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Office of the Commissioner

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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 12, 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 September 12, 1990 adopted an amendment to its approved County Plan. However, while this amendment was adopted on September 12, 1990, it was not submitted to the Department in its entirety until August 26, 1991. The amendment proposes the uses and disbursement of Essex County's Resource Recovery Investment Tax (RRIT) Fund through July 30, 1992. Specifically, the amendment proposes payments of \$3,705,882.20 to the Port Authority of New York and New Jersey as debt payment toward the County's resource recovery incinerator, \$123,000.00 for administrative expenses and \$60,000.00 towards County leaf composting operations.

The amendment was received by the Department of Environmental Protection and Energy (Department or DEPE) on August 26, 1991 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 12, 1990 is approved as provided in N.J.S.A. 13:1E-24. While the immediate plan amendment has been approved, 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 12, 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 consistent 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
Water Supply Element, DEPE
Wastewater Quality Element, 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
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 12, 1990 Amendment

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

Division of Environmental Quality, DEPE
Water Supply Element, DEPE
Wastewater Quality Element, DEPE
Division of Parks and Forestry, DEPE
Green Acres Program, DEPE
New Jersey Turnpike Authority
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
Division of Fish, Game and Wildlife, DEPE
New Jersey Advisory Council on Solid Waste Management
Department of Health
Department of the Public Advocate

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

Division of Solid Waste Management, DEPE

2. Issues of Concern Regarding the September 12, 1990 Amendment

Issue: RRIT Fund Use and Disbursement

The provisions of the "McEnroe" legislation (N.J.S.A. 13:1E-136 et seq.) which establish RRIT Fund accounts for the state's twenty-one counties, set out a clear state policy objective to generate revenues in order to subsidize anticipated resource recovery tipping fees to a level which is competitive with disposal costs at landfills utilized by the counties.

Prior to disbursement from its RRIT Fund, however, a county must prepare a plan amendment which outlines the proposed uses of the moneys in its district fund and establishes a disbursement schedule for those moneys in the Fund. Thus, two tests must be met: an eligible use test, which uses are limited to those identified in N.J.S.A. 13:1E-150b., and a disbursement schedule test, which test criteria are not specifically provided in the Act.

Eligible uses of the fund are provided in Attachment I, Part I, of this certification. In consideration of the intent and objectives of the Act outlined above and the specific limitations upon eligible uses of the fund provided in N.J.S.A. 13:1E-150b., projects not formally identified in the approved district solid waste management plan shall not be funded with RRIT Fund moneys. Therefore, in order to ensure users' rate reduction and facilitate timely project implementation, disbursements from a RRIT Fund shall be made only to projects formally identified in the approved district solid waste management plan.

Pursuant to law, in order to provide safeguards as to how the investment tax funds are to be spent, a schedule for the disbursement of the moneys must be provided through the plan amendment process established under the New Jersey Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.). In this way, a formal procedure for quantifying contributions to and withdrawals from the fund is established in order to maintain a running fund balance. Such a procedure may be followed using a variety of specific steps and methods of data presentation. In order to evaluate the adequacy of the disbursement schedule, the Department has established criteria (See Attachment I, Part II).

On September 12, 1990, the Essex County Board of Chosen Freeholders adopted an amendment to its approved County Plan which proposed uses of and a disbursement schedule for RRIT Fund revenues totaling \$7,416,019.66 through July 30, 1992. The proposed plan calls for expenditures for payments to the Port Authority of New York and New Jersey for the County's resource recovery incinerator; toward leaf composting operations and for administrative expenses (allowable at 2% of RRIT Funds appropriated by the state).

Although the uses and disbursements are approved in Section C., two areas of concern have been identified. First, of the \$5,772,196.04 identified as having already been spent as of December 31, 1991, Essex County only had previous approval to spend \$2,027,137.46 which was for fiscal year 1986 and part of fiscal year 1987. The County received RRIT distributions from the State for fiscal years 1986, 1987, 1988 and 1989 and spent \$3,745,058.58 more than its disbursement schedule provided for under a previously approved plan amendment. Secondly, Essex County is receiving a smaller share of RRIT Funds each year because waste which is sent to the Essex County incinerator is not subject to the tax. There appears to be enough money in the County's RRIT Fund to cover expenses identified in the subject plan amendment through July 30, 1992. However, RRIT revenues beyond this date may not be sufficient to match Essex County's planned (projected) payments to the Port Authority.

It is noted that the premature disbursement of \$3,745,058.58 was for expenditures within the limits of approvable uses and only lacked a disbursement schedule. However, Essex County is hereby cautioned not to make premature disbursements in the future. In addition, the proposed revised disbursement schedule for distributions of moneys from the Essex County RRIT Fund through July 30, 1992 is consistent with the requirements

of N.J.S.A. 13:1E-150b. Finally, because of decreasing RRIT revenues, it is recommended that Essex County reassess their RRIT revenues beyond July 30, 1992, until the program terminates on January 1, 1996, in order to identify alternate funding sources to cover future payments to the Port Authority for the Essex County RRF.

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

I, Scott A. Weiner, Commissioner of the Department, 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, have reviewed the September 12, 1990 amendment to the approved County Plan and certify to the County Freeholders that the September 12, 1990 amendment is approved as further specified below.

1. September 12, 1990 Amendment

The Essex County Resource Recovery Investment Tax Fund uses and disbursements, totaling \$7,416,019.66 through July 30, 1992, are in conformance with the requirements of N.J.S.A. 13:1E-150b and are approved. As noted in Section B., \$5,772,196.04 has already been spent, therefore, leaving a balance of \$1,643,823.62. The remaining funds, are allocated to the Port Authority of New York and New Jersey as service contract payments for the County's resource recovery incinerator; leaf composting operations; and for administrative expenses.

2. Essex County District Solid Waste Management Plan Deficiencies

I have reviewed the entire County Plan, including this amendment, to determine whether the plan fulfills the requirements set forth in N.J.S.A. 13:1E-21. The result of that review is as follows:

- a. N.J.S.A. 13:1E-21b(1) requires the designation of a Department, unit, or committee of county government . . . to supervise the implementation of the County's solid waste management plan.

Although Essex County has developed its resource recovery incinerator facility, there has been no formal designation of an implementation agency to oversee the entire solid waste program. Therefore, Essex County is hereby directed to submit to the Department a subsequent plan amendment within 180 days of the date of this certification designating the solid waste management implementation agency for the district.

- b. N.J.S.A. 13:1E-21b(3) requires a site plan which shall include all existing solid waste disposal facilities located within the Solid Waste Management District . . . and sufficient additional available suitable sites to provide solid waste facilities to treat and dispose of the actual and projected amounts of solid waste contained in the report accompanying the plan.

Currently, Essex County has contracted with an out-of-state landfill to accept residual and nonprocessable waste from the County's resource recovery facility. This disposal arrangement is inconsistent with the Department's policy that solid waste districts must be self-sufficient with regard to solid waste disposal. Therefore, Essex County is directed to actively pursue in-state landfill arrangements through facility siting or the negotiation of an interdistrict agreement.

- c. N.J.S.A. 13:1E-21b(4) requires every solid waste management plan to include a survey of proposed collection districts and transportation routes . . . to existing or available suitable sites for solid waste disposal facilities.

As Essex County has not specified routes to and from its disposal facilities, the solid waste management plan is deficient in this respect. As previously stated in the October 26, 1987 Certification of the April 29, 1987 plan amendment, Essex County was required to identify in a subsequent plan amendment, specific routes from certain municipalities to its resource recovery incinerator. The municipalities requiring further route identification were: Caldwell, Cedar Grove, Essex Fells, Fairfield, Montclair, North Caldwell, South Orange, Verona, and West Caldwell. In this regard, Essex County is hereby directed to submit to the Department a subsequent plan amendment within 180 days of the date of this certification which identifies specific routes from the aforementioned communities to the Essex County resource recovery incinerator. When Essex County addresses this requirement, they are advised that certain solid waste vehicles are incapable of complying with federal weight limitations (Federal Bridge Formula) set forth for interstate roadways. Accordingly, if interstate routes are to be utilized, haulers must demonstrate their ability to comply with the weight limitations of the Federal Bridge Formula.

3. Essex County Response to Solid Waste Task Force Final Report

Finally, I have also reviewed the County Plan to determine whether the plan fulfills the recommendations of the Emergency Solid Waste Assessment Task Force Final Report accepted by the Governor on November 16, 1990. Following this review, the County is hereby directed to submit a subsequent plan amendment within 180 days of this certification to address the following provisions of source reduction, recycling and regionalization:

- a. Source Reduction: The County shall determine what source reduction measures can be taken at the County level to eliminate the trend of increased per capita solid waste generation. For each noted source reduction measure, the County shall estimate its potential impact upon total solid waste generation with the district.
- b. Recycling: The County shall determine what measures will be taken by the district to achieve at least a 50% recycling rate for the municipal waste stream, including yard waste, and a 60% recycling

rate for the total waste stream by December 31, 1995. This determination shall address, at a minimum, what additional facilities will be needed within the district; what sites already exist or under what procedure the district will select necessary sites; and under what schedule the district feels that each necessary facility can be brought into operation.

Also, for each component of the recycling strategy, the district shall outline estimates of the tonnages which can be recycled in a mass balance format taking into consideration the total projected solid waste generation in the district. Further, based upon the minimum 50% and 60% recycling rates, the district must outline the amount of solid waste still requiring disposal. Finally, the County must consider the establishment of blanket facility inclusion and plan modification procedures to enable the expedited development of needed capacity and approvals for yard waste composting facilities, recycling centers, materials markets, and minor program policies.

c. Regionalization: On May 1, 1991, Essex County, American Ref-Fuel, the Port Authority of New York and New Jersey and the Bergen County Utilities Authority entered into a regional agreement for redirection of 250,000 tons per year of processible solid waste types 10 and 23 generated within Bergen County to the Essex County resource recovery facility. Because this agreement only extends through March 1, 1994 as it currently exists, Essex County shall determine the extent to which it can undertake long-term regionalization of its resource recovery facility that may be necessary after this date in order to provide regional solutions to solid waste management. Moreover, any such agreement shall be made a component of the Essex County District Solid Waste Management Plan. Finally, consideration should also be given to regional plans for materials processing, recycling, transfer and disposal facilities.

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.

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 and N.J.A.C. 7:26-1.4 and -2.13.

6. Effective Date of the Amendment

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

7. Reservation of Authority

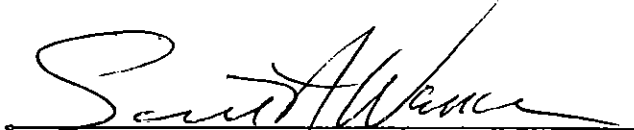
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan. The Department has published a Statewide 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 12, 1990. 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.

JAN 21 1992

DATE



SCOTT A. WEINER
 COMMISSIONER
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 AND ENERGY

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