



## State of New Jersey

Christine Todd Whitman  
Governor

Department of Environmental Protection

Robert C. Shinn, Jr.  
Commissioner

Office of the Commissioner

P.O. Box 402

Trenton, NJ 08625-0402

Tel. # 609-292-2885

Fax. # 609-292-7695

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, 1998  
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 (Department or DEP) 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.

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 Monmouth County Board of Chosen Freeholders (County Freeholders) completed such a review and on October 8, 1998

adopted an amendment to its approved County Plan.

The amendment represents the County's supplemental response to the May 1, 1997 decision of the United States Court of Appeals for the Third Circuit which declared unconstitutional New Jersey's historic system of solid waste flow control. [See Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County et al. 112 F.3d 652 (3d Cir. 1997, cert. den., November 10, 1997.)] Specifically, each solid waste management district must reevaluate its solid waste disposal strategy in light of this recent court decision and, if necessary, initiate appropriate amendments thereto.

In general, the Department refers the County to the solid waste regulations at N.J.A.C. 7:26-1 et seq. to the extent they relate to specific procedural and substantive issues addressed in this and subsequent plan amendments. In addition, this certification is in no way intended by the DEP to represent a legal determination regarding the effect of the Atlantic Coast decision on any specific contract between public and/or private parties.

The October 8, 1998 amendment describes the County's revised disposal strategy, in response to the Atlantic Coast decision, which mandates that all type 10 solid waste generated from within Monmouth County which is not disposed of outside the State of New Jersey is to be disposed of at the Monmouth County Reclamation Center (MCRC) located in Tinton Falls, Monmouth County.

The amendment was received by the Department on October 20, 1998, 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 October 8, 1998 is approved as provided in N.J.S.A. 13:1E-24.

**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, 1998 amendment to the County Plan according to the objectives, criteria, and standards developed in the Statewide Solid Waste Management Plan and I find and conclude that this plan amendment is consistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the issues of concern relative to the October 8, 1998 amendment which are included in Section B.2. below.

In conjunction with the review of the amendment, the Department circulated copies to fifteen federal and state 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. All

agencies contacted are as follows:

Division of Parks and Forestry, DEP  
Division of Fish, Game and Wildlife, DEP  
Division of Compliance and Enforcement, DEP  
Division of Solid and Hazardous Waste, DEP  
Division of Water Quality, DEP  
Office of Air Quality Management, DEP  
Green Acres Program, DEP  
Land Use Regulation Element, DEP  
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  
U.S. Environmental Protection Agency

1. Agency Participation in the Review of the October 8, 1998 Amendment

The following agencies did not object to the proposed amendment:

Office of Air Quality Management, DEP  
Division of Parks and Forestry, DEP  
Green Acres Program, DEP  
Department of Agriculture  
Department of Community Affairs  
Land Use Regulation Element, DEP  
New Jersey Turnpike Authority

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

Division of Compliance and Enforcement, DEP  
Division of Water Quality, DEP  
Division of Fish, Game and Wildlife, DEP  
New Jersey Advisory Council on Solid Waste Management  
Department of Transportation  
Department of Health  
U.S. Environmental Protection Agency

The following agency provided substantive comments as shown in Section B. of the certification document.

Division of Solid and Hazardous Waste, DEP

2. Issues of Concern Regarding the October 8, 1998 Amendment

**Issue: Prior Disposal Strategy**

On December 23, 1997, the County adopted its initial amendment in response to the Atlantic Coast case. The County's strategy at that

time was to move to a voluntary delivery system by reducing the tip fee at the MCRC to a competitive level and subsidizing its solid waste management system (including such programs as recycling, household hazardous waste, inspection and enforcement) through a Dedicated County Line Item Tax. However, this tax proposal can not be implemented until authorizing State legislation is enacted which, to date, has not occurred. On April 24, 1998, the Department certified the December 23, 1997 amendment by approving with modification contingent upon enactment of appropriate State legislation. Despite reducing the MCRC tip fee from \$75 per ton to \$55 per ton, commercial haulers from the County have continued to deliver solid waste to out-of-county but in-state facilities thereby depriving the County of needed revenue. In response to this continued shortfall, the October 8, 1998 amendment was adopted which proposes that all type 10 solid waste generated from within the County which is not disposed of outside the State of New Jersey is to be disposed of at the MCRC.

**Issue: Legal Justification for Revised Disposal Strategy**

In the Atlantic Coast case, the United States Court of Appeals for the Third Circuit enjoined the enforcement of New Jersey's flow control regulations noting that "...the State of New Jersey cannot protect the local waste disposal market, and thereby exclude out-of-state competitors, in order to use inflated revenues to finance substantial debts of its waste management districts." However, the court noted that "...a law that directs waste to a particular facility will not necessarily violate the dormant Commerce Clause as long as out-of-state operators are given an even chance to compete for the opportunity to dispose of the state or district's waste." Further, the Court held that "...[a]lthough the state of New Jersey may no longer preclude the designation of out-of-state waste disposal facilities or operators, the state and the county authorities remain free to regulate the flow of waste within New Jersey as long as the state's laws and regulations treat in-state and out-of-state facilities equally." Finally, significant case law exists to provide support that a New Jersey court would uphold an intrastate flow control regulation as long as out-of-state competitors are given an even chance to compete for the opportunity to dispose of a county's waste. Specifically, IMO Allegations of Violations of Law by A. Fiore & Sons, Inc. et al., 305 N.J. Super. 192, 701 A. 2d. 1303, (1997), the court held that flow control requirements which affect only the intrastate flow of waste are enforceable. Therefore, since this strategy does not preclude transporters from disposing of solid waste at out-of-state facilities and the amendment provides detailed legal justification for this disposal strategy as well as an extensive review of applicable case law, within Section C. of this certification the Department approves the County's revised disposal strategy.

**Issue: Private Sector Objections to the October 8, 1998 Amendment**

After the October 8, 1998 amendment was submitted to the Department, Ross Lewin, Esquire, of Jamieson, Moore, Peskin & Spicer which represents BFI Waste Systems, submitted extensive written objections to the amendment. The substance of these objections is that the imposition of intrastate flow control violates both the Commerce Clause and the Equal Protection Clause of the United States Constitution. Specifically, "flow control requirements are illegal, wasteful, and counterproductive." The Office of the Attorney General has reviewed the October 8, 1998 amendment, as well as the objections submitted by Jamieson, Moore, Peskin and Spicer, and has determined that there is no legal impediment to approving the amendment. If, however, BFI Waste Systems or any other party is aggrieved by the Department certifying approval of intrastate flow control, it will ultimately rest with the courts to resolve the legality of this issue.

The commenter also notes an ambiguity created by the amendment in failing to address the utilization of transfer stations/materials recovery facilities by transporters prior to in-state or out-of-state disposal. Specifically, "...the amendment could be interpreted to prevent transport of Monmouth County generated solid waste to an in-state transfer station or materials recovery facility prior to out-of-state disposal. If so interpreted, the amendment would dramatically impede the interstate commerce in the disposal of solid waste contrary to the dictates of Atlantic Coast. In fact, delivery of Monmouth County's solid waste to any out-of-state facility would be virtually precluded given the absence of viable out-of-state disposal facilities within the reach of direct haulage vehicles." This would "...constitute an effective bar to any interstate shipments of solid waste generated in Monmouth County." There is no evidence to substantiate the commenter's claim that precluding transfer stations/materials recovery facilities from accepting Monmouth County generated waste would constitute an effective bar to any interstate shipments of solid waste generated within the County. However, until this issue is otherwise addressed by the County, transporters collecting Type 10 solid waste generated within Monmouth County are free to use transfer stations/materials recovery facilities which are operating in accordance with applicable laws including, but not limited to, permitting, licensing, registration, truck routing, and reporting requirements, as long as Monmouth County generated waste delivered to transfer stations/materials recovery facilities is disposed of at a permitted out-of-state disposal facility or the MCRC, or delivered to recovered materials end markets. Pursuant N.J.A.C. 7:26-2.13(k), any in-state transfer station/materials recovery facility which accepts Type 10 solid waste generated within Monmouth County shall be required to submit forms to the Department and the County documenting that such Monmouth County waste was actually delivered to a permitted out-of-state disposal facility, the MCRC, or to recovered materials end markets.

**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, 1998 amendment to the approved County Plan and certify to the County Freeholders that the October 8, 1998 amendment is approved as further specified below.

The County Plan inclusion of the revised disposal strategy which mandates that all type 10 solid waste generated from within Monmouth County which is not disposed of outside the State of New Jersey is to be disposed of at the Monmouth County Reclamation Center located in Tinton Falls, Monmouth County is approved.

**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 in part and modification in part 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 Plan

The provisions of the District 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 including waste types 10, 13, 23, 25, and 27 and all applicable subcategories and shall not apply to liquid and hazardous waste. All nonhazardous materials separated at the point of generation for sale or reuse are subject to regulation pursuant to N.J.A.C. 7:26A-1 et seq.

4. Certification to Proceed with Implementation of the 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 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, -2.13, and N.J.A.C. 7:26A-1.3.

6. Effective Date of the Amendment

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

7. Reservation of Authority

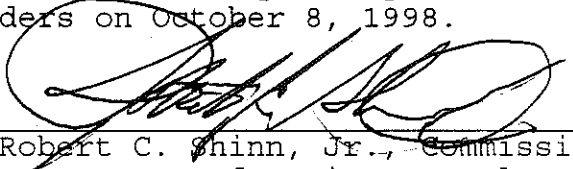
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's planning guidelines, rules, regulations, orders of the Department, and also includes the compilation of individual district plans and amendments as they are approved.

E. Certification of Approval of the Amendment by the Commissioner of the Department of Environmental Protection

In accordance with the requirements of N.J.S.A. 13:1E-1 et seq., I hereby approve the October 8, 1998 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, 1998.

March 18, 1999

Date

  
Robert C. Shinn, Jr., Commissioner  
Department of Environmental Protection

