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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 SEPTEMBER 9, 1992
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 September 9, 1992, adopted an amendment to its approved County Plan. As adopted, the amendment proposed the County Plan inclusion of the Regional Recycling Corporation transfer station/materials recovery facility located at 295 Frelinghuysen Avenue, Newark, New Jersey.

The amendment was received by the Department of Environmental Protection and Energy (Department or DEPE) on December 9, 1992, 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 September 9, 1992 is approved as provided in N.J.S.A. 13:1E-24. While the immediate plan amendment has been approved, serious 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 September 9, 1992 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 and the applicant are notified of the issues of concern relative to the September 9, 1992 amendment which are included 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 September 9, 1992 Amendment

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

Land Use Regulation Element, DEPE
Division of Parks and Forestry, DEPE
Green Acres Program, DEPE
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
Department of Agriculture
Department of Transportation

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

Groundwater Quality Management Element, DEPE
Division of Fish, Game and Wildlife, DEPE
Department of Health
Department of Community Affairs
Department of the Public Advocate
U.S. Environmental Protection Agency

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

Office of Energy, DEPE
Division of Solid Waste Management, DEPE
Wastewater Facilities Regulation Element, DEPE

2. Issues of Concern Relative to the September 9, 1992 Amendment

Issue: Permit Requirements

Transfer stations/materials recovery facilities 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 or property. Further, transfer stations/materials recovery facilities are also subject to N.J.A.C. 7:27-8.2(a)16 which requires air pollution control permits for any equipment which vents a solid waste facility directly or indirectly into the outdoor atmosphere. Such vents may require devices to control odors and other air contaminants. Finally, if the proposed operation will discharge pollutants as defined at N.J.A.C. 7:14A-1.9, said operation must secure a New Jersey Pollution Discharge Elimination System (NJPDES) permit and/or a treatment works approval for pollutant discharges prior to operation.

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.

Issue: County Plan Inclusion

The Regional Recycling Corporation transfer station/materials recovery facility is presently operating without a solid waste facility permit. Therefore, inclusion of this facility in the County Plan will correct an historical planning deficiency and allow the applicant to apply for a solid waste facility permit.

Issue: County Plan Implementation Agency

The County has previously designated the Essex County Division of Solid Waste Management as the solid waste implementation agency. On February 9, 1993, the County informed the DEPE that the Essex County Utilities Authority (ECUA) will become the implementation agency while solid waste administrative matters will be handled by the Essex County Department of Planning and Economic Development. The County must adopt and submit to the DEPE an amendment which specifically indicates the duties of all County agencies which will function as a solid waste implementation agency.

Issue: Facility Waste Flow

The amendment did not indicate whether the transfer station was to be assigned a waste flow commensurate with its specific type of operation. For example, if the facility is to operate as a sole source transfer station/materials recovery facility, the assignment of a waste flow to the facility is not necessary. Also, if the facility is to operate as a commercial transfer station which accepts waste from other counties in conformance with the DEPE's "Pereira Policy," the assignment of a waste flow is not necessary. If, however, the facility is not to operate as a sole source or so noted commercial facility, the County must first assign a waste flow to the facility through a subsequent plan amendment followed by DEPE approval pursuant to N.J.A.C. 7:26-6.6.

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 September 9, 1992 amendment to the approved County Plan and certify to the County Freeholders that the September 9, 1992 amendment is approved as further specified below.

1. September 9, 1992 Amendment

The County Plan inclusion of the Regional Recycling Corporation transfer station/materials recovery facility located at 295 Frelinghuysen Avenue, Block 3538, Lot 22, Newark, New Jersey, is approved. The facility has been operating without a solid waste facility permit and, therefore, County Plan inclusion will correct a historical planning deficiency.

While a facility capacity has not been specified in the plan amendment, Essex County has indicated by letter that it will concur with whatever capacity the Department finds appropriate in its permit review. Such an application is acceptable to the DEPE in the limited circumstances of this case due to the unique history of the Regional Recycling facility particularly with respect to the record of litigation and delay surrounding inclusion within the Essex County Plan.

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 Department 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. Finally, although County Plan inclusion will allow the applicant to apply for a solid waste facility permit, this certification shall not be construed as an expression of the Department's intent to issue a solid waste facility permit.

2. Essex County District Solid Waste Management Plan Deficiencies

a. County Plan Overview

I have reviewed the entire County Plan to determine whether it 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 (Task Force) Final Report accepted by the Governor on November 16, 1990. In this regard, the County is reminded that the Department's January 22, 1992 certification of the County's September 12, 1990 plan amendment noted detailed deficiencies which the County was required to address in a subsequent plan amendment submission by July 21, 1992. Specifically, the certification required the County's pursuit of in-state landfill arrangements, the identification of specific truck routes to the County incinerator, and the submission of a plan amendment addressing the provisions of the Task Force Final Report with recommendations including source reduction, achievement of at least a 50% recycling rate for the municipal waste stream and a 60% recycling rate for the total waste stream, and a plan for long-term regionalization of the County's incinerator. Further, consideration was also to be given to regional plans for materials processing, recycling, transfer and disposal facilities. To date, the Department has not received the required amendment.

Additionally, since it is currently unclear to the DEPE what role the ECUA has in terms of serving as an implementation agency, the County must adopt and submit to the DEPE an amendment which specifically indicates the duties of all County agencies which will function as a solid waste implementation agency.

The outstanding areas noted above represent serious plan deficiencies which must be addressed immediately. At this point in time, Essex County is one of several remaining counties which have not submitted any formal plan to advance statewide goals in the critical areas of source reduction, expanded recycling and system regionalization. Further, while the County has a regional agreement for the acceptance and processing of Bergen County solid waste, this arrangement is short-term in nature, expiring on

March 1, 1994. No specific long-term regional partnership has been formalized at this time. Finally, even with current incinerator operations, approximately 358,000 tons per year of the County's nonprocessable, bypass and residual solid waste is being exported for out-of-state disposal contrary to the DEPE's self-sufficiency objectives. Therefore, the County is directed to submit the required amendment as soon as possible but in no event later than November 1, 1993 to address these and the other noted deficiencies. Please be advised that the failure of the County to comply with this directive may result in the withholding and reallocation of the County's Solid Waste Services Tax moneys, the withholding of the County's Resource Recovery Investment Tax moneys and/or initiating appropriate enforcement action.

b. Expanded Materials Separation Prior to Incineration

The Department has also reviewed the entire County Plan focusing upon the existing incinerator operations and the need to remove additional constituents from the incoming waste stream to ensure a reduction in facility emissions; in particular mercury. The Department is committed to the use of best available air pollution controls at existing facilities, as well as the application of the most stringent standards within permits. The Department is currently working as part of the "Task Force on Mercury Emissions Standard Setting (Mercury Task Force)" toward development of a statewide mercury emission standard for municipal solid waste incinerators, involving both air quality control technologies and identification and implementation of specific measures to reduce the content of mercury in the solid waste stream. The mercury task force completed its preliminary report, which includes an evaluation of both environmental and health issues and technical and regulatory issues, in August 1992 and distributed this document for public comment through November 1992. A public hearing on the preliminary report was held on October 26, 1992. The Department recently published the findings and recommendations of the Mercury Task Force in the interim report on proposed mercury emission standards in December 1992. The Department will continue to work closely with incinerator operators to have system modifications installed to implement use of best available control technology.

The County planning process must complement the future installation of more advanced air pollution control equipment and intended permit modifications to ensure necessary reductions in mercury and other metals from the solid waste stream. As a result of the efforts of the Mercury Task Force and the referenced public hearing process, the Department is considering implementation of an interim and final mercury emission standard of 65 and 28 mg/dscm. From the task force's technical research, available air pollution control equipment can result in significant reductions (up to 80%) of mercury based upon current emission levels. A portion of this emission standard will be achieved through source reduction programs as manufacturer's redesign their products to eliminate or minimize mercury content. Source separation programs will also remove mercury from the processible waste stream. Therefore, in order to fully achieve interim and final standards of 65 and 28 mg/dscm, it will be necessary for counties with incinerators to develop plans and schedules for the removal of sources of mercury from the waste stream.

Toward the above goal, the County is hereby ordered to submit a report to the Department within 120 days of this certification which outlines plans and specific timetables for the removal of materials of concern from the incoming solid waste stream. At a minimum, the plan must address:

- * Efforts already being used by the County for removal of toxic materials from the waste stream, particularly mercury;
- * Specific plans and timeframes for the removal and separate management of consumer batteries, fluorescent light bulbs, thermometers, and thermostats, all of which contain mercury and other heavy metals;
- * An inventory of potential generators of the above materials, such as jewelers, hospitals and large commercial/institutional/industrial buildings and plans for education and separate collection/drop-off of these materials;
- * Specific plans and timeframes for the removal of wallboard, grass and other yard wastes from the incoming waste stream toward further reducing sulphur dioxide (SO₂) and nitrogen oxide (NOX) emissions;
- * An inventory of large generators of wallboard and plans for education and separate collection/drop-off and disposal (nonincineration) of this material;
- * Plans for implementing a combination of grass, cut-it and leave-it programs, backyard composting and/or compost facility development or expansion plans to include management of grass clippings. This must include an inventory of existing facilities which accept grass for composting, as well as a listing of all landscapers operating within the County;
- * Specific plans and timeframes for developing comprehensive recycling and waste diversion programs which support the prohibition from acceptance at the incinerator of paints, tires, electronics and vehicular materials, such as batteries, from the residential, commercial, institutional and industrial sectors to further reduce the potential for toxic materials entering the facility; and
- * Specific plans and schedules for expanding existing household hazardous waste collection programs and/or the development of a permanent household hazardous waste collection facility and management program for the County.

This report must be submitted within 120 days of this certification and is not required to be submitted in plan amendment form. Department staff within the Division of Solid Waste Management and the Policy and Planning Program will be available at any time to assist the County.

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 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.


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 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 approve 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 September 9, 1992. I hereby also require, as noted in Section C., the Essex County Board of Chosen Freeholders to address the noted deficiencies within the timeframe specified. This certification memorializes the determinations made by me on or before May 7, 1993.

5-7-93
DATE


SCOTT A. WEINER
COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND ENERGY