



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
PASSAIC COUNTY SOLID WASTE
MANAGEMENT DISTRICT

CERTIFICATION
OF THE MARCH 5, 1997
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 of Environmental Protection (Department or DEP) approved, with modifications, the Passaic County District Solid Waste Management Plan (County Plan).

The Act requires that all district plans be based on and accompanied by a report detailing the existing waste disposal situation in the district, and a plan which includes the strategy to be followed by the district in meeting the solid waste management needs of the district for a ten-year planning period. The report must detail the current and projected waste generation for the district, inventory and appraise all facilities in the district, and analyze the waste collection and transportation systems which serve the district. The disposal strategy must include the maximum practicable use of resource recovery techniques. In addition to this strategy, the plan must designate sufficient available suitable sites for the disposal of the district's waste for a ten-year period, which sites may be in the district or, if none are available, in another district. (The Act provides procedures for reaching any necessary interdistrict agreements.)

The Act further provides that a district may review its County Plan at any time and, if found inadequate, a new County Plan must be adopted. The Passaic County Board of Chosen Freeholders (County Freeholders) completed such a review and on March 5, 1997, adopted an amendment (Amendment #1-1997) to its approved County Plan.

The amendment proposes the removal from the Passaic County Solid Waste System, administered by the Passaic County Utilities Authority, of the Iowa Avenue Transfer Station operated by Pen Pac, Inc. located in the City of Paterson, Passaic County, and redirects the waste formerly directed to this facility to two other Pen Pac., Inc. transfer stations located in Paterson and Totowa, Passaic County. However, the amendment does not delete the facility from the County Plan but authorizes its continued operation as a privately owned transfer station.

The amendment was received by the Department on March 10, 1997, 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 March 5, 1997 is remanded for modification as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the March 5, 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 is potentially inconsistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the issues of concern relative to the March 5, 1997 amendment which are included within Section B.2. below.

In conjunction with the review of the amendment, the Department circulated copies to fifteen 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 DEP. 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 March 5, 1997 Amendment

The following agencies did not object to the proposed amendment:

Division of Fish, Game and Wildlife, DEP
Division of Parks and Forestry, DEP
Division of Water Quality, DEP
Division of Compliance and Enforcement, DEP
Green Acres Program, DEP
New Jersey Turnpike Authority
Department of Agriculture
Department of Community Affairs
Department of Transportation

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

Office of Air Quality Management, DEP
Land Use Regulation Element, DEP
Department of Health
U.S. Environmental Protection Agency
New Jersey Advisory Council on Solid Waste Management

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 March 5, 1997 Amendment

Issue: Regulatory Requirements

The Iowa Avenue Transfer Station is now known as the Nicholas Enterprises, Inc. Transfer Station. Additionally, the DEP facility numbering system has been changed with the Nicholas Enterprises, Inc. Transfer Station now identified as Facility Number 1608000709, while the Pen Pac, Inc. Fulton Street and Totowa Transfer Stations are identified as Facility Numbers 1608000708 and 1612000721, respectively. Also, the Nicholas Enterprises, Inc. Transfer Station has a pending permit renewal application with the DEP. This application calls for increasing the capacity of the facility from 150 tons per day (TPD) to 680 (TPD) and redesignating the site from a transfer station to a materials recovery facility. The capacity expansion is consistent with the County Plan, having been approved in a March 26, 1987 DEP certification of the County's November 19, 1986 amendment. However, the County Plan does not provide for materials recovery operations at the Nicholas

Enterprises, Inc. Transfer Station. Finally, the acceptance of waste previously delivered to the Nicholas Enterprises, Inc. Transfer Station at the Pen Pac, Inc. Fulton Street and Totowa Transfer Stations will not result in exceeding their permitted capacities of 1,000 TPD and 480 TPD, respectively.

Issue: United States Court of Appeals Decision

After Amendment #1-1997 was adopted on March 5, 1997, the United States Court of Appeals for the Third Circuit ruled on May 1, 1997 in the matter of Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, et al. The Court ruled that New Jersey's waste flow control regulations are unconstitutional insofar as they discriminate against out-of-state operators of waste disposal facilities and permanently enjoined the DEP from implementing its self-sufficiency policy. Specifically, the Court ruled "...that the disposal facilities presently listed there (the Interdistrict and Intradistrict Solid Waste Flow Rules found at N.J.A.C. 7:26-6.5) can no longer be considered the facilities to which each district's solid waste must be directed." Further, the Court noted "...that the twenty-two solid waste management districts must modify their waste disposal plans and choose new facilities to service their needs in a nondiscriminatory fashion." Although the Court stayed its injunction pending appeal, the County must reevaluate its solid waste disposal strategy in light of the directives of this recent court decision. Therefore, within Section C. of this certification, the Department remands for modification Amendment #1-1997 in light of the Atlantic Coast decision.

C. Certification of the Passaic 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 March 5, 1997 amendment to the approved County Plan and certify to the County Freeholders that the March 5, 1997 amendment is remanded for modification as further specified below.

On May 1, 1997, the United States Court of Appeals for the Third Circuit ruled that New Jersey's waste flow control regulations are unconstitutional insofar as they discriminate against out-of-state operators of waste disposal facilities and directed that the twenty-two solid waste management districts modify their waste disposal plans to choose new facilities to service their needs in a nondiscriminatory manner. Although, the Court stayed its injunction pending appeal, the County Freeholders should have the opportunity to consider the impact of the Court's directive prior to taking the contemplated action. Therefore, the Department remands for modification Amendment #1-1997 in light of the Atlantic Coast decision.

Specifically, the removal from the Passaic County Solid Waste System, administered by the Passaic County Utilities Authority, of the Nicholas Enterprises, Inc. Transfer Station, DEP Facility No. 1608000709, operated by Pen Pac, Inc. located in the City of Paterson, Passaic County, and the redirection of waste formerly directed to this facility to the Pen Pac., Inc. Fulton Street Transfer Station, DEP Facility No. 1608000708, located in the City of Paterson, Passaic County, and the Pen Pac, Inc. Totowa Transfer Station, Facility No. 1612000721, located in the Borough of Totowa, Passaic County, shall be modified as described above.

D. Other Provisions Affecting the Plan Amendment

1. Contracts

Any contract renewal or new contract for solid waste collection or disposal which is inconsistent with this amendment to the County Plan and which was executed prior to the approval of this amendment and subsequent to the effective date of the Solid Waste Management Act (July 29, 1977), and which shall further be for a term in excess of one year, shall immediately be renegotiated in order to bring same into conformance with the terms and provisions herein set forth. Any solid waste collection operation or disposal facility registered by the Department and operating pursuant to a contract as herein described, shall be deemed to be in violation of this amendment and of the County Plan if such renegotiation is not completed within ninety (90) days of the effective date of this amendment provided, however, that any such registrant may, upon application to the Department, and for good cause shown, obtain an extension of time to complete such renegotiation.

2. Compliance

All solid waste facility operators and transporters registered with the Department and operating within the County and affected by the amendment contained herein shall operate in compliance with this amendment and all other approved provisions of the County Plan. Any facility operator or transporter who fails to comply with the provisions contained herein shall be deemed to be in violation of N.J.S.A. 13:1E-1 et seq., in violation of N.J.A.C. 7:26-1 et seq., and in violation of their registration to operate a solid waste facility or a collection system issued thereunder by the Department and shall be subject to the provisions and penalties of N.J.S.A. 13:1E-9 and 12 and all other applicable laws.

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

The provisions of the County Plan shall apply to all solid wastes defined in N.J.S.A. 13:1E-3 and N.J.A.C. 7:26-2.13 and shall not apply to liquid waste, sewage sludge, septage, and hazardous waste. All nonhazardous materials separated at the point of generation for

sale or reuse and all construction and demolition waste classified as Type 13C 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, -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, 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.

6. Modification Procedures

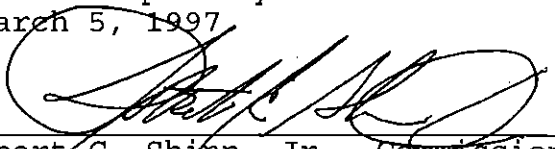
Pursuant to N.J.S.A. 13:1E-24d., remands for modification shall be accompanied by a statement indicating the reasons for the modification and the action to be taken thereon. That section of the Act indicates that if the Commissioner determines a modification is major, the freeholder board must hold an additional public hearing to enact the modification. If the modification is minor, no further public hearing need take place. The instant remand requires that the Passaic County District Solid Waste Management Plan be modified in light of the United States Court of Appeals decision of May 1, 1997 and said modification is deemed to be major.

E. Certification of 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 remand for modification the amendment, as outlined in Section C. of this certification, to the Passaic County District Solid Waste Management Plan which was adopted by the Passaic County Board of Chosen Freeholders on March 5, 1997.

Date

8-6-97


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