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Scott A. Welner
Commissioner

IN THE MATTER OF CERTAIN AMENDMENTS
TO THE ADOPTED AND APPROVED SOLID
WASTE MANAGEMENT PLAN OF THE
MERCER COUNTY SOLID WASTE
MANAGEMENT DISTRICT

CERTIFICATION
OF THE NOVEMBER 25, 1992
AMENDMENT TO THE MERCER 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 July 31, 1980, the Department of Environmental Protection approved, with modifications, the Mercer 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 Mercer County Board of Chosen Freeholders (County Freeholders) completed such a review and on November 25, 1992, adopted an amendment to its approved County Plan.

The proposed amendment designated the J&J Recycling Company materials recovery facility, located at 833 Flora Street, City of Elizabeth, Union County to accept specific solid waste types generated from within Mercer County for processing to recover recyclables and dispose of all residue in accordance with waste flow rules for Mercer County.

The amendment was received by the Department of Environmental Protection and Energy (Department or DEPE) on December 22, 1992 and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed this amendment and has determined that the amendment adopted by the County Freeholders on November 25, 1992 is approved in part and rejected in part as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the November 25, 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 the approved portion of this plan amendment is consistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders and applicant are notified of the issues of concern relative to the November 25, 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 November 25, 1992 Amendment

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

Land Use Regulation Element, DEPE
Wastewater Facilities Regulation Element, 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

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

Groundwater Quality Management Element, DEPE
Department of Community Affairs
Department of the Public Advocate
Department of Health
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

2. Issues of Concern Regarding the November 25, 1992 Amendment

Issue: Permit Requirements

Transfer stations (and material 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. In this regard, these 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. Additionally, if the proposed operations will discharge pollutants as defined at N.J.A.C. 7:14-1.9, the applicant must secure a New Jersey Pollutant Discharge Elimination System (NJPDES) permit and/or a Treatment Works Approval for pollutant discharges prior to operation.

Issue: Facility Operating Conditions

The subject plan amendment included proposed conditions which the J&J Recycling Company materials recovery facility would be subject to. These conditions included: specific waste types and source separated

recyclables to be accepted from the Mercer County waste stream, residue waste flow requirements, monthly recordkeeping reports to the Mercer County Improvement Authority (MCIA), site inspection access to MCIA representatives, compliance with all applicable statutes, rules and regulations, and discontinuation of processing of Mercer County waste upon commencement of the MCIA's shipment of bulky waste to the Atlantic County Utilities Authority (ACUA) bulky waste recycling facility consistent with the Atlantic-Mercer interdistrict agreement.

As noted in Section C., all of the above conditions imposed on the J&J facility by Mercer County are preempted by State statutes, rules and regulations. In the case of specific waste types and recyclables to be accepted by the facility, the facility's solid waste permit application for expansion of current waste handling activities is under review by the Department and, when finalized, will govern the amount and type of recyclable materials which the facility may accept. Furthermore, in accordance with the Department's longstanding "Pereira Policy", intercounty movement of solid waste to transfer stations and materials recovery facilities is permitted so long as it is for the purpose of removing solid waste materials from the waste stream for recycling, so long as nonrecycled residue is returned to the county of waste origin for disposal in proportion to the amount of waste taken from that county, and so long as strict recordkeeping requirements are followed. The Department is in the process of codifying the "Pereira Policy" as a rule concerning mixed loads. (See rule proposal of September 21, 1991, at 24 N.J.R. 3286). Accordingly, Mercer County's restrictions on the amount and type of waste which may be accepted at the J&J facility is in conflict with both Department permitting requirements and the "Pereira Policy." Similarly, residue waste flow requirements, monthly recordkeeping requirements, site inspection, and compliance with applicable rules are regulated pursuant to the Department's solid waste regulations.

Issue: County Plan Inclusion

The Department's January 4, 1993 certification of Union County's June 18, 1992 plan amendment approved a capacity expansion of the existing J&J Company, Inc. transfer station/materials recovery facility located at 833 Flora Street in the City of Elizabeth, from less than 100 tons per day (TPD) to 450 TPD. An application to expand the J&J facility to 450 TPD is currently under review by the Department. Therefore, inclusion of the J&J facility site in the Mercer County Plan at this time is only appropriate for purposes of operational clarification. Further, based upon the Department's "Pereira Policy" and proposed September 21, 1992 rule regarding mixed loads, the inclusion of the J&J Recycling Company operation of Elizabeth, Union County, within the Mercer County Plan is unnecessary. Despite the fact that inclusion of a transfer station or materials recovery facility in the county plan for the county of waste origin is unnecessary under the "Pereira Policy" and mixed loads rule, such plan inclusion is neutral in affect and does not conflict with the policy or proposed rule. Accordingly, the Department has approved inclusion of the J&J facility in the Mercer County Plan, as noted in Section C. of this certification. However, as noted above, the Department's has rejected all operational and other conditions imposed by the County, as these conditions are preempted by the Department's regulatory authority.

C. Certification of the Mercer 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 November 25, 1992 amendment to the approved County Plan and certify to the County Freeholders that the November 25, 1992 amendment is approved in part and rejected in part as further specified below.

The County Plan inclusion of the designation of the J&J Recycling Company materials recovery facility located at 833 Flora Street in the City of Elizabeth, Union County to accept solid waste generated from within Mercer County for purposes of operational clarification is approved. However, the conditions imposed upon the J&J Recycling Company which are included in the amendment are rejected since State statutes, rules and regulations supersede the regulatory authority granted to County government. In the case of specific waste types and source separated recyclables to be accepted by the facility, the facility's solid waste permit application for expansion of current waste handling activities is under review by the Department and, when finalized, will govern the amount and type of recyclable materials which the facility may accept. Furthermore, in accordance with the Department's longstanding "Pereira Policy", intercounty movement of solid waste to transfer stations and materials recovery facilities is permitted so long as it is for the purpose of removing solid waste materials from the waste stream for recycling, so long as nonrecycled residue is returned to the county of waste origin for disposal in proportion to the amount of waste taken from that county, and so long as strict recordkeeping requirements are followed. The Department is in the process of codifying the "Pereira Policy" as a rule concerning mixed loads. (See rule proposal of September 21, 1991, at 24 N.J.R. 3286). Accordingly, Mercer County's restrictions on the amount and type of waste which may be accepted at the J&J facility is in conflict with both Department permitting requirements and the "Pereira Policy."

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 to be deserving of licensing under the provisions of N.J.S.A. 13:1E-126.

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

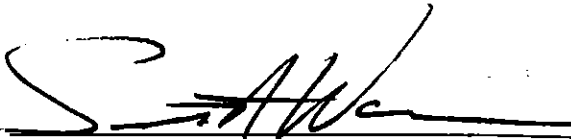
7. Reservation of Authority

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 in Part and Rejection in Part of the Amendment 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 in part and reject in part the amendment, as outlined in Section C. of this certification, to the Mercer County District Solid Waste Management Plan which was adopted by the Mercer County Board of Chosen Freeholders on November 25, 1992.

5-18-93
DATE



SCOTT A. WEINER
COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND ENERGY

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