



State of New Jersey
Department of Environmental Protection and Energy
Office of the Commissioner
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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
ESSEX COUNTY SOLID WASTE
MANAGEMENT DISTRICT**

**CERTIFICATION OF THE
SEPTEMBER 9, 1992, MAY 12, 1993, AND
AUGUST 4, 1993 AMENDMENTS TO THE
ESSEX 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 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 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 September 9, 1992, May 12, 1993, and August 4, 1993 adopted amendments to its approved County Plan.

The September 9, 1992 amendment proposed to add white goods and lead acid batteries (vehicle batteries) to the list of designated recyclables in the County Plan. Although the County adopted this amendment on September 9, 1992, it was not considered administratively complete until August 5, 1993. The May 12, 1993 amendment proposed to include within the County Plan an ABB Sanitec microwave facility to be located at the Newark campus of the University of Medicine and Dentistry of New Jersey (UMDNJ) for processing regulated medical waste generated at the UMDNJ Newark campus. Finally, the August 4, 1993 amendment designated the Essex County Utilities Authority as the County's solid waste management plan implementation agency in substitution for the County's Division of Solid Waste Management.

The September 9, 1992, May 12, 1993, and August 4, 1993 amendments were received by the Department of Environmental Protection and Energy (Department or DEPE) on August 5, 1993, August 23, 1993, and October 28, 1993, respectively, and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed these amendments, as well as the entire County Plan, and has determined that the amendments adopted by the County Freeholders on September 9, 1992, May 12, 1993, and August 4, 1993 are approved as provided in N.J.S.A. 13:1E-24. Also, 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 Amendments

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the September 9, 1992 and May 12, 1993 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 applicant are notified of the issues of concern relative to the May 12, 1993 amendment which are included below in Section B.3.

In conjunction with the review of the amendments, the Department circulated copies to fifteen 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 Air Quality Management, DEPE
Land Use Regulation 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:

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 Transportation
Department of Community Affairs

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

Office of Air Quality Management, DEPE
Land Use Regulation Element, DEPE
Department of Health
Department of the Public Advocate
U.S. Environmental Protection Agency

None of the agencies provided substantive comments.

2. Agency Participation in the Review of the May 12, 1993 Amendment

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

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
Department of Community Affairs

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

Office of Air Quality Management, DEPE
Land Use Regulation Element, DEPE
Division of Fish, Game and Wildlife, DEPE
Department of Health
Department of the Public Advocate
U.S. Environmental Protection Agency

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

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

3. Agency Participation in the Review of the August 4, 1993 Amendment

The following agencies had no objection to the August 4, 1993 amendment:

Office of Air Quality Management, 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
Department of Agriculture
Department of Transportation

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

Land Use Regulation Element, DEPE
Wastewater Facilities Regulation Element, DEPE
New Jersey Advisory Council on Solid Waste Management
Department of Health
Department of Community Affairs
Department of the Public Advocate
U.S. Environmental Protection Agency

None of the agencies provided substantive comments.

4. Issues of Concern Relative to the May 12, 1993 Amendment

Issue: Regulatory Requirements

The UMDNJ must obtain all required permits, authorizations and/or approvals from the DEPE and the New Jersey Department of Health prior to installing and operating the proposed regulated medical waste (RMW) microwave disinfection unit. Specifically, the proposal to install such a unit requires the facility to register as a medical waste destination facility pursuant to N.J.A.C. 7:26-3A.8. Also, an air pollution control permit from the Department will be required pursuant to N.J.A.C. 7:27-8.2(a)16. Further, the use of crushers, chippers and shredders will

necessitate the control of particulate emissions to the air and, pursuant to N.J.A.C. 7:27-8.2(a), 7, 11, 15, and 16, air pollution control permits are required. Additionally, if the operation of the proposed facility will discharge pollutants as defined in N.J.A.C. 7:14A-1.9, the facility must obtain a New Jersey Pollutant Discharge Elimination System Permit and/or a Treatment Works Approval for pollutant discharge prior to operation. Finally, the UMDNJ must also comply with all relevant federal, state, and local regulations.

Issue: Microwave Disinfection Unit Moratorium

Starting on or about September 1993, the DEPE and the Department of Health imposed a moratorium on the sale, operation, and siting of new ABB Sanitec microwave RMW treatment/destruction facilities pending further evaluation of air emissions from these units and other operational concerns. It is expected that the results of further air quality testing and system analysis will be completed during February 1994. Also, the United States Environmental Protection Agency is expected to publish the results of its analysis of the ABB Sanitec system in its third and final Report to Congress in the summer of 1994. Notwithstanding the moratorium, the DEPE is approving within Section C. of the certification the County Plan inclusion of the UMDNJ microwave unit. Upon review of the State and Federal studies regarding the viability of this form of RMW treatment, the issue of granting an authorization to operate an ABB Sanitec unit at the UMDNJ Newark campus will be addressed during the technical phase of the DEPE permitting process. The applicant, UMDNJ, may wish to contact the DEPE's Office of Air Quality Management or the Bureau of Medical Waste, Residuals Management, and Statewide Planning for further information relative to the moratorium.

Issue: County Plan Inclusion of Medical Waste Facilities

All future plan amendments which propose inclusion of medical waste facilities will be reviewed within the context of the RMW management hierarchy and source reduction initiatives as identified in the Solid Waste Management State Plan Update 1993-2002; Section II: Comprehensive Regulated Medical Waste Management Plan. More specifically, the DEPE has proposed an RMW disposal strategy hierarchy which represents a listing in descending order of the options the DEPE views as the best management practices to safely dispose of RMW in environmentally sound and economical ways and to achieve self-sufficiency as quickly as possible. The DEPE's disposal strategy hierarchy is as follows:

1. County management strategies which include regional planning for the use of existing or planned RMW processing/treatment/disposal capacity on a multicounty basis through interdistrict agreements;
2. Strategies which demonstrate the capacity and timeframes for achieving self-sufficiency through more efficient use of existing in-county RMW disposal capacity at state-of-art hospital and other facilities such as microwaves, chemical disinfection and grinding systems, upgraded incinerators and sanitary sewer systems;

3. Plans for the development of new commercial or noncommercial disposal capacity on a singular countywide basis;
4. Plans for the development of new commercial or noncommercial disposal capacity for use by a single large generator;
5. Plans which call for the merger of RMW disposal within the existing solid waste infrastructure of the county through revision of existing regulations to allow for the acceptance of untreated RMW; and,
6. Out-of-state disposal which will only be acceptable as a short-term option pending development of in-state capacity and which will not be authorized for long-term use other than as part of a broad county contingency plan.

Each facility proposed by a County will be evaluated by the DEPE in relation to the RMW disposal hierarchy on a case by case basis in the plan amendment phase. As part of any future amendment for RMW facility inclusion, the County must indicate how the facility fits into the overall RMW plan being developed and provide a rationale, where appropriate, for why more preferred management options within the above hierarchy are not being pursued. As indicated within Section C., the DEPE has approved the inclusion of the UMDNJ microwave unit since the County Freeholders adopted the amendment on May 12, 1993 and the public hearing for the RMW Plan, which marked the effective date of the Department's County Plan inclusion policy, was held on May 26, 1993.

Issue: Conditions Pertaining to County Plan Inclusion of UMDNJ Microwave Unit

Within the May 12, 1993 amendment, the County imposed certain conditions concerning the inclusion of the UMDNJ ABB Sanitec microwave unit. Specifically, one of the conditions indicated that in the event the County designates in a subsequent plan amendment that RMW generated at the UMDNJ be directed to a regional RMW facility other than the UMDNJ microwave unit, the UMDNJ facility shall cease operation and RMW generated at the UMDNJ shall be disposed of in accordance with the waste flow directive set forth in said amendment. While the Department approves in Section C. of the certification the inclusion of the UMDNJ microwave facility within the County Plan, the County is advised that it may not require the UMDNJ facility to cease operations upon the inclusion of a regional RMW facility in the County Plan unless the County first adopts a plan amendment specifically removing the UMDNJ facility from the County Plan and that amendment is approved by the Department. The Department's position that a facility included in an adopted and approved solid waste management plan may only be removed from the relevant County Plan by a subsequent plan amendment certification was recently affirmed by the Appellate Division in In the Matter of Certain Amendments to the Adopted and Approved Solid Waste Management Plan of the Mercer County Solid Waste Management District, A-3448-91T1 (July 2, 1993), certif. den., Docket No. 37,231 (October 7, 1993).

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 September 9, 1992, May 12, 1993, and August 4, 1993 amendments to the approved County Plan and certify to the County Freeholders that the September 9, 1992, May 12, 1993, and August 4, 1993 amendments are approved as further specified below.

1. September 9, 1992 Amendment

The County Plan inclusion of white goods and lead acid batteries (vehicle batteries) as mandated recyclable materials to be added to the list of previously designated recyclables in the County Plan is approved. Accordingly, the list of materials to be recycled by various sectors in the County is as follows:

Residential Sector

- Newspapers
- Glass food and beverage containers
- Aluminum beverage containers
- Leaves
- Used motor oil
- White goods*
- Lead acid batteries (vehicle batteries)*

Commercial Sector

- Newspapers
- Glass food and beverage containers
- Aluminum beverage containers
- Leaves
- Old corrugated containers
- Office paper (all marketable grades)
- Used motor oil
- White goods*
- Lead acid batteries (vehicle batteries)*

Institutional Sector

- Newspapers
- Glass food and beverage containers
- Aluminum beverage containers
- Leaves
- Old corrugated containers
- Office paper (all marketable grades)
- Used motor oil
- White goods*
- Lead acid batteries (vehicle batteries)*

*Newly designated materials

2. May 12, 1993 Amendment

The County Plan inclusion of an ABB Sanitec microwave unit to be located on Lot 1, Block 211, on Norfolk Avenue between 12th Avenue and South Orange Avenue, at the University of Medicine and Dentistry of New Jersey (UMDNJ), Newark campus, in the City of Newark, for processing RMW generated only from within the UMDNJ Newark campus is approved. The estimated capacity of this facility will be 550 pounds per hour or 6.6 tons per day.

The amendment also states that in the event the County proposes to designate in a subsequent plan amendment a regional RMW processing facility other than the UMDNJ microwave facility and directs the RMW generated at the UMDNJ Newark campus to the County's regional facility, the UMDNJ shall cease operating its microwave facility and shall comply with the waste flow directive set forth in such a subsequent amendment. As noted in Section B., the County is hereby notified that it may not require the UMDNJ microwave unit to cease operations upon the inclusion of a regional RMW facility within the County Plan unless the County first adopts a plan amendment deleting the UMDNJ unit from the County Plan and that amendment is approved by the DEPE.

Further, all RMW processed at the UMDNJ microwave facility shall be disposed, subsequent to processing, as type 10 municipal waste in conformance with the Interdistrict and Intradistrict Solid Waste Flow Rules at N.J.A.C. 7:26-6.6 et seq. and the approved Essex County Plan. The microwave facility is also subject to N.J.A.C. 7:26-3A, "Regulated Medical Waste Rules," and other regulatory requirements as described in Section B. of the certification.

Finally, as indicated within Section B. of the certification, a moratorium has been imposed on the sale, operation and siting of ABB Sanitec microwave units. Notwithstanding the moratorium, the DEPE is approving at the planning phase of the permitting process the inclusion of the UMDNJ microwave unit. Upon review of State and Federal studies regarding the viability of this form of RMW treatment, the issue of granting an authorization to operate an ABB Sanitec microwave unit at the UMDNJ Newark campus will be addressed during the technical phase of the DEPE's permitting process.

3. August 4, 1993 Amendment

The County Plan inclusion of the designation of the Essex County Utilities Authority as the County's solid waste management plan implementation agency in substitution for the County's Division of Solid Waste Management is approved.

4. Essex County District Solid Waste Management Plan Deficiencies

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.

The outstanding issues noted above represent serious plan deficiencies which must be addressed immediately. At this point in time, Essex County is one of few 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 immediately to address these and the other noted deficiencies. Although the Department notes that staff of the DEPE's Division of Solid Waste Management has been working very aggressively over the past month with representatives from Essex County and the Essex County Utilities Authority toward correcting these deficiencies and negotiating a long-term regional disposal plan, the County's continued failure to resolve the noted deficiencies 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.

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 these 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 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 Amendments

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 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 and -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. 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 Amendments and Notification of Deficiencies 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 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 September 9, 1992, May 12, 1993, and August 4, 1993. 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.

December 10, 1993
DATE

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