind the Essex County Board of Chosen Freeholders to address the deficiencies noted in Section C., within the timeframes previously specified. This certification memorializes the determinations made by me on or before March 8, 1992.

MAR 16 1992

DATE



SCOTT A. WEINER
COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND ENERGY

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