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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
MONMOUTH COUNTY SOLID WASTE
MANAGEMENT DISTRICT

CERTIFICATION
OF THE OCTOBER 8, 1992
AMENDMENT TO THE MONMOUTH 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 31, 1980, the Department of Environmental Protection approved, with modifications, the Monmouth 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 Monmouth County Board of Chosen Freeholders (County Freeholders) completed such a review and on October 8, 1992, adopted an amendment to its approved County Plan.

The amendment proposed to delete from the County Plan the Waste Disposal, Inc. (WDI) landfill facility located in Howell Township as a solid waste disposal site. The County's deletion of the WDI site was based on the premise that the landfill's limited useful disposal capacity, as well as environmental, economic and other limitations, effectively eliminate any role it may serve as a component of the County Plan.

The amendment was received by the Department of Environmental Protection and Energy (Department or DEPE) on October 15, 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 October 8, 1992 is rejected as provided in N.J.S.A. 13:1E-24. In addition to the immediate plan amendment being rejected, serious deficiencies in the County Plan have been identified within Section C. of this certification.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the October 8, 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 inconsistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders and applicant are also notified of the issues of concern relative to the October 8, 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 October 8, 1992 Amendment

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

Wastewater Facilities Regulation Element, DEPE
Division of Parks and Forestry, DEPE
Green Acres Program, DEPE
New Jersey Turnpike Authority
Department of Agriculture
Department of Transportation

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

Land Use Regulation Element, DEPE
Groundwater Quality Management 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

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

Office of Energy, DEPE
Division of Fish, Game and Wildlife, DEPE
Division of Solid Waste Management, DEPE

2. Issues of Concern Regarding the October 8, 1992 Amendment

Issue: Historical Background

The WDI landfill began operating in 1946 and although the facility was initially grandfathered into the County Plan pursuant to the Solid Waste Management Act, the facility was formally included in the County Plan on August 31, 1981. SCA Services, the former owner of the WDI landfill, suspended operations at the facility on November 22, 1983, with approximately 926,000 cubic yards of remaining unfilled capacity. This action was subsequent to an Administrative Consent Order (ACO) between the Department and SCA entered on May 8, 1981, concerning remediation of

ground water contamination problems at the site. This agreement was followed by a second ACO on October 27, 1982 to implement the remediation plan. Since that time, Waste Management, Inc. (WMI), new owner of WDI, has undertaken remedial measures to attempt to decontaminate the site through a ground water pumping and monitoring system.

On March 25, 1987, WDI initiated attempts to reopen the facility and submitted a permit renewal application in June 1989. However, in response to significant public opposition from local officials and residents in Howell Township, the County Freeholders adopted an amendment on March 8, 1990 which proposed deletion of the facility from the County Plan. Former Commissioner Judith A. Yaskin's certification of the March 8, 1990 amendment remanded for reconsideration and potential modification, among other things, the deletion of the WDI landfill from the County Plan, pending Governor Florio's action on the Emergency Solid Waste Assessment Task Force (Task Force) Final Report recommendations. Commissioner Yaskin noted that policy and regulatory changes such as the planning horizons for district solid waste management plans, requirements pertaining to the use of volume reduction equipment at landfills, and county-by-county assessments of disposal capacity needs could arise based upon the recommendations of the Task Force Final Report and, therefore, it would be premature and imprudent for the Commissioner to specifically act upon the County Freeholders proposed deletion of the WDI landfill from the County Plan at that time. Following this certification, the Governor endorsed the findings of the Task Force Final Report on November 16, 1990. Subsequently, litigation resulted in two separate cases regarding the County's March 8, 1990 plan amendment and the Department's August 24, 1990 certification of the amendment. On August 12, 1991, the litigation between the County and WMI was resolved through a court decision and on December 18, 1991 the County withdrew its lawsuit against the Department. In his August 12, 1991 decision, Judge McGann ruled that the March 8, 1990 plan amendment was not supported by substantial evidence and therefore was invalid.

The subject amendment once again proposes to delete from the County Plan the WDI landfill facility as a solid waste disposal site. The County's deletion of the WDI site was based on the premise that the landfill's limited useful disposal capacity, as well as environmental, economic and other limitations, effectively eliminate any role it may serve as a component of the County Plan. The County submitted as part of the plan amendment a public hearing record comprising a total of forty-nine (49) separate items. These included a combination of maps, correspondence, reports, a video tape, transcripts, etc., of alleged water contamination, water supply information, drum discovery at the WDI site and other site information, and resolutions of opposition from various towns, groups and citizens. Also submitted were more than three volumes of documents from WMI supporting the landfill's reopening. All of these submissions from both the County and the company were reviewed by the Department as part of its decision making process for the subject amendment.

Issue: Environmental Concerns

A series of environmental, economic, land use and other concerns regarding the WDI landfill site have been addressed through the amendment and its public hearing record, particularly by the County and other public officials, local environmental groups and local citizens to justify the County's proposed deletion of the WDI landfill site from the County Plan.

Specifically, the amendment raised concerns regarding the suitability of the WDI site for landfiling purposes by virtue of its location in an environmentally sensitive area on top of the Kirkwood-Cohansey Aquifer which is being utilized as a principal source of potable water supply. The site suitability is further impacted by its location in the water supply critical area of Sandy Hill Brook and Muddy Ford Brook on or adjoining the site which are utilized as a source of water. Other concerns include alleged unsuitable soils and geological characteristics of the site, wetlands and 100 year flood plain area designation, endangered species of flora and fauna in the surrounding area designation, its location in Planning Area-4B "environmentally sensitive rural" of the State Development and Redevelopment Guide Plan, and the investigation by the United States Environmental Protection Agency to determine whether the facility is a Superfund waste site.

Evolving land use patterns in the surrounding area of the site have also been presented in the amendment. Substantial residential and commercial development, population growth, and proposed new development in the surrounding area have been addressed to support the deletion of the WDI landfill from the County Plan. The economic concerns associated with the reopening of the WDI site were also raised. Specifically, it could result in higher tipping fees for those towns directed to the WDI landfill. Moreover, its negative impact on property values in the area was raised.

The effectiveness of the existing groundwater remedial system at the WDI site and compliance of WMI with the ACO of the DEPE were questioned by the County. In this regard, the County submitted an analysis of monitoring well and surface water sampling results at the WDI site. The amendment also cited the DEPE's determination that the existing groundwater control system at the WDI site was not capturing the entire plume of contamination as anticipated with the downgradient edge of the plume at present uncontrolled which would require additional monitoring wells and an upgraded groundwater control system.

Also, the County has alleged that the more recent discovery of drums at the WDI site and subsequent detection of contaminants in the soils at the drum site indicates that hazardous waste was disposed at this landfill in the past which poses a substantial threat to the environment, potable water supply and public health. Further, while WMI counterargued that it has implemented proper groundwater remedial action in accordance with the ACO and the remedial system has created the desired effect, WMI also indicated that an upgrade of the existing remedial system is necessary and WDI has recently received an approval from the DEPE to implement the upgraded remedial system. Finally, WMI indicated that the drums and the soils have been properly remediated and the County has not provided technical analysis or documentation which would infer that the site is an uncontrolled hazardous waste site.

The various environmental concerns associated with the proposed reopening of WDI landfill, such as ground and surface water contamination, air emissions, noise, traffic impact, impact on wetlands and endangered flora and fauna in the surrounding area, etc., will be addressed by the Department as part of its review of WDI's permit renewal application. In this regard, WMI submitted an engineering design report for the WDI landfill in June 1989. The submission included a new engineering design for the remaining capacity, engineering reports, geotechnical analysis, a closure plan, an operations and maintenance manual, traffic studies, noise studies, and site monitoring results.

The review of the plan amendment, while certainly considering the above referenced environmental concerns, focused on the appropriateness of the land use decision of reopening the WDI landfill nearly 10 years following the suspension of activity at the site and the impact this facility would have upon the County Plan in terms of providing additional disposal capacity, as further addressed below.

Issue: Available Disposal Capacity

The amendment indicated that the remaining capacity at the WDI landfill is insignificant and is not needed in light of consideration of environmental and public health concerns. The County's approved primary disposal site is the Monmouth County Reclamation Center (MCRC) landfill located in Tinton Falls Borough. This facility currently accepts all solid waste generated within the County and has an estimated remaining capacity of less than three years. Further available disposal capacity at the MCRC landfill will depend upon the eventual size (if permitted and constructed) of its planned Phase III expansion. Originally, the County had anticipated that the Phase III expansion could provide an additional capacity of 15 - 20 years for county residents. However, there is a likelihood that the actual area of the Phase III landfill will be reduced because of wetlands disturbances and associated mitigation plans for the site. According to one estimate by the County in its solid waste management program fact sheet of May 1992, due to wetland limitations the remaining capacity at the existing MCRC Phase II area and planned Phase III landfill may be as little as five to seven years. Also, it must be noted that the County's previously planned incinerator project is no longer considered to be viable by the County. The County included this facility in its August 8, 1985 amendment, which was certified by the DEPE on December 11, 1985, as a 1500 ton per day (TPD) incinerator. Subsequently, in its March 8, 1990 amendment, the County increased the capacity of the incinerator from 1500 TPD to 1700 TPD but the DEPE, in its August 24, 1990 certification, remanded the amendment for reconsideration and potential modification consistent with the Task Force Final Report. Finally, the project was rejected at a referendum held in November 1991. No replacement project to provide additional disposal capacity has been proposed by the County since that time. As a result, as part of a future plan amendment submission, the County may wish to undertake a feasibility study of alternate uses of the WDI site such as composting and recycling facilities or disposal of nonputrescible waste types, particularly demolition and land clearing debris, in order to provide adequate long-term disposal capacity for the County and extend the life of the MCRC landfill.

The appropriateness of reopening the WDI facility must be considered in the context of the long-term plans of the County for solid waste management. At present, and as noted above, significant uncertainty exists regarding the actual capacity which the Phase III expansion would provide for the County. In this regard, a public hearing on the proposed freshwater wetlands permit application was held by the Department on December 9, 1992. Detailed engineering plans for the Phase III landfill have yet to be submitted pending the outcome of the freshwater wetlands permit review process. Therefore, no reliable picture currently exists as to future available capacity at the MCRC landfill.

To further add to the uncertainty of future plans, Monmouth County is one of the few remaining counties in the state which has yet to submit a revised long-term plan in response to the Governor's Task Force. As a result, the County's commitment to source reduction to address solid waste generation over time, specific plans and programs to achieve statewide recycling goals, and long-term plans for county and regional resource recovery facility development and use, have not been identified to the Department. Taken together, the current uncertainty of existing and future capacity at the MCRC landfill and lack of an updated solid waste plan leaves the Department unable to make any reasonable judgments as to the need for reopening WDI. While the land use concerns of the County are certainly valid, the question of the need for the facility must be thoroughly addressed by the County in the context of its overall long-term solid waste plan. The County may resubmit proposals pertaining to WDI after it has addressed its long-term planning needs.

In light of these considerations, and the failure of the County to provide its required long-term management plan, the deletion of any future disposal capacity, including the WDI Landfill, is inappropriate at this time, and the Department is constrained to reject the deletion of the WDI Landfill from the County Plan. This rejection is not based upon the Department's disagreement with the County's proposed land use decision. Rather, to eliminate potential capacity even in the context of such a significant land use decision cannot be made in the absence of a clear picture as to long-term capacity considerations in Monmouth County which are currently not fully developed.

Issue: Regulatory Requirements

Landfills 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. New and closed landfills should be equipped with positive ventilation systems, which direct landfill gases to air pollution control devices. These vents and devices require air pollution control permits pursuant to N.J.A.C. 7:27-8.2(a)1 and 16. These regulations also require permits for all stationary equipment used to ventilate a solid waste facility directly or indirectly to the ambient atmosphere.

Issue: Task Force Final Report

On January 15, 1992, the Department directed the County to submit within 180 days or July 12, 1992 a plan amendment to address the Task Force Final Report recommendations relative to source reduction, 60% recycling and regionalization. While County solid waste representatives have met with the Division of Solid Waste Management staff on several occasions to discuss the County's development of a draft Task Force amendment, to date the County has not adopted and submitted the required amendment. Therefore, as noted in Section C. below, the County is hereby directed to immediately submit the subsequent amendment addressing the Task Force recommendations.

C. Certification of the Monmouth 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 October 8, 1992 amendment to the approved County Plan and certify to the County Freeholders that the October 8, 1992 amendment is rejected as further specified below.

1. October 8, 1992 Amendment

The proposal to delete the WDI landfill site from the County Plan is rejected to provide further planning activity by the County. As noted in Section B., the County's approved primary disposal site is the MCRC landfill located in Tinton Falls Borough. Further available disposal capacity at the MCRC landfill will depend upon the eventual permitted size (if permitted and constructed) of its planned Phase III expansion. Originally, the County had anticipated that the Phase III expansion could provide an additional capacity of 15 - 20 years for county residents. However, there is a likelihood that the actual area of the Phase III landfill will be reduced because of wetlands disturbances and associated mitigation plans for the site. According to one estimate by the County in its solid waste management program fact sheet of May 1992, due to wetland limitations the remaining capacity at the existing MCRC Phase II area and planned Phase III landfill may be as little as five to seven years. Also, it must be noted that the County's previously planned incinerator project is no longer considered to be viable by the County. The County included this facility in its August 8, 1985 amendment, which was certified by the DEPE on December 11, 1985, as a 1500 TPD incinerator. Subsequently, in its March 8, 1990 amendment, the County increased the capacity of the incinerator from 1500 TPD to 1700 TPD but the DEPE, in its August 24, 1990 certification, remanded the amendment for reconsideration and potential modification consistent with the Task Force Final Report. Finally, the project was rejected at a referendum held in November 1991. No replacement project to provide additional disposal capacity has been

proposed by the County since that time. As a result, as part of a future plan amendment submission, the County may wish to undertake a feasibility study of alternate uses of the WDI site such as composting and recycling facilities or disposal of nonputrescible waste types, particularly demolition and land clearing debris, in order to provide adequate long-term disposal capacity for the County and extend the life of the MCRC landfill.

The appropriateness of reopening the WDI facility must be considered in the context of the long-term plans of the County for solid waste management. At present, and as noted above, significant uncertainty exists regarding the actual capacity which the Phase III expansion would provide for the County. In this regard, a public hearing on the proposed freshwater wetlands permit application was held by the Department on December 9, 1992. Further, detailed engineering plans for the Phase III landfill have yet to be submitted pending the outcome of the freshwater wetlands permit review process. Therefore, no reliable picture currently exists as to future available capacity at the MCRC landfill.

To further add to the uncertainty of future plans, Monmouth County is one of the few remaining counties in the state which has yet to submit a revised long-term plan in response to the Governor's Task Force. As a result, the County's commitment to source reduction to address solid waste generation over time, specific plans and programs to achieve statewide recycling goals, and long-term plans for county and regional resource recovery facility development and use, have not been identified to the Department. Taken together, the current uncertainty of existing and future capacity at the MCRC landfill and lack of an updated solid waste plan leaves the Department unable to make a final determination as to the need for reopening the WDI facility. The question of need must be thoroughly addressed by the County in the context of its overall long-term solid waste plan in conjunction with a land use decision to develop or delete the WDI landfill. The Department's rejection is not based upon its disagreement with the County's proposed land use decision. Rather, to eliminate potential capacity even in the context of such a significant land use decision cannot be made in the absence of a clear picture as to long-term capacity considerations in the County which are not currently fully developed. The County may resubmit proposals pertaining to WDI after it has addressed its long-term planning needs.

In light of these considerations, and the failure of the County to provide its required long-term management plan, the deletion of any future potential disposal capacity, including the WDI landfill, is inappropriate at this time, and the Department is constrained to reject the deletion of the WDI Landfill from the County Plan.

2. Task Force Recommendations

As noted in Section B. of the certification, the County Plan continues to be deficient in addressing the following provisions of the Task Force recommendations and the County is directed to submit the required amendment immediately.

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 source reduction measure, the County shall estimate its potential impact upon total solid waste generation within 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 vegetative 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 County. 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: As indicated above, the County shall determine the extent to which it can undertake long-term regionalization of its solid waste facilities and programs with other districts to provide regional solutions to solid waste management. At a minimum, consideration should 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 the certification of this amendment to the County Plan and which was executed prior to the certification 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 the certification 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 certification of the amendment contained herein shall operate in compliance with this certification 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. 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.

5. Reservation of Authority

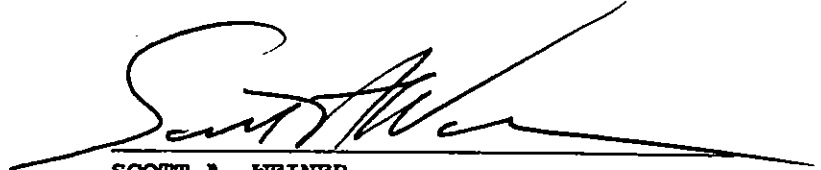
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan. The Department has published a Statewide 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 Rejection 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 reject the amendment, as outlined in Section C. of this certification, to the Monmouth County District Solid Waste Management Plan which was adopted by the Monmouth County Board of Chosen Freeholders on October 8, 1992. I hereby also require, as noted in Section C., the Monmouth County Board of Chosen Freeholders to address the noted deficiencies within the timeframe specified.

3-11-93

DATE



SCOTT A. WEINER

COMMISSIONER

DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND ENERGY

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