



State of New Jersey  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER  
CN 402  
TRENTON, N.J. 08625  
609-292-2885

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

CERTIFICATION OF APPROVAL  
OF THE JANUARY 17, 1986  
AMENDMENT TO THE PASSAIC 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 approved, with modifications, the Passaic County District Solid Waste Management 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 the 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 the 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. Under the New Jersey Solid Waste Management Act, counties are given the primary role in solid waste management planning. Counties are required to develop comprehensive plans which, among other things, describe a strategy for handling waste generated in

the counties, which designate the sites for sufficient facilities to implement the strategy, and which describe the financial and institutional arrangements for implementation of the required facilities and activities.

It is the policy of the Department of Environmental Protection to affirm the primacy of the counties in this process. The Department has provided advice and support for the required decisions, but until now, hasn't found it necessary to directly intervene in the basic decisions regarding strategy and siting, except as required to ensure that counties activities conform to the requirements of the Act. However, the Act does provide that the Commissioner may propose and adopt amendments to solid waste management plans to remedy any deficiencies.

On January 17, 1986, the Department proposed an amendment to the Passaic County District Solid Waste Management Plan. Primarily, the amendment proposed the incorporation of a short-term disposal strategy to provide for the development of a transfer station(s) to prepare the county's waste for transport to out-of-district disposal facilities. In addition, the amendment addressed landfill site selection in Passaic County and the need for an expedited mandatory recycling program. In order to receive public comment, the Department followed the public notice procedures outlined in the Solid Waste Management Act, specifically N.J.S.A. 13:1E-23d. In doing so, each mayor in Passaic County was sent a copy of the proposed plan amendment on January 17, 1986. In addition, each mayor was later sent a copy of the public hearing notice on January 22, 1986 prior to publication. The same notice was given to the Passaic County Board of Chosen Freeholders and to the county's solid waste coordinator. Publication of the hearing notice appeared in The Paterson News and the Newark Star Ledger on January 24 and 31, 1986. The proposed amendment was also available for public inspection during this period at the municipal offices of each municipality in Passaic County, at the county offices and at the Division of Waste Management Offices, 32 East Hanover Street, Trenton, New Jersey. The public hearing to receive testimony on the proposed amendment was held at the William Paterson College on February 10, 1986. Copies of the proposed amendment were also distributed to various state level agencies for review and comment as required by law. The Department has reviewed all testimony received at the public hearing and during the comment period, as well as those comments generated by the state level review process, and has determined that the amendment proposed by the Department of Environmental Protection on January 17, 1986, as modified below, is approved as outlined in Section C. of this document.

B. Findings and Conclusions with Respect to the Department's Proposed Amendment to the Passaic County Solid Waste Management Plan

1. The Division of Waste Management circulated the proposed Passaic County plan amendment to sixteen review agencies and solicited their review and recommendations. Pursuant to N.J.S.A. 13:1E-24a(2) and (3), these agencies included various agencies, bureaus, and divisions within the Department of Environmental Protection as well as the Board of Public Utilities. Also among these agencies were the Department of Community Affairs, the Department of the Public Advocate, the Department of Health, the Office of

Recycling, the Department of Agriculture, the Department of Transportation, and the New Jersey Turnpike Authority. Of these agencies, the following did not object to the proposed plan amendment: the N.J.D.E.P. Divisions of Environmental Quality and Fish, Game and Wildlife; the State Departments of Agriculture and Transportation; the Green Acres Program and the New Jersey Turnpike Authority. The following agencies failed to respond to our requests for comments: the N.J.D.E.P. Divisions of Water Resources, Parks and Forestry, and Coastal Resources; the State Departments of Health, Community Affairs and the Public Advocate; the New Jersey Advisory Council on Solid Waste Management and the U.S. Environmental Protection Agency. The Board of Public Utilities and Office of Recycling submitted substantive comments which are further addressed below.

The Board of Public Utilities expressed concern that the proposed amendment appeared to exclude the Board from its jurisdiction of evaluating the economic consequences of the transfer station strategy. Briefly, the role of the Board with respect to solid waste management includes its authority under the law to provide economic regulation over the solid waste industry. This is accomplished through uniform licensing procedures and rate regulation as well as the power to grant franchises. Additionally, the Board of Public Utilities in conjunction with the Department designates waste flows to specific solid waste facilities which serve specific geographic areas. With respect to the Board's expressed concern it must be noted that the Department circulated the proposed amendment to sixteen state level review agencies, including the Board of Public Utilities, as part of its standard review process required by law. This process afforded the Board its appropriate opportunity to comment as with any other proposed plan amendment. The proposal of the amendment did not exclude the Board and, to the contrary, provided the proper means for the receipt of comments related to the Board's concerns. The proposed amendment is intended to provide a new short-term solid waste strategy as part of the approved Passaic County Plan. Following issuance of the approval contained herein, a private consultant to the Department will complete a Request For Proposals to be released to the private sector for the siting, design, construction and operation of a transfer station(s) within Passaic County. For each step in the process where additional site specific plan amendments will be required, the Board of Public Utilities will once again have the opportunity to evaluate economic consequences of the project as part of the state level review process.

The Office of Recycling recommended that the Department expand the provisions of the recycling component of the proposed amendment to require that each municipality separate, collect and market at least three recyclable materials. It was further recommended that if a county has already adopted a more stringent recycling plan than that required in the proposed plan amendment, the more comprehensive plan should supersede the DEP's requirement. In response, the Department agrees in concept with the above recommendations and has specifically addressed Passaic County's existing mandatory recycling program in Section C. 3. of this certification. Further, the requirements of the plan amendment should not be construed as prohibiting or discouraging the development or continued operation of more aggressive programs covering more than one recyclable component.

2. As noted above, in accordance with the requirements of N.J.S.A. 13:1E-23, a public hearing on the proposed amendment was conducted by the Department on February 10, 1986 at William Paterson College. At the hearing, five individuals gave testimony. In addition, four (4) individuals submitted written comments during the official comment period. The questions raised during these proceedings have been specifically addressed in the Response to Public Hearing Document included within this certification as Appendix A.

While Appendix A addresses specific comments, some of the comments are briefly summarized herein. In general, the individuals commenting were opposed to the Department's proposed transfer station strategy. Objections centered on three issues: the recent issuance of a Request For Proposals (RFP) by Passaic County which requested proposals from the private sector for somewhat similar services as were proposed in the January 17, 1986 plan amendment; the legality of the proposed action by the Department; and the economic repercussions of constructing a transfer station and transporting the solid waste long distances to out-of-district disposal facilities.

Concerning the first issue, Passaic County issued an RFP on January 10, 1986 requesting proposals to transport and dispose of 878 tons per day of baled solid waste (generated in Passaic County) from the HMDC baler to an out-of-county disposal facility. This contract would span from March 1, 1986 to approximately December 1, 1989. An agreement currently exists between Passaic County, the DEP and the Hackensack Meadowlands Development Commission (HMDC) whereby all solid waste generated within Passaic County will be disposed of at the HMDC baler until December 1, 1987. The county's RFP proposes to reduce the amount balefilled thereby extending the life of the balefill facility for county use until December 31, 1989. The request to use the HMDC baler beyond the agreed cutoff date was subsequently denied by the Hackensack Meadowlands Development Commission.

On January 17, 1986, the Commissioner of the Department of Environmental Protection informed the Passaic County Freeholder Director of the details of the Department's proposed plan amendment. On January 24, 1986, Passaic County issued a revised RFP in light of the refusal of the HMDC to permit the extended use of the baler/balefill facility noted above.

The efforts of both the county and the Department were carried out to insure the availability of disposal capacity needed for the waste generated in Passaic County. The Department sees no conflict between its proposed plan amendment and the county's RFP initiative. The Department's proposed amendment recognizes and encourages the possibility of the county assuming the responsibility for implementing any or all of the required activities contained in the plan amendment. In addition, should the county continue to proceed with its own initiative to develop a transfer station, it is possible that this effort will satisfy the requirements set forth in the Department's plan amendment.

With respect to the comment concerning the Department's legal authority to amend the Passaic County Solid Waste Management Plan, the New Jersey Solid Waste Management Act provides alternative remedies, at the discretion of the Department, for the situation in which a board of chosen freeholders fails to adopt an adequate solid waste management plan or any portion thereof. In one provision, the Legislature has indicated that "the

Department shall have the power to develop and formulate a solid waste management plan in its entirety for any such solid waste management district." N.J.S.A. 13:1E-23i. Similarly, should any board of chosen freeholders fail to adopt modifications or replacement to its plan as required by the Commissioner, "the Commissioner shall have the power to adopt and promulgate any modification or replacement he deems necessary." N.J.S.A. 13:1E-24f. Alternatively, the Act also provides the Commissioner with authority to issue orders requiring the correction of any violation of the Act and, if he so chooses, to enforce the statute directly through suits in the Superior Court. Therefore, the Department clearly has the authority to propose and adopt this amendment if the county's plan has been determined to be deficient in whole or in part.

The final major comment expressed at the hearing concerned the economic repercussions of constructing a transfer station and transporting the solid waste long distances to out-of-district disposal facilities. The useful life and economic feasibility of a new transfer station was also questioned in light of the proposed Passaic County resource recovery facility in the city of Passaic, which is proposed to be operational in 1990. The Department of Environmental Protection does not question the assertion that, if implemented, the transfer station strategy would result in higher solid waste disposal costs, particularly with respect to increased transportation costs. At this time it is impossible to determine the extent of cost escalation. The Department will seek proposals that represent the most advantageous economic arrangements for the residents of Passaic County. However, it must be noted that cost considerations are only relevant when suitable alternatives exist to enable comparative analysis. As noted in Section B.3. of the proposed amendment, Passaic County does not at present have viable short-term solid waste disposal alternatives. Continued utilization of the HMDC baler/balefill after December 1, 1987 is precluded by provisions of the Passaic County/HMDC/DEP Judicial Consent Order.

C. Certification of the Department's Proposed Amendment to the Passaic County District Solid Waste Management Plan

I, Richard T. Dewling, Commissioner of the Department of Environmental Protection, in accordance with N.J.S.A. 13:1E-1 et seq. and N.J.S.A. 13:1E-23(d), which established specific requirements regarding the contents of district solid waste management plans and the Department's powers regarding approval, rejection or modification of district plans, hereby declare that the portion of the Passaic County Solid Waste Management Plan which pertains to interim disposal arrangements (hereinafter referred to as "interim plan") is deficient. The county currently does not have a viable interim plan for the period after they cease using HMDC facilities. In light of this deficiency, the Passaic County District Solid Waste Management Plan is amended herein to provide for contingency measures that may be necessary prior to implementation of the proposed Passaic County resource recovery facility.

Therefore, I hereby adopt as a replacement the following plan amendments based upon the January 17, 1986 proposed amendment to the Passaic County District Solid Waste Management Plan and certify that the January 17, 1986 amendment is approved as further specified below:

1. The inclusion in the plan of the short-term disposal strategy outlined below, which proposes the development of an in-county transfer station(s) to be used in conjunction with out-of-district disposal is approved.

#### Short-Term Disposal Strategy

The Department of Environmental Protection (Department) will seek proposals from private entities for siting, design, construction and operation of an in-county transfer station(s) for the county for purposes of out-of-district disposal. The Department will select a proposal after evaluating the proposals according to site suitability, environmental impact, cost and other appropriate considerations. The Department will then propose to amend the county's plan to designate the facility and its operational plan and to direct all waste generated in the county to the transfer station(s) until such time as an alternative facility is available for the district's wastes and incorporated into the county plan. To carry out this strategy, the Department will undertake the activities listed below utilizing, as appropriate, the services of an environmental consulting firm.

The following steps will be undertaken in order to further amend the Passaic County District Solid Waste Management Plan and issue a permit to the proposed facility:

1. The nature and quantity of the disposal needs of the county prior to implementation of in-county long-term facilities will be determined.
2. The availability of out-of-district facilities to receive wastes generated in the short-term will be studied.
3. The types of transfer facilities required to handle the waste flows will be specified along with performance criteria for operation.
4. The criteria for siting of transfer stations to provide for interim needs will be developed.
5. Alternative cost proposal systems and alternative uses for which the transfer station facility could be adapted in the future will be investigated.
6. A Request for Proposal of transfer stations and out-of-district disposal arrangements by private enterprise will be developed.
7. The Request for Proposal will be publicly advertised and applications received.
8. The Department of Environmental Protection will select a Proposal to meet the short-term disposal needs of the county by evaluating the proposals according to site suitability, appropriateness of the proposed technology, the nature and reliability of the proposed out-of-district disposal options, the qualifications of the proposer, the total cost of waste disposal and any other appropriate criteria.
9. The Department will propose an amendment to the county plan to include in the plan the selected facility site, its operational plan

and redirection of all of the waste stream of Passaic County to the transfer station(s) for the purpose of out-of-district disposal according to the schedule furnished in the Request for Proposal.

10. The Department will review the transfer station facility design and, in accordance with applicable state law, issue a draft permit, receive comments at a public hearing on the draft permit, respond to comments and, if appropriate, issue a final permit which will authorize construction and operation of the facility in accordance with applicable permit conditions. Additionally, the applicant must apply to the Board of Public Utilities for a tariff rate, sitting forth prices to be charged at the facility to assure a fair rate of return to the facility owner and to protect the public interest

11. The Department will undertake steps one (1) through ten (10) above and prepare relevant plan amendments to supplement the results of these activities. However, the Department will consider a request by the county to undertake portions of these activities at the county level.

In order to implement this strategy, the Department has selected a vendor to develop a Request For Proposal to solicit proposals from private entities for siting, design, construction and operation of an in-county transfer station(s). However, as noted above, the Department will consider a request from Passaic County to undertake portions of the transfer station planning and implementation process at the county level. Further, the Department would advocate and support the highest feasible level of county participation in this process.

2. The requirement set forth in Section C.2. of the January 17, 1986 Proposed Amendment to the Passaic County Plan related to landfill siting is approved. Therefore, in order to implement a landfill facility, Passaic County shall, within 90 days of the date of this certification, adopt and submit a plan amendment identifying a landfill site.
3. Through the February 2, 1985 Passaic County Solid Waste Management Plan Amendment, the county incorporated provisions for a county-wide mandatory recycling program into the district plan. In accordance with these provisions each municipality must host a recycling program, which may be municipally run or run by a volunteer group on a regular basis (at least once per month). The materials recycled must include, but are not limited to newspaper and leaves. The Department's July 15, 1985 Certification approved the recycling amendment, but stated that the program as developed would not provide sufficient assurances that maximum recycling would occur.

The Department recognizes Passaic County's efforts to address mandatory recycling and has modified the requirements set forth in Section C.2. of the DEP's proposed amendment dated January 17, 1986 to include the following provisions. Within sixty (60) days of the adoption of this amendment, Passaic County shall submit to the Department a report detailing the status of each existing or proposed municipal recycling program in the county. In addition, the county shall indicate what program development and enforcement techniques will be utilized to implement the county's mandatory municipal recycling program. Further, no later than ninety (90)

days from the adoption of this amendment every municipality shall have adopted such ordinance(s) as may be required to implement the county-wide mandatory recycling program (as contained in the February 2, 1985 Passaic County Plan Amendment) requiring the recycling of newspaper and leaves. The Department, at this time, is requiring programs to address newspaper and leaves in conjunction with the county's program. However, this requirement is intended to facilitate program development and in no way should be construed as prohibiting or discouraging more aggressive programs covering more recyclable components, namely glass, ferrous or non-ferrous metals, which may be required in subsequent actions.

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 within amendment to the Passaic County District Solid Waste Management 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 of Environmental Protection and operating pursuant to a contract as herein described, shall be deemed to be in violation of this amendment and of the Passaic County District Solid Waste Management 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 of Environmental Protection, and for good cause shown, obtain an extension of time to complete such renegotiation.

2. Compliance

All solid waste facility operators and collector/haulers registered with the Department of Environmental Protection and operating within the state and affected by the amendment contained herein shall operate in compliance with this amendment and all other approved provisions of the Passaic County District Solid Waste Management Plan. Any facility operator or collector/hauler 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 of Environmental Protection and shall be subject to the provisions and penalties of N.J.S.A. 13:1E-9, 10, and 12 and all other applicable laws.

3. Types of Solid Wastes Covered by the District Solid Waste Management Plans

The provisions of the Passaic County District Solid Waste Management 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. Also, all non-hazardous 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 (N.J.A.C. 7:26-6).

4. Certification to Proceed with the Implementation of Plan Amendment

This document shall serve as the certification of the Commissioner of the Department of Environmental Protection and pursuant to N.J.S.A. 13:1E-24C. and F., implementation of the approved amendment contained herein shall proceed in accordance with all specified timeframes.

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

6. Effective Date of Amendment

The amendment to the Passaic County District Solid Waste Management Plan contained herein shall take effect immediately.

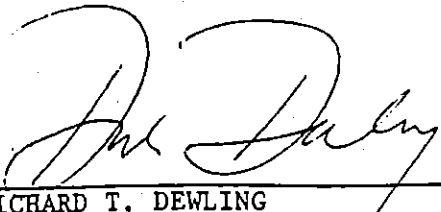
7. Reservation of Authority

Nothing contained herein shall be construed as a limitation on any other action taken by the Department of Environmental Protection pursuant to its authority under the law. The Passaic County District Solid Waste Management 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 and rules, regulations, and orders of the Department, including the 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 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 amendment as outlined in Section C. of this certification to the Passaic County District Solid Waste Management Plan which was proposed by the Department on January 17, 1986.

MAY 13 1986  
DATE

  
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RICHARD T. DEWLING  
COMMISSIONER  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Appendix A  
Passaic County  
Response to Public Hearing Document

1. Reason for Department's County Initiative

Comment: Why has the DEP singled out Passaic County for the proposed plan amendment when neither Bergen County nor Essex County have identified interim disposal capacity?

Response: The DEP determined that the solid waste disposal situation in northern New Jersey has reached a critical stage due to the severe lack of disposal capacity. This lack of disposal capacity resulted from the failure of certain counties to site and develop needed solid waste disposal facilities or enter into interdistrict agreements for the use of facilities in other counties. Passaic County was included in the proposed action because after December 1, 1987, Passaic County has no designated disposal capacity, all the deadlines to site and construct an in-county landfill have not been met and an attempt to secure disposal capacity out-of-district has failed. This action is the first of its kind by the DEP and may lead to similar action in other parts of the state where warranted due to a lack of disposal capacity.

2. Passaic County's Transfer Station Request For Proposals (RFP)

Comment: Several commentators expressed concern about the timing of the Department's initiative in light of Passaic County's issuance of an RFP for a transfer station and out-of-county disposal and the effects of the Department's initiative will have on the county's efforts.

Response: Passaic County issued an RFP on January 10, 1986 requesting proposals to transport and dispose of 878 tons per day of baled solid waste (generated in Passaic County) from the HMDC baler to an out-of-district disposal facility. This contract would span from March 1, 1986 to approximately December 1, 1989. An agreement currently exists between Passaic County, the DEP and the HMDC whereby all solid waste generated within Passaic County will be disposed of at the HMDC baler/balefill until December 1, 1987. The county's RFP proposed to reduce the amount balefilled thereby extending the life of the balefill facility for county use until December 31, 1989. The request to use the HMDC baler beyond the agreed cutoff date was subsequently denied by the Hackensack Meadowlands Development Commission.

On January 17, 1986, the Commissioner of the Department of Environmental Protection informed the Passaic County Freeholder Director of the details of the Department's proposed plan amendment. On January 24, 1986, Passaic County issued a second RFP based on the HMDC's

rejection of the county's request to extend the use of the baler/balefill.

The efforts of both the county and the Department were carried out to insure the availability of disposal capacity needed for the waste generated in Passaic County. The Department sees no conflict between its proposed plan amendment and the county's RFP initiative. The Department's proposed amendment recognizes and encourages the possibility of the county assuming the responsibility for implementing any or all of the required activities contained in the plan amendment. In addition, should the county continue to proceed with its own initiative to develop a transfer station, it is possible that this effort might satisfy the requirements set forth in the Department's proposed amendment.

3. The Passaic County/HMDC/DEP Consent Agreement

Comment: Provisions in the Passaic County/HMDC/DEP Judicial Consent Order allows an alternative to the county's responsibility to site an in-county landfill. Therefore, there is no violation of the consent order.

Response: The Judicial Consent Order states..."if Passaic County seeks to enter into either an interdistrict waste flow agreement or other lawful agreement for disposal of its solid waste beyond the borders of Passaic County, the parties to the Consent Order agree to negotiate, in good faith, Passaic County's continuing obligations under the aforesaid Interim/Residual Landfill task time schedule, which negotiations shall be subject to judicial review should any party allege that the negotiations are not being conducted in good faith."

The schedule contained in the consent order originally required the county to select an alternative landfill site by August 1, 1985. The county requested and received extensions from the HMDC which postponed the deadline for site selection until January 31, 1986. The schedule for resource recovery implementation has also currently fallen behind schedule. Due to the lack of any designated alternative disposal sites, which could satisfy the intent of the agreement if all concerned parties agreed, and the expiration of all reasonable deadline extensions, the Department contends that the county has failed to implement the provisions of the consent order.

Comment: The DEP plan amendment is illegal because it seeks to amend the Judicial Consent Order between Passaic County/HMDC/DEP which cannot be done through the plan amendment process.

Response: The Judicial Consent Order between Passaic County, the HMDC and the Department represented the settlement of litigation in which the Department sought to ensure that Passaic County establish disposal facilities for the county's use. It should be noted that the county is substantially delinquent in complying with timetables established by the consent order. Because of the failure of the county to adhere to the schedule in the consent order, the Department has found it necessary to propose the transfer station strategy. This action does not seek to amend in any way the consent order entered into by the county, the HMDC and DEP. Indeed, the county is under a continuing obligation to comply with the timetables established in the consent order. Nevertheless, the existence of the consent order does not prohibit the Department for taking any other actions within its authority to address the solid waste disposal problems in the county.

#### 4. Regional Landfills

Comment: A residual landfill site should be a joint development of the DEP and one or two counties in the northern part of the state. It shouldn't be done on a county by county basis. A regional approach to residual sites would be appropriate, selecting one site to serve two or three resource recovery plants.

Response: The Solid Waste Management Act N.J.S.A. 13:1E-1 et seq. requires every county to identify and develop the disposal facilities for the solid waste generated by the county residents. The Act also contains procedures for reaching the necessary agreements should two or more counties decide to develop a joint plan. In an attempt to facilitate the regional approach for a residual landfill, the Department agreed, as a provision to the Essex County/HMDC/DEP interdistrict agreement, to retain a consulting firm to perform a residual landfill siting study for the counties of Bergen, Essex, Hudson and Passaic. The Department retained the firm of Dresdner Associates to perform the residual landfill siting study. The study identified available sites in all four counties and a ranking of all sites was performed. The study was submitted to the four counties for their action in 1984. The four counties have failed to designate any in-county site or develop a joint site for the region. The four counties are directly responsible for the failure to implement any site or sites identi-

fied in the study that attempted to provide a regional approach to the residual landfill issue in the northeastern area of the state.

5. Waste Flows

Comment: The increased waste loadings identified as Passaic County solid waste entering the HMDC baler are not the result of increased garbage generation rates but, rather a problem of waste flow enforcement. Figures supplied by certain municipalities of generation rates differ from those supplied by the HMDC.

Response: Waste flow enforcement is an on-going function of the HMDC and the DEP. All haulers entering any facility are required to submit origin and destination (O&D) forms identifying the municipality from which the solid waste is generated. The enforcement activities by the staffs of both agencies should identify violators of the waste flow regulations. The differences between the HMDC and the municipalities concerning generation rates may have other explanations besides waste flow violations. The generation rates compiled by the municipalities are approximations based on truck loadings of municipal wastes. These figures often fail to include the commercial and industrial waste handled by contracted private haulers. The figures compiled by the HMDC are based upon the origin and destination forms and the computerized weigh-scale located at the baler and should provide a more accurate assessment of waste generation rates.

6. Planning Process

Comment: The proposed plan amendment process creates an inherent conflict of interest within the DEP. The DEP cannot make an honest judgment regarding the development of an RFP, the review of an RFP, proposing plan amendments and making siting decisions.

Response: The Solid Waste Management Act gives the responsibility to site a solid waste facility to the board of chosen freeholders of the county in which the facility is located. The Department concurs that the siting decision should be made at the local level. However, when a county freeholder board fails to provide the necessary facility sites or fails to enter into interdistrict agreements for the use of facilities in other counties, a disposal crisis will eventually develop as the current landfills reach their approved capacities. To prevent an imminent disposal capacity crisis from causing extreme hardships for the residents of the state, the Department has decided that interim measures are necessary until planned long-term disposal facilities

are operational. The interim measures proposed by the Department include the hiring of a private consultant to draft siting criteria for transfer stations which would provide transportation of solid waste to available solid waste facilities out-of-district. Once the siting criteria are developed they will be incorporated into a Request for Proposal issued by the Department for the private sector to select sites, provide the transportation and arrange contracts for landfill use. The Department will require the final site(s) selected, as the result of the RFP, to be incorporated into the county plan and undergo the standard environmental impact statement and engineering review. This process, which will include public notice/hearing procedures, will provide objectivity and public scrutiny in the proposed transfer station initiative.

7 Economic Effects

Comment: Several comments were received concerning the economic repercussions of constructing a transfer station and transporting the solid waste long distances to out-of-state disposal facilities. The useful life and economic feasibility of a new transfer station were also questioned. It was also questioned as to who would pay for any cost increases for solid waste disposal.

Response: The Department does not question the assertion that, if implemented, the transfer station strategy would result in higher solid waste disposal costs, particularly with respect to increased transportation costs. At this time it is impossible to determine the extent of cost escalation. The Department will seek proposals that represent the most cost effective economic arrangements for the residents of Passaic County who will ultimately pay any increases in disposal costs. The useful life and economic feasibility of a new transfer station is not necessarily limited to the projected date when the proposed resource recovery system becomes operational. There also exists possibilities of retro-fitting the facility to accommodate other uses should it be necessary. Finally, it must be noted that cost considerations are only relevant when suitable alternatives exist to enable comparative analysis. Currently, Passaic County does not have any viable short-term solid waste disposal alternatives for comparison.

8. Out-of-State Cooperation

Comment: Has the DEP submitted the proposed plan amendments to the officials of Pennsylvania or New York?

Response: The Department has not solicited comments from

officials of neighboring states on the proposed transfer station initiative, although these governments were able to supply comments through the public comment period.

9. Time Schedule

Comment: There is no date specified in the plan amendment as to when the transfer stations would become operational.

Response: The anticipated date for the start of operations of the transfer stations proposed in the plan amendments is dependent upon the timely completion, among other things, of the following tasks: the consultant's siting criteria; the certification of the proposed plan amendment; the issuance of the RFP; the RFP selection process; the submission of all permit and engineering requirements under the Solid Waste Management Act; the completion of public hearings and certification of a plan amendment incorporating the transfer station site into the county's solid waste management plan; the issuance of all necessary permit approvals; and finally, construction. It is anticipated that the timely completion of these tasks, should the transfer station initiative become implemented, could take until the summer of 1987 to complete. In the case of Passaic County, where the cutoff date for the use of Hackensack Meadowlands facilities is December 1, 1987, there appears to be sufficient time to prevent a disposal crisis if all the above mentioned tasks are completed in a timely fashion.

10. Passaic County's Responsibility

Comment: If the DEP plan amendment becomes a reality, would Passaic County take part in the siting policy?

Response: The proposed plan amendment recognizes and encourages the possibility of the county assuming the responsibility for implementing any or all of the required activities contained in the plan amendment. The county should, in fact, be the implementing agency for the transfer station initiative. However, should the county not participate, the Department would assume the county's responsibilities to insure the needed disposal capacity for Passaic County solid waste prior to the development of the proposed resource recovery facility.

Comment: If the county didn't take any active participation in the siting process, who would do the siting of the transfer stations?

Response: The Department will issue a Request for Proposal document that will specify siting criteria. The private sector will submit proposed transfer station sites that must conform to the siting criteria and a site or sites would be selected by the Department upon the determination as to which proposals best meet the criteria.

11. Location and Number of Transfer Stations

Comment: If the county selects an out-of-county transfer station site and the plan amendment process indicates an in-county transfer station site, who would resolve the differences?

Response: The DEP has always maintained that it is the responsibility of the county boards of chosen freeholders to select sites and would only enter into the process when a county freeholder board failed in its responsibility. Should Passaic County be able to enter into a legal contract and interdistrict agreement for the use of an out-of-district transfer station that can adequately serve its needs, the Department is willing to allow the county to proceed in as much as the county will be in compliance with the Department's proposed transfer station strategy.

Comment: How many transfer stations are going to be needed to process the solid waste generated in Passaic County?

Response: The number of transfer stations that will be needed to process the Passaic County solid waste will ultimately depend upon the private sector's proposals submitted in response to the Department's request for proposal. Depending on the proposals submitted, it is possible that either one large facility or a number of smaller, dispersed facilities will be required.

12. Past Proposals

Comment: A similar proposal for the transport of solid waste out-of-state was rejected by the county last year. Why wasn't that a good idea then?

Response: At the time the proposal in question was rejected by Passaic County, the county had the legal responsibility under provisions of the Passaic County/HMDC/DEP Judicial Consent Order to either site an in-county landfill or arrange an out-of-district alternative by a fixed date in 1985. The county board of chosen freeholders are responsible for such a decision provided the decision be made within the timeframe contained in the consent order. Prior to the expiration of the siting deadline, the county had a siting study for a

residual/interim landfill completed and also entered into negotiations, that later proved unsuccessful, to use an out-of-state landfill. During this time, the county had not pursued the development of transfer stations that would be necessary should an out-of-district alternative be developed nor was a site for a residual/interim landfill selected. After the expiration of the siting deadline, and with the HMDC landfill use ban of December 1, 1987 quickly approaching, the Department determined that the transfer station initiative was necessary to avert a disposal crisis.

13. Schedule for Landfill Development

Comment: Why must an emergency/non-processable/residual landfill be designated within forty-five days by Passaic County when its use would not be necessary in either scenario prior to 1990?

Response: According to the provisions of the Passaic County/HMDC/DEP Judicial Consent Order, Passaic County was to designate a landfill site by August 1, 1985 and have the facility operational by December 1987. The consent order allows the county to negotiate an interdistrict agreement for out-of-district disposal; however, the county has been unable to negotiate such an agreement. While the consent order contains a deadline for the resource recovery facility to be operational by October 1, 1988, the county has indicated that their new projected operational date is actually in 1990. The intention of the Department's transfer station initiative is to provide interim disposal capacity at out-of-district facilities for the period between December 1, 1987, the deadline to cease using the HMDC baler/balefill, and the date when the proposed resource recovery facility becomes operational. The emergency/non-processable/residual waste landfill has yet to be identified. Even after a site is identified there are many steps before any landfill may become operational. Included in the process that must be completed is the inclusion of the site in the county plan, the certification of the plan amendment, the completion and submission of an environmental impact statement for the site, the review and possible approval of the environmental impact statement by the Department, the completion and submission of all engineering designs and permit applications, the review and possible approval of the engineering designs and issuance of all necessary permits by the Department, and, finally, the construction of the facility. This process will encompass a lengthy period of time prior to the beginning of operations at a landfill and does not ensure final approval of any site the county selects. The use of the proposed landfill would be to provide

disposal capacity for resource recovery residue, non-processable waste and also for emergency backup which may also include the possibility of use if a further delay in the resource recovery project becomes unavoidable.

14. Use of the HMDC Baler

Comment: Passaic County requests the DEP to consider permitting the use by the county of the HMDC baler as a transfer station after December 1, 1987 for the processing of waste only and not as a disposal location.

Response: The Department does not own or operate the HMDC baler. It is owned by the HMDC and operated under their control. The HMDC has indicated both to the Department and to Passaic County that it intends to close the facility no later than March, 1988. Should the HMDC reverse their decision and allow the county to utilize the baler as a transfer station, the Department will review any arrangement the county may make to determine whether it conforms with the Department's transfer station strategy. Until that point, the decision on the use of the baler rests solely with the Hackensack Meadowlands Development Commission.

15. Legal Issues

Comment: The Department's actions violated Title 40 of the revised statutes and concerning public hearing.

Response: The Solid Waste Management Act N.J.S.A. 13:1E-1 et seq. specifies the procedures to be followed by the Department in amending a district solid waste management plan. The provisions of title 40 concerning requirements for counties and municipalities for public bidding are not relevant to the state in this matter.

Comment: The DEP does not have the authority under N.J.S.A. 13:1E-20, N.J.S.A. 13:1E-23 and N.J.S.A. 13:1E-24 to propose the plan amendment.

Response: The New Jersey Solid Waste Management Act N.J.S.A. 13:1E-1 et seq. provides alternative remedies, at the discretion of the DEP, for the situation in which a board of chosen freeholders fails to adopt an adequate solid waste management plan or any portion thereof. Specifically, the Act provides that "the Department shall have the power to develop and formulate a solid waste management plan in its entirety for any such solid waste management district." N.J.S.A. 13:1E-23i. Similarly should any board fail to adopt modifications or replacements to its plan as required by the Commissioner, "the Commissioner shall have the power to

adopt and promulgate any modification or replacement he deems necessary." N.J.S.A. 13:1E-24F. Alternatively, the Act also provides the Commissioner with authority to issue orders requiring the correction of any violation of the Act and, if he so chooses, to enforce the statute directly through suits in the Superior Court. Court decisions have long recognized the authority of the Department to fill any gaps left by the counties in their planning for solid waste disposal. Recent judicial rulings have held that the Department cannot seek relief in the courts to remedy deficiencies in county plans because of the authority possessed by the Department to amend deficient plans through its own administrative powers.

Comment: The DEP and BPU adopted waste flow regulations, therefore, obviating the need for formal agreements to be entered into between the counties regarding waste disposal.

Response: The waste flow regulations issued jointly by the DEP and BPU sought to ensure the continued collection and disposal of solid waste in those circumstances where counties were unable or unwilling to reach interdistrict agreements. These waste flows did not obviate the need for interdistrict agreements. In fact, through administrative mechanisms, the Department has continued to insist on the development of interdistrict agreements to formulize intercounty waste flows.

Comment: The mandate in the proposed plan amendment requiring municipalities to adopt ordinances mandating recycling is illegal.

Response: The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. requires that each solid waste management plan include a strategy for the maximum practical use of resource recovery procedures. The Act defines resource recovery to include recycling. Since the requirement that municipalities establish mandatory recycling is a reasonable strategy for the maximum practical use of resource recovery, it is, therefore, authorized by the Act.