



State of New Jersey

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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 DECEMBER 23, 1997
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 December 23, 1997,

adopted an amendment to its approved County Plan.

The amendment represents the County's 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 December 23, 1997 amendment proposes a market participant strategy which provides for voluntary delivery of solid waste to the Monmouth County Reclamation Center (landfill).

The amendment was circulated to various administrative review agencies for review and comment, as required by law, on January 2, 1998. The Department has reviewed this amendment on an expedited basis and has determined that the amendment adopted by the County Freeholders on December 23, 1997 is approved with modification 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 December 23, 1997 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, as modified, is consistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the issue of concern relative to the amendment which is included in Section B.2. below.

In conjunction with the review of the amendment, the Department circulated copies to sixteen 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 Treasury
Department of Transportation
Department of Community Affairs
U.S. Environmental Protection Agency

1. Agency Participation in the Review of the December 23, 1997 Amendment

The following agencies did not object to the proposed amendment:

Division of Compliance and Enforcement, DEP
Division of Parks and Forestry, DEP
Green Acres Program, DEP
Department of Community Affairs
Department of Agriculture
New Jersey Turnpike Authority

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

Division of Water Quality, DEP
Division of Fish, Game and Wildlife, DEP
Office of Air Quality Management, DEP
Land Use Regulation Element, DEP
Department of Health
Department of Transportation
Department of Treasury
New Jersey Advisory Council on Solid Waste Management
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. Issue of Concern Regarding the December 23, 1997 Amendment

Issue: County Solid Waste System

The December 23, 1997 describes the history of the development of the County's solid waste system and the various options to maintain this current system. The County is desirous of becoming a market

participant by offering contracts for disposal services to its local municipalities and other customers. To achieve a competitive market participant status, the County has lowered the tipping fees at the County Reclamation Center. However, the tipping fee at the disposal facility subsidized other services within the County's solid waste system other than landfill disposal. These services include recycling, waste reduction, household hazardous waste, inspection and enforcement programs. To maintain a competitive market rate and to continue to fund nondisposal related solid waste services, it is necessary for the County to develop a mechanism to subsidize the County solid waste system. After examining the various available options, the County selected pursuing the "Dedicated County Line Item Tax." Although implementation of this option will require State legislation, the County takes the position that the Dedicated County Line Item Tax offers numerous advantages. Specifically, a dedicated tax offers accountability, flexibility, reliability, and enforceability. Therefore, the amendment proposes the implementation of a market participant strategy based upon a Dedicated County Line Item Tax which is contingent upon enactment of authorizing State legislation. Section C. of the certification approves with modification this strategy contingent upon enactment of enabling State legislation. Also, upon enactment of appropriate State legislation, Section C. directs the County to notify the Department through an Administrative Action (pursuant to N.J.A.C. 7:26-6.11(b)10.) prior to implementation of the tax. Finally, Section C. notes that if such legislation is either defeated or not forthcoming by December 1998, the County is directed to adopt within 90 days of that date a subsequent amendment providing for an alternative funding method.

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 December 23, 1997 amendment to the approved County Plan and certify to the County Freeholders that the December 23, 1997 amendment is approved with modification as further specified below.

The County Plan inclusion of a market participant strategy which provides for voluntary delivery of solid waste to the Monmouth County Reclamation Center located in Tinton Falls Borough, Monmouth County is approved with modification. Specifically, as noted in Section B.2., this strategy relies upon a subsidization method which is the Dedicated County Line Item Tax that cannot be implemented until authorizing State legislation is enacted. Therefore, this strategy is approved with modification contingent upon enactment of enabling State legislation. Also, as noted in Section B., upon enactment of appropriate State legislation, the County should notify the Department through an Administrative

Action prior to implementation of the tax. Finally, if such legislation is either defeated or not forthcoming by December 1998, the County is directed to adopt within 90 days of that date a subsequent amendment providing for an alternative funding method.

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

7. Reservation of Authority

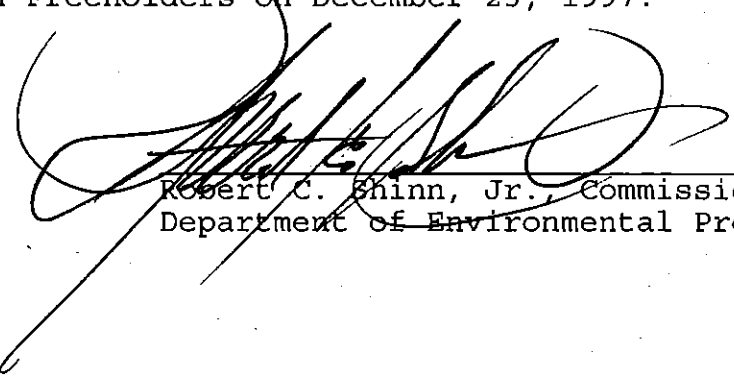
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's 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 with Modification 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 with modification 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 December 23, 1997.

Date

4/24/98


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