

Let's protect our earth



STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
RICHARD T. DEWLING, Ph.D., P.E., COMMISSIONER  
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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 NOVEMBER 19, 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 Board of Chosen Freeholders and the Hackensack Meadowlands Development Commission develop comprehensive plans for waste management in their respective districts. On August 13, 1986, 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 January, 1986, had not 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.

The Department approved the January 17, 1986 proposed amendment on May 13, 1986 with those modifications specified in the Certification of Approval document. On June 4, 1986, the Department issued a Request for Proposals (RFP) document which solicited proposals from private entities for siting, design, construction, and operation of an in-county transfer station(s) for the purpose of out-of-district waste disposal. One proposal from the private sector was received by the Department on August 13, 1986. Pen Pac, Inc. submitted to the Department a proposal whereby four transfer stations located, or to be located in Passaic County, would transport the solid waste generated in Passaic County to out-of-district disposal facilities. After detailed evaluation, the Department selected the Pen Pac, Inc. proposal on August 18, 1986.

On November 19, 1986, the Department proposed an amendment to the Passaic County Plan to select the Pen Pac, Inc. proposal, including the one new transfer station site in the Borough of Totowa, an operational plan and waste flow directives to all four sites associated with the proposal. 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, the Passaic County Board of Chosen Freeholders, the county solid waste coordinator and the county solid waste advisory council chairperson were sent copies of the prepared amendment along with public hearing notification, via express mail on November 20, 1986. The proposed amendment, along with the same public hearing notification, was also distributed via standard mail to adjacent property owners, other elected officials in Passaic County and all solid waste facility operators and collector/haulers in Passaic, Bergen, Hudson, Morris, Sussex and Union Counties during the period of November 19, - December 1, 1986. Publication of the hearing notice appeared in The Paterson News on November 21 and 28, 1986 and in the Newark Star Ledger on November 21 and 29, 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 Solid Waste Management Offices, 32 East Hanover Street, Trenton, New Jersey. The public hearing to receive testimony on the proposed amendment was held at William Paterson College on December 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 November 19, 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 District Solid Waste Management Plan Amendment**

1. The Division of Solid 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 Coastal Resources, Parks and Forestry and Water Resources; the State Departments of Agriculture, Transportation, and Community Affairs; 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 Fish, Game and Wildlife and the Green Acres Program; the State Department of Health and the Public Advocate; the New Jersey Advisory Council on Solid Waste Management and the U.S. Environmental Protection Agency. The N.J.D.E.P. Division of Environmental Quality, the Office of Recycling and the Board of Public Utilities submitted substantive comments which are further addressed below.

The Division of Environmental Quality commented that transfer stations are required to control air pollution, including odors, as required by N.J.A.C. 7:27-5. Also, N.J.A.C. 7:27-8.2(a)16 requires air pollution control permits for any equipment which vents a solid waste facility directly or indirectly to the outdoor atmosphere. Control devices to reduce odor-causing air contaminants may be required for such vents. The Division of Environmental Quality further commented that traffic to the facilities should be in compliance with Federal Highway Administration guidelines on noise. Measures to minimize the idling of trucks at the facilities should be evaluated and the most effective measures implemented. The Department concurs with the Division of Environmental Quality's comments and will forward the comments to Pen Pac, Inc. The Department must note that it is the responsibility of the applicant to obtain all the required permits and approvals for the operation of all the transfer stations in the Pen Pac, Inc. proposal.

The Office of Recycling commented that the proposed amendment designates the flow of certain waste types to the proposed transfer stations and includes waste type 23, which includes leaves. A recent DEP sponsored plan amendment mandates the recycling of leaves in Passaic County. Therefore, the Office of Recycling comments that the leaves must be excluded from the waste flow directives. The Office of Recycling correctly states that the Passaic County District Solid Waste Management Plan has been amended to include a mandatory recycling

program requiring the recycling of newspapers and leaves. Provisions of the November 19, 1986 Passaic County Plan Amendment in no way relieves Passaic County from its obligation to recycle newspapers and leaves. Waste type 23 is a broad category encompassing all vegetative waste material. The redirection of waste type 23 to the transfer stations is intended to direct all vegetative waste not currently included in the recycling requirements contained in the approved Passaic County District Solid Waste Management Plan.

The Board of Public Utilities commented that there is no information in this plan amendment which would allow the staff of the Board of Public Utilities to conduct a study of the amendment's economic effect on the citizens and collectors of the county, although the amendment acknowledges the role the Board has and will play in the establishing rates for the Pen Pac, Inc. proposal. The Board of Public Utilities further commented that the Board's economic analysis of this proposal will, therefore, take place within the context of a rate proceeding. Further, the Board and its staff will endeavor to expeditiously analyze all data supplied in support of the proposed rates when it is received in order to bring this and other similar projects initiated by the Department of Environmental Protection pursuant to its powers under N.J.S.A. 13:1E-1 et seq. to successful conclusion. The Department disagrees that the proposal contains little economic information on which to base an assessment of economic impact since the Pen Pac, Inc. proposal contains a detailed breakdown of the costs of the proposed tipping fee.

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 December 10, 1986 at William Paterson College. At the hearing, fourteen (14) individuals gave testimony. In addition, four (4) individuals submitted written comments during the official comment period. The questions raised during those 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, many individuals commenting were opposed to the Department's proposed transfer station strategy. However, the Hackensack Meadowlands Development Commission (HMDC) endorsed the proposal. Objections centered on three (3) issues: high projected project costs, the legality of the project and alternate disposal options.

Concerning the first issue, high projected project costs, the Pen Pac, Inc. submission to the Request for Proposals issued by the Department, contained projected tipping fees at the transfer stations to be approximately \$90.00 per ton for a three year project duration and \$88.00 per ton for a five year project duration. These rates can only be considered projections because any final rate setting can only be done by the Board of Public Utilities within the context of a rate setting process. Secondly, while the projected costs of the Pen Pac, Inc. proposal seems high in comparison to the current disposal costs at the HMDC baler/balefill, compared to tipping fees charged at newly developed landfills which can range from \$55.00 to \$155.00 per

ton, and newly established transfer stations in the New York area which are charging from \$80.00 to \$100.00 per ton, the projected Pen Pac, Inc. rates do not appear excessive. Solid waste disposal costs can be expected to escalate in the future no matter which disposal option is selected. (Following the public hearing held on December 10, 1986, Passaic County entered into negotiations with Pen Pac, Inc. These negotiations are intended to result in Passaic County's endorsement of the transfer station initiative and a reduction in the projected project undertaken by Passaic County.)

Concerning the second issue, the legality of the project, it was alleged that the Department does not have the authority to amend a district solid waste management plan or use the RFP process to select a proposal. The Department contends that it does have the authority to amend a district solid waste management plan under the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. As for the use of the RFP process to select a proposal, the Department used the RFP process as a rational open and public basis for choosing a proposal.

Concerning the third issue, the Department examined all disposal options available to Passaic County. The Passaic County, HMDC and the Department of Environmental Protection Interdistrict Agreement requires Passaic County to cease using HMDC disposal facilities by December 1, 1987. No alternate disposal facilities exist within Passaic County. The option of redirection of Passaic County's waste to other New Jersey districts with operating disposal facilities are either necessary to meet planned disposal needs of counties which have selected and/or developed long term facilities or in other cases because existing, operating sites are not adequate to meet predictable near-term needs of present users." The Department and the Board of Public Utilities are not willing to redirect Passaic County solid waste to a county that has developed a landfill to meet the needs of its residents. As to the continued use of the HMDC baler, the HMDC, which has jurisdiction concerning the baler use, has denied Passaic County's request to continue to use the baler after December 1, 1987. In light of the above, the only viable option available to ensure continued solid waste pick-up and disposal of Passaic County solid waste was the development of a transfer station system with transportation to out-of-state disposal facilities.

C. Certification of Passaic County District Solid Waste Management Plan Amendment

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-21, which established specific requirements regarding the contents of the 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 Management Plan which pertains to the interim disposal arrangement (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 supplement the following plan amendments based upon the November 19, 1986 proposed amendment to the Passaic County District Solid Waste Management Plan and certify that the November 19, 1986 amendment is approved as further specified below:

1. Inclusion of Transfer Station Site into District Plan

The Pen Pac, Inc. proposal identified one new transfer station site requiring inclusion within the Passaic County District Solid Waste Management Plan. The I.M.R.F. Systems, Inc. Transfer Station, located at 301 Maltese Drive, Block 170B, Lot 3, in the Borough of Totowa, is approved for inclusion into the Passaic County District Solid Waste Management Plan.

The remaining sites which comprise the Pen Pac, Inc. proposal have previously been incorporated within the Passaic County Plan as follows:

The Nicholas Sanitation Transfer Station, located at Block 1250, Lot 21, 36, 37, 38, in the City of Paterson, facility #1608A, was included in the original Passaic County District Solid Waste Management Plan, which was approved by the Department on August 13, 1980. This transfer station shall be expanded to handle a maximum design processing capacity of at least 680 tons per day and an expected loading rate of 440 tons per day.

The A. Capone Transfer Station, located at Block 558, Lot 5 and Block 559, Lots 5 and 6, in the City of Paterson, facility #1608B, and the Stamato (West Milford Haulage) Transfer Station, located at Block 549, Lot 8, in the West Milford Township (which is currently undergoing permit review by the Department) were proposed by the Passaic County Freeholder Board to be included in the district plan on October 19, 1983. The Department approved the district plan inclusion for these two transfer stations on March 22, 1984. This transfer station shall be expanded to handle a maximum design processing capacity of at least 680 tons per day and an expected loading rate of 440 tons per day.

The construction or operation of any solid waste facility beyond current permitted capacity shall be preceded by the acquisition of all necessary permits and approvals under N.J.S.A. 13:1E-1 et seq.

2. Operational Plan

The transfer arrangements specified in the Department's proposed amendment of November 19, 1986 for a minimum of three (3) years service and a maximum of five (5) years service are approved for inclusion within the Passaic County Solid Waste Management Plan. These transfer arrangements shall commence on or before December 1, 1987 depending upon the operational status of the four (4) transfer facilities.

The solid waste transfer program approved herein will service all of Passaic County through the operation of four transfer stations and the transportation and disposal at out-of-district landfills. Each of the four (4) transfer stations will have a maximum design processing capacity of at least 680 tons per day (TPD) and an expected loading rate of 440 TPD, operating five and one-half (5 1/2) days per week.

Solid waste will be collected in the Passaic County municipalities and delivered to the appropriate transfer stations as identified in the redirection of waste flow listed below. The transfer of solid waste from collection vehicles to transfer trailers will be accomplished through the use of a compactor/baler. Transfer trailers will be loaded at the transfer station sites and will transport the solid waste to the Southern Alleghenies Landfill in Conemaugh Township, Pennsylvania.

Routes and methods of transport will be specified for both collection vehicles and transfer trailers as conditions of the facilities' permit from the department's Division of Solid Waste. The routes and methods will be based on the department's detailed review of the environmental impact statements for the individual facilities. Prior to issuance of a permit, the public will be given the opportunity to comment on the selected routes at a public hearing.

Pen Pac, Inc. has also identified two additional landfills: The Arden Landfill, located in Chartiers Township, Pennsylvania, as a backup for the Southern Alleghenies Landfill; and the C.I.D. Landfill, located in Chaffee, New York, for the disposal of residual or industrial waste.

### 3. Designation of Waste Flow to Transfer Station Sites

The Department herein approves Plan inclusion of the following redirection of waste flow to the four transfer stations to be effective as Passaic County disposal privileges at H.M.D.C. disposal facilities cease and approved transfer stations projects become operational.

- a. All waste types 10, 13, 23, 25, and 27 generated from within the Passaic County municipalities of Bloomington, Pompton Lakes, Ringwood, Wanaque, Wayne, and West Milford shall be directed to the West Milford Haulage Transfer Station, located in West Milford, Passaic County, New Jersey, for transportation to out-of-district disposal facilities.
- b. All waste types 10, 13, 23, 25, and 27 generated from within the Passaic County municipalities of Hawthorne, Little Falls, Passaic, Prospect Park, Totowa, and West Paterson shall be directed to the I.M.R.F. Systems, Inc. Transfer Station, located in Totowa, Passaic County, New Jersey, for transportation to out-of-district disposal facilities.

- c. All waste types 10, 13, 23, 25, and 27 generated from within the Passaic County municipalities of Clifton, Haledon, and North Haledon shall be directed to the Nicholas Sanitation Transfer Station, facility #1608A, located in the City of Paterson, Passaic County, New Jersey, for transport to out-of-district disposal facilities.
- d. All waste types, 10, 13, 23, 25, and 27 generated from within the Passaic County municipality of Paterson shall be directed to the A. Capone Transfer Station, facility #1608B, located in the City of Paterson, Passaic County, New Jersey, for transport to out-of-district disposal facilities.
- e. The Request For Proposals issued by the Department also identified other existing, operating transfer stations within Passaic County that possess approved certificate of registration and engineering design approvals, which are not a part of the Pen Pac, Inc. proposal. These transfer stations may continue to operate at their current levels, or the levels approved in their certificates of registration. The solid waste from these transfer stations must be delivered to the appropriate Pen Pac, Inc. transfer station according to the origin of the waste.

The above redirection of the waste flow may be revised ~~and/or~~ after the start-up of the transfer station program if the waste loadings at the transfer stations so warrant as a result of conditions in the certificate of approved registration and engineering design approval.

- 4. The Department has reviewed the entire Passaic County District Solid Waste Management Plan, including this amendment, to determine whether the plan fulfills the requirements set forth in N.J.S.A. 13:1E-21. The results of that review are as follows:

- a. N.J.S.A. 13:1E-21b(1) requires the designation of a Department, unit, or committee of county government . . . to supervise the implementation of the county's Solid Waste Management Plan.

The Passaic County Board of Chosen Freeholders have not submitted to the Department a designation of the solid waste management plan implementation agency. Therefore, the Passaic County District Solid Waste Management Plan is deficient in regards to N.J.S.A. 13:1E-21b(1) because it fails to designate a district plan implementation agency. For the purposes of the Pen Pac, Inc. transfer station project, the Department will oversee the project development and assume implementory agency responsibility until such time as the County of Passaic agrees to undertake the implementation responsibilities for the transfer station project components identified herein.

- b. N.J.S.A. 13:1E-21b(3) requires a site plan which shall include all existing solid waste disposal facilities located within the Solid Waste Management District . . . and sufficient additional available suitable sites to provide solid waste facilities to treat and dispose of the actual and projected amounts of solid waste contained in the report accompanying the plan.

Due to the failure of the Passaic County Board of Chosen Freeholders to include within the plan additional available suitable sites to dispose of the projected amounts of solid waste generated within Passaic County, the Department has amended the Passaic County Solid Waste Management Plan to include the transfer station program contained in this amendment as an interim measure pending the development of long term in-county disposal facilities.

Passaic County has failed to meet the provisions of the December 3, 1984, Judicial Consent Order between the Department, the Hackensack Meadowlands Development Commission (HMDC) and Passaic County, which required, among other things, that Passaic County would have an in-county interim/residual landfill operational by December 1, 1987 and a resource recovery facility operational by October 1, 1988, dates which cannot now be met. The Passaic County District Solid Waste Management Plan is therefore deficient in regards to N.J.S.A. 13:1E-21b(3).

- c. N.J.S.A. 13:1E-21b(4) requires a survey of proposed collection districts and transportation routes with projected transportation costs from collection districts to existing or available suitable sites for solid waste disposal facilities.

The Passaic County District Solid Waste Management Plan does not contain an updated survey of transportation routes with projected transportation routes with projected transportation costs from collection districts to proposed disposal facilities, specifically to the proposed Passaic City resource recovery facility site. Therefore, the Passaic County District Solid Waste Management Plan is deficient with respect to the requirements of N.J.S.A. 13:1E-21b(4)

- d. N.J.S.A. 13:1E-21b(6) requires a method or methods of financing solid waste management in the Solid Waste Management District pursuant to the Solid Waste Management Plan.

The Pen Pac Inc. transfer station proposal will be financed by the residents of Passaic County through tipping fees at the four (4) transfer stations. These tipping fees will be set by the Board of Public Utilities through the rate setting process.

Passaic County has submitted to the Department a preliminary financing plan for the proposed Passaic City resource

recovery facility. However, until complete financial data is developed and incorporated into the approved plan, the Passaic County District Solid Waste Management Plan remains deficient with regards to the provisions of N.J.S.A. 13:1E-21b(6).

#### 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 Passaic County 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, 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 to the Passaic County Board of Chosen Freeholders 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 N.J.A.C. -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

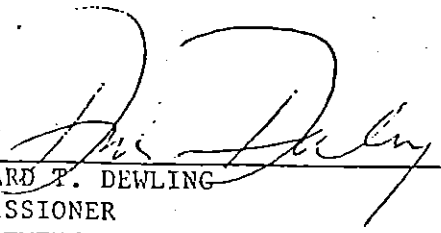
Nothing contained herein shall be construed as a limitation on any other action taken by the Department of Environmental Protection pursuant to its authority under the law. The Passaic County District Solid Waste Management Plan, including any amendment made thereto, shall conform with the Statewide 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 November 19, 1986.

DATE

3/26/87

  
RICHARD T. DEWLING  
COMMISSIONER

DEPARTMENT OF ENVIRONMENTAL PROTECTION

GENERALComment:

A comment was received which criticized the lack of an overall track record for Pen Pac, Inc.

Response:

This criticism is unjustified in light of the fact that the four companies that will operate the transfer stations are led by personnel with many years of experience and proven records in the waste management business.

Comment:

Comments were received questioning the fairness of singling out certain counties, and thereby discriminating against Passaic County. Bergen, Essex, and Hudson counties, which are in a disposal capacity situation similar to Passaic County, have not been directed to out-of-state disposal facilities.

Response:

The DEP determined that the solid waste disposal situation in northern New Jersey had 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. The DEP proposed the transfer station initiative in Morris, Passaic, Somerset, and Union Counties. Passaic County was included in the proposed action because after December 1, 1987, Passaic County has no designated disposal capacity. In addition, efforts to site and construct an in-county landfill, as well as attempts to secure disposal capacity out-of-district, have failed.

In regard to the charge of discrimination, the Department contends that it has not discriminated against the county and offers the following discussion. Currently, the Hackensack Meadowlands District (HMD) accepts solid waste for disposal from Bergen County, Essex County, Hudson County, Passaic County and two municipalities in Union County. The HMD is composed of fourteen (14) municipalities located within Bergen and Hudson Counties. Essex County, Passaic County and Union County have no municipalities that exist within the HMD. The Hackensack Meadowlands Development Commission (HMDC) has informed the Department that certain arrangements may be made to permit solid waste generated within Bergen County and Hudson County to be disposed of in facilities located within these counties, which may also be located within the Hackensack Meadowlands District jurisdiction. Specifically, should Hudson or Bergen County designate a disposal facility within their respective borders which is also located within the HMD, the HMDC may, if the proposed sites are deemed suitable, approve the disposal facility designations for inclusion within the Hackensack Meadowlands District Solid Waste Management Plan.

Since Essex County, Passaic County and Union County have no municipalities within the HMDC, the HMDC has taken the position that similar arrangements are not possible. The DEP supports the position of the HMDC because of the DEP's policy not to force one county's solid waste problems on another county.

Essex County must cease using HMDC disposal facilities on July 31, 1987, four months before the Passaic County cutoff date of December 1, 1987. At the time the Department initiated the transfer station strategy, the Department was informed that Essex County would undertake a similar initiative. In this regard, Essex County issued a bid document to the private sector to initiate its own transfer station project in December 1986. The Department realizes that sufficient time does not remain for Essex County to duplicate the RFP process initiated by the Department for Morris, Passaic, Somerset, and Union Counties. Therefore, the Department may have to undertake some action with regard to the disposal problem facing Essex County.

Comment:

Comments were received stating that the Pen Pac, Inc. schedule for construction is unrealistic.

Response:

The Department realizes that this is a tight schedule, but maintains that the construction scheduled submitted by the Pen Pac, Inc. is realistic. The Department realizes that delays are possible due to numerous situations over which neither Pen Pac, Inc. nor the Department has complete control. However, the timeframe projected for the permitting, construction and operation of the Pen Pac, Inc. facilities is considered possible and the Department intends to proceed with implementation according to the proposed schedule.

Comment:

Comments were received indicating that the Department should look to regional solutions. It was stated that the Department appears unwilling to force regional interdistrict agreements.

Response:

The Solid Waste Management Act N.J.S.A. 13:1E-1 et seq. requires every county to identify and develop 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 identified in the study that attempted to provide a regional approach to the residual landfill issue in the northeastern area of the state. The four counties noted above have utilized a regional disposal arrangement at HMDC landfills, with DEP support, for over a decade. It is the Department's and the HMDC's position that continued reliance on the HMDC district is not feasible due to the limited remaining

disposal capacity at the existing landfills and the lack of available virgin land areas suitable for the development of new solid waste landfills.

With respect to the other existing landfills in New Jersey, sufficient capacity does not exist elsewhere to handle the volume of solid waste generated in the four county area. In addition, the failure of a county to resolve its solid waste disposal problems due to failure to site and implement a landfill should not penalize a county that has sited and implemented a landfill. The redirection of solid waste to another county's landfill will prematurely cause the closure of the landfill depriving the host county of its planned solid waste capacity, thus aggravating solid waste disposal problems in other counties.

Comment:

Comments were received from the Hackensack Meadowlands Development Commission (HMDC) endorsing the Department's transfer station initiative, and explaining the reasons why the landfills within the Hackensack Meadowlands District are to be closed. The HMDC also disputed the assertion that the cost of waste disposal would be too high. The HMDC also explained why Passaic County's request to use the baler after December 1, 1987 was denied.

Response:

The Department agrees with the comments made by the HMDC and appreciates the assistance provided by the HMDC in this regard in affirming the prior commitments by Passaic County to cease using the HMDC landfills by the end of 1987.

Comment:

Comments were received stating that it is inappropriate for the Department to mandate out-of-state disposal because of uncertainties of other state regulations, uncontrolled and discriminatory landfill rate increases and the fact that out-of-state disposal facilities are not regulated as public utilities.

Response:

There are no present in-state disposal options available to carry Passaic County through the impending short-term waste disposal crisis. The Department has determined that sufficient permitted capacity exists in out-of-state facilities to handle the needs of Passaic County and the other New Jersey counties being addressed through the transfer station initiative.

Acceptance of rates to be charged at those facilities will be part of the overall rate setting process carried out by the Board of Public Utilities.

Comment:

Comments were received questioning if there would be another public hearing on the transfer station expansions.

Response:

Following a submission and review of a detailed environmental impact statement and engineering designs and upon a tentative decision by the Department to issue

a Certificate of Approval Registration and Engineering Design Approval (CAREDA) for any transfer station requiring such a permit, a public hearing is held in the host community. The purpose of this public hearing is to solicit comment from the affected community, on the Department's proposed permitting decision.

Comment:

Comments were received stating that the Passaic County Solid Waste Management Plan never approved the three transfer stations (Nicholas, Capone and Stamato) for the waste loadings proposed by the Department. As a result, another plan amendment is necessary to permit the expansion.

Response:

The designation of solid waste facilities in district solid waste management plans is a land use decision. Facility sizing is considered during the technical review stage of the permit review process. Facility sizing is generally a permit condition under the Certificate of Registration and Engineering Design Approval issued by the Department. The proposed Passaic County District Solid Waste Plan Amendments, issued by the Department on November 19, 1986, states on page 4 that: "Each of the four transfer stations will have a maximum design processing capacity of at least 680 tons per day (tpd) and an expected loading rate of 440 tpd." In addition to this disclosure of the Department's intentions to have each of the previously permitted facilities expand its operations, a public hearing regarding the technical components of each project will be held in the host community following a tentative decision to issue solid waste permits.

Comment:

One comment stated that DEP was either not cognizant, or indifferent to the Pennsylvania Department of Environmental Resources (PA DER) opposition to out-of-state waste.

Response:

NJDEP has contacted the Pennsylvania DER concerning this project to inform them of the potential of the project to generate needs that could be met by Pennsylvania landfills. The permitting process and rules in Pennsylvania do not prohibit out-of-state waste from being processed in Pennsylvania landfills. More importantly, the RFP requires that only disposal facilities which are permitted are allowed to be considered for disposal of New Jersey waste. Furthermore, there is no RFP requirement that only Pennsylvania landfills should be used as disposal facilities.

Comment:

Comments were received stating that alternative disposal options such as disposal facilities in other New Jersey counties, use of the HMDC baler as a transfer station, or the recycling of old New Jersey landfills have not been fully considered by the Department.

Response

Alternative disposal options were considered by the Department. There currently are no landfills operating in Passaic, Morris, Somerset, Union, Essex, Warren and Sussex counties. Operating landfills elsewhere in the state do not have capacity to relieve the needs of Passaic County and have been designed to serve current needs of counties where they are located. The three operating landfills within the Hackensack Meadowlands District will reach their capacities between July 1987 and March 1988. The Department and the Board of Public Utilities do not believe it is appropriate to penalize counties that have sited and implemented landfills by redirecting waste to those landfills from counties that have failed to site landfills.

The baler is under the jurisdiction of the Hackensack Meadowlands Development Commission (HMDC). Passaic County had requested that the HMDC allow the use of the baler as a transfer station until such time as the proposed Passaic County resource recovery facility becomes operational. The HMDC refused this request on the basis that the baler would be needed in the short term to handle counties that would continue to use HMDC facilities.

The expansion of old landfills has been a standard practice in northern New Jersey for years. Passaic County may have some landfills which could potentially be considered in this category. Should the county wish to designate and implement a landfill at one of these sites, the Department will do everything possible to assist the county in exploring such possibilities.

Comment:

Comments were received which indicated that the County was undertaking a similar RFP process which would provide less expensive disposal costs than the Department received. It was also stated that the Department should let the county proceed without the intervention of the Department.

Response:

The Passaic County Plan Amendment of January 1986 gave Passaic County the opportunity to undertake its own transfer station program. In fact Passaic County issued an RFP for transfer stations in January 1986. However, Passaic County rejected the one it did receive from this RFP; Passaic County gave no indication that they would continue to try and undertake a viable transfer station program. Therefore, in May 1986 the Department was forced to issue an RFP to initiate a transfer station program in Passaic County. Should Passaic County wish at this time to undertake the implementation of the Department's transfer station initiative, arrangements can be made to allow the county to undertake the DEP's current role. As stated in the January 17, 1986 amendment to the Passaic County Plan, it has always been the Department's position that the county should be the entity to undertake solid waste planning and implementation.

Comment:

Comments were received questioning what would happen if one of the Pen Pac, Inc. transfer stations break down.

Response

Passaic County's solid waste, under the proposal submitted by Pen Pac, Inc., is reasonably divided among the four proposed transfer stations. Should a situation arise where one of the transfer stations becomes inoperable, the solid waste designated to that particular transfer station could be redirected on a short term basis to the remaining operational transfer stations.

Comment:

Comments were received questioning the status of the I.M.R.F. Transfer Station in regard to the Passaic County Solid Waste Management Plan.

Response:

On October 19, 1983, the Passaic County Board of Chosen Freeholders adopted an amendment to the district solid waste management plan to include the I.M.R.F. (Iorio) Transfer Station, located in Totowa, in the approved plan. The October 19, 1983 amendment also contained a policy to approve all future transfer stations for inclusion into the approved plan. On March 22, 1984, the Department approved the inclusion of the I.M.R.F. (Iorio) Transfer Station but rejected the blanket transfer station siting policy. On March 28, 1984, the Passaic County Board of Chosen Freeholders adopted an amendment to the district solid waste management plan to delete the I.M.R.F. (Iorio) Transfer Station from the approved plan. The Department affirmed the land use decision made by the county at that time, and approved the county plan amendment on September 7, 1984. The Department did not evaluate the merits of using the IMRF site, but rather approved the amendment in deference of the county's land use decision.

In substance, the inclusion of the Totowa transfer station in the Pen Pac, Inc. proposal, which the Department has approved in its plan amendment, reinstates the former I.M.R.F. site in the plan.

FINANCIALComment:

Numerous comments were received which were critical of the overall cost associated with the Pen Pac, Inc. proposal.

Response:

The costs for waste disposal in Passaic County as well as other parts of New Jersey have been and will continue to increase in the future. Waste disposal in state-of-the-art landfills and resource recovery facilities is simply more expensive than disposal in older, environmentally unsound landfills.

The waste generated from Passaic County is currently being disposed of at the Hackensack Meadowlands District Commission (HMDC) baler/balefill. However according to a court ordered agreement, Passaic County will not be allowed to continue using this HMDC facility after December 1987. Since Passaic County does not have an approved short-term waste disposal alternative, the Pen Pac, Inc.

transfer station proposal is the only viable proposal received by the Department pursuant to its RFP to handle Passaic County's waste in the near future.

Also, the county's proposed resource recovery facility is still in the initial engineering/permitting stage and would appear at least 3 to 5 years from operation. When a state-of-the-art landfill and/or a resource recovery facility becomes operational in Passaic County, tipping fees at these facilities are likely to be similar if not more than those at the Pen Pac, Inc. transfer stations.

Presently, the tipping fee for a new state-of-the-art landfill in Gloucester County New Jersey is \$53.00 per ton. Similarly, the December 1986 issue of Waste Age Magazine (Volume 17, Number 12) stated that Philadelphia, Baltimore and New York currently spend \$157.00 per ton, \$146.03 per ton, \$93.95 per ton respectively. Finally, Waste Age Magazine, in the same issue, describes a transfer station in Westchester County, New York with an \$84.00 per ton tipping fee. The transfer station in New York has a tipping fee which is similar to the tipping fee proposed by Pen Pac, Inc. and is in the same range as the other transfer stations proposed as part of the Department's program in Morris, Somerset and Union counties. All waste disposal costs associated with this project must be presented to the BPU (Board of Public Utilities) which must ultimately approve the final rates for this project pursuant to its rate setting procedures.

Comment:

Comments were received stating that the Board of Public Utilities does not have the ability or the wherewithal to grant a franchise for the Pen Pac, Inc. project which is a requirement for the financing of the project.

Response:

According to N.J.S.A. 48:13A-5, the Board of Public Utilities has the authority to grant a franchise. However, to date, no submission has been made to the Board of Public Utilities, from Pen Pac, Inc. and therefore, no prejudgement of the franchise submission is possible.

Comment:

Comments were received stating that by using Pennsylvania landfills New Jersey will not collect the tax monies associated with solid waste disposal.

Response:

Currently, all taxes on solid waste are based upon the amount of waste received at the disposal facility. According to the provisions of A-1778, the state does not have the ability to collect solid waste taxes at transfer stations and a disposal facility located out-of-state is beyond the state's jurisdiction to collect taxes.

Comment:

Comments were received stating that the Pen Pac, Inc. submission contains a major deficiency due to the fact that Pen Pac, Inc. will not have a financial commitment until every regulatory step is completed, and approvals are obtained.

Response:

While it may be true that not all financial arrangements cannot be finalized by the proposer until after all permit approvals are obtained, the transfer station project evaluation committee determined that the Pen Pac, Inc. proposal met the financial resources requirement of the RFP prior to selection of the proposal.

It was not the intent of the financial resource requirement in the RFP that financial arrangements would be finalized prior to selection. As the project develops, Pen Pac, Inc. will be asked to obtain a performance bond to cover the construction and upgrading of the four transfer facilities. Evidence of this bond can be furnished during the permit review process.

Comment:

Comments were received questioning the mechanism to reduce higher costs (tipping fees) associated with the Pen Pac, Inc. proposal as well as future cost increases in the event alternate out-of-state landfills are used.

Response:

All costs included in the Pen Pac, Inc. proposal are only proposed at this time, and will require review by the New Jersey Board of Public Utilities as part of the rate setting process. Following BPU review for reasonableness, costs will either be modified downward or approved as submitted, based on their findings. Also, any future proposal cost increases will similarly have to be approved by the BPU prior to being approved as part of the tipping fee.

Comment:

Comments were received stating that the capital investments for the transfer stations will be obsolete once the resource recovery facility becomes operational.

Response:

Since the county's resource recovery facility will not be on line and operational for at least 3 to 5 years, or after the transfer station program amortization period, all transfer station capital costs will be accounted for. Nevertheless, any transfer stations have the future potential to serve as regional recycling facilities, or continue to be utilized in conjunction with the county's resource recovery facility. Similarly, much of the transfer station equipment which is still operable could be dismantled and reused elsewhere.

PROCEDURALComment:

Comments were received questioning how the RFP siting criteria were developed.

Response:

The "Request for Proposal (RFP document) For Solid Waste Management Plan Inclusion For Development of Transfer Station Transportation and Disposal of Solid Waste For Any of the Following New Jersey Counties: Morris, Passaic, Somerset and Union", dated May 23, 1986, which provides exclusionary and non-exclusionary ranking siting criteria, was developed by the Department of Environmental Protection, Division of Solid Waste Management with assistance from its consultant, Baker TSA, Inc. of Pittsburgh, Pennsylvania. The criteria were intended to assure that any newly proposed transfer station sites would not be located within an environmentally sensitive area and not be rejected during the permitting review for environmental reasons. Generally, the criteria were not developed based upon any existing criteria, but rather on the Department's best judgments as to what would constitute an appropriate siting criteria relative to land use and environmental impact of transfer station facilities.

Comment:

Comments were received which suggested that the Evaluation Committee that reviewed the proposals should have had higher ranking DEP officials participate.

Response:

Experienced officials of DEP and BPU participated in the transfer station project evaluation which evaluated the proposals and made recommendations to DEP's management. These individuals have experience in the areas of planning, engineering, law, and economics, and environmental issues. In addition, DEP's senior management was informed of transfer station programs and approved all policy decisions concerning this project.

Comment:

Comments were received which criticized the evaluation process noting that the exclusionary siting and ranking criteria in the RFP were not applied to the two existing transfer sites (the Fulton Street and Iowa Avenue sites in Paterson) and the one site with a permit pending (West Milford) that were already included in the county's solid waste management plan.

Response:

DEP never intended to evaluate the siting of existing sites or those with a permit pending that were previously sited and already included in the county plan. The siting criteria were developed for evaluation of new solid waste facilities responding to the RFP only. DEP's policy was to encourage the use of existing and operating transfer stations and those with a permit issued or pending that were already included in the county solid waste management plan. Such stations were previously evaluated when they were originally included in the

county plan and did not need to be reevaluated according to newly developed criteria.

This policy was also made clear at the Request for Proposal conference held for all prospective bidders on June 4, 1986, and in Addendum No. 1 issued to prospective bidders on June 17, 1986. At the conference Mr. Theodore A. Schwartz, Esq., stated ... "I assume that all those existing facilities have to meet these particular requirements that are contained in the RFP. "Mr. Joseph Wiley, Acting Assistant Director of the Division of Solid Waste Management, emphatically responded "No." The ensuing discussion clarified this policy. Similarly, Addendum No. 1, Attachment 2 contained revised text for Section 2.0 of the RFP - "Status of Existing and Pending Waste Facilities." This revised text clearly states that one of the policies of the RFP was "... to encourage the use of existing transfer stations and those currently in the permit process to meet the needs of the project." Accordingly, all other questions and comments concerning the siting of the Fulton Street and Iowa Avenue sites in Paterson, and the West Milford site do not need to be addressed in detail.

Comment:

Comments were received which criticized the site evaluation criteria in the RFP.

Response:

The site evaluation criteria were developed by DEP and their consultant (Baker, TSA, Inc.) to provide a method for evaluation of proposed sites. These criteria were selected so that the project would not require extensive engineering work and permit delays or be rejected at some later stage of the review process. The criteria were not intended to include every possible evaluation criteria and were developed based on the Department's best judgment as to what would constitute an environmentally sound site.

Comment:

Comments were received which criticized the overall proposal ranking procedure including the site evaluation criteria set forth in the RFP and used to evaluate all the sites.

Response:

According to the RFP, all proposed new transfer station sites were to be evaluated based on both exclusionary and ranking criteria. The exclusionary criteria, were pass/fail. A site had to pass all exclusionary criteria in order to be considered as a possible site. If a site passed all the exclusionary criteria it was then evaluated according to the ranking criteria. Numerical scores were assigned to each of the ranking criteria and a total numerical score for the site was calculated. A site had to obtain a minimum of 6,500 points (out of a possible 10,000) in order to be judged as acceptable. Pen Pac, Inc. proposed only one new transfer station site (Totowa) for Passaic County. The site passed all the exclusionary criteria set forth in the RFP, and obtained a high passing score of 9,000 points out of 10,000 for the ranking criteria. The site meets all the requirements of the RFP and scored very well by all the RFP criteria.

Comment:

One comment suggested that a proposal "could pass without a disposal site, at any cost and from a firm without qualifications, experience of (or) financial resources."

Response:

Section 6.0 of the proposal clearly states that the selected proposer must be "responsive and responsible" to the requirements of the RFP. These requirements included a letter of commitment from the operator of a disposal site to handle the required quantity of waste and also required a valid copy of the landfill operating permit. Also, the RFP required that a proposer provide a letter of commitment for alternative disposal capacity in the event the primary disposal site becomes unavailable. DEP also evaluated the costs in the proposals for their responsiveness and provided an overall evaluation of their reasonableness. It was clearly stated in the RFP that all rate setting will be subject to approval by the BPU. DEP also required that any proposal have the technical qualifications and experience to carry out this program. It required the proposer to submit the qualifications and experience of the firm and resumes of company personnel. This information had to demonstrate that the firm was qualified and capable of performing this project. The RFP also required that the proposer provide assurance that it has financial resources adequate to carry out the program or the ability to obtain such resources. Therefore, if the proposal did not adequately address the issues as described above, it would have been judged non-responsive and non-responsible and would not have been given further consideration.

Comment:

One comment suggested that the consultant's letter of 8/20/86 raising questions about the Pen Pac, Inc. organization and costs were "not dealt with."

Response:

The consultant's letter called the proposal responsive and responsible. The technical issues raised in the letter will be addressed in later permitting stages of the project. Other issues raised in the letter were addressed in subsequent correspondence with Pen Pac, Inc. and further analysis of the proposal. For example, on September 8, 1986, the attorney for Pen Pac, Inc. provided written answers to 33 written questions posed on August 20, 1986 by David McGee, Esq. representing Passaic County. These answers addressed many of the issues raised in the consultant's letter.

Comment:

Comments were received stating that the Department was remiss for not waiting for a detailed Board of Public Utilities financial review prior to including the Pen Pac, Inc. proposal into the district plan.

Response:

Board of Public Utilities financial review is not a requirement of district solid waste management plan amendment approvals and is rarely, if ever, undertaken at the planning phase of project development. The Board of Public Utilities was, however, represented on the proposal evaluation committee and is also a state level review agency for the review of the proposed plan amendments. A detailed financial review of the Pen Pac, Inc. proposal will take place as part of the rate setting process when Pen Pac, Inc. applies for a certificate of public convenience and necessity.

Comment:

Comments were received stating that there is no guarantee that Pen Pac, Inc. will receive a certificate of public convenience and necessity from the Board of Public Utilities. Without this Pen Pac, Inc. cannot operate. Therefore, the portion of the RFP which relates to qualifications is improper.

Response:

There is no guarantee that Pen Pac, Inc. will receive any or all of the necessary permits and approvals to operate. The Department and the Board of Public Utilities cannot prejudge applications prior to submission. This does not mean that planning decisions that are a prerequisite to the permit should not go forward.

Comment:

Comments were received questioning what would happen if one of the Pen Pac, Inc. transfer stations break down.

Response:

Passaic County's solid waste, under the proposal submitted by Pen Pac, Inc., is reasonably divided among the four proposed transfer stations. Should a situation arise where one of the transfer stations becomes inoperable, the solid waste designated to that particular transfer station could be redirected on a short term basis to the remaining operational transfer stations.

Comment:

Comments were received stating that the transfer station transportation contracts should have been submitted to the Department and made a part of the Department's evaluation process.

Response:

The evaluation process of the Request for Proposal submission reviewed the transportation costs associated with the Pen Pac, Inc. proposal for reasonableness. However, a guarantee of a primary contractual arrangement and indication of availability of backup capacity for disposal was a prerequisite to selection of the Pen Pac, Inc. proposal. Further evaluation and review of

transportation arrangements will be performed as a part of the Board of Public Utilities rate setting process.

Comment:

Comments were received questioning why the Department did not go back and try to solicit more proposals because only one proposal was received.

Response:

On June 4, 1986, the Department issued and widely advertised a Request for Proposal (RFP) to solicit proposals from private vendors to site, design, construct and operate in-county transfer stations and transport the county's solid waste to out-of-district disposal facilities. On August 13, 1986, one proposal was received by the Department. Other proposers submitted written inquiries or comments, but declined to submit a proposal. After a review by an evaluation committee, it was determined that the proposal met all the requirements of the RFP. Therefore, it was unnecessary for the Department to resolicit the RFP.

Comment:

Comments were received stating that the RFP was withheld from the Passaic County Freeholder Board and the public.

Response:

On June 4, 1986, the Department issued a Request for Proposal (RFP) to solicit proposals from private vendors to site, design, construct and operate in-county transfer stations for out-of-district solid waste disposal. This document was made available to all interested parties that attended the conference and was specifically made available to county representatives.

ENGINEERING

Comment:

Comments were received stating that the Totowa transfer trailer traffic route omitted Route 46.

Response:

The comment correctly identifies an omission in the November 19, 1986 Proposed Passaic County Solid Waste Management Plan Amendment. The proposed route would include "Riverview Drive south to Route 46 east; then Route 46 east to Route 20 north"; the remaining route designation is correct.

Comment:

One comment questioned both the capability of the equipment selected by Pen Pac, Inc. (AMFAB Trans Pak Model 500) and the qualifications of the company.

Response:

Although the AMFAB Trans Pak Model 500 is a relatively new piece of equipment, its actual operation is based on proven, time tested technology. The equipment, which has the capability of processing 4-25 ton loads per hour (1000 TPD/10 hr day), simply utilizes a hydraulic ram to compact the waste to improve transportation economics. Two of the AMFAB Trans Pak 500's are currently in operation, one in Denver, Colorado, and one in Oroville, California. The Denver facility has been operating 8 months at 1000 TPD. The unit in Oroville, California has been operating 18 months at a maximum of 200 TPD. Both operators indicated to the Department that they are very pleased with the AMFAB Trans Pak 500 equipment and both reported very little downtime.

Since each of the four proposed transfer stations will have a solid waste throughput that will be approximately one-half of the capability of the AMFAB Trans Pak unit, there will be a 100% built in redundancy for processing Passaic County's solid waste. The conservative design of this equipment, simplicity of operation and recent performance record indicates that it will be capable of meeting the needs of Passaic County.

Comment:

One comment suggested that the Totowa transfer station site is in a wetland and contains critical habitats.

Response:

The general area of the Totowa site is shown as a wetland on a United States Fish and Wildlife Service Region Five Habitat Resources Map. However, ground inspection of the area does not indicate the presence of wetlands on the site in any area in which disturbance is needed for purposes of construction of the transfer facility. This discrepancy may have been the result of misinterpretation of high-altitude air photography used to develop the maps, or disturbance and filling of the site subsequent to the development of the maps. Also NJDEP is not aware of any information that indicates the Totowa site contains critical habitat of an endangered or threatened species.

Comment:

One comment suggested that the location of, and the amount of space at the Paterson, Fulton Street site, would limit expansion of the site and would not provide adequate room for trucks to queue and maneuver.

Response:

There is already an existing, operating transfer station at the Paterson, Fulton Street site. This site is included in the Passaic County Solid Waste Management Plan. A permit amendment will be required to allow the site to be modified to handle additional waste. In addition, it is anticipated that a queuing area for the trucks will be provided in a lot directly across from the existing building on Fulton Street. The design of the queuing area and other details will be developed during the review of the EHIS and engineering design.

Comment:

One comment suggested that there is not sufficient area at the Paterson - Iowa Avenue site to queue trucks.

The design of these areas will be further evaluated and developed during the review of the EHIS and engineering design.

Comment:

Comments were received which were critical of the ability of the landfill site proposed by Pen Pac, Inc. to have sufficient capacity to accept increased waste volumes.

Response:

The Department has evaluated the landfill proposed for this project. The landfill has permitted capacity available to handle the increased waste flows from Passaic County.

Comment:

Comments were received concerning the viability of the staging area and stating that the staging area is not contained in the Department's plan amendment.

Response:

The staging area is not contained in the proposed plan amendment because it is not considered a solid waste facility requiring plan inclusion and a permit from the Department to operate. Solid waste would not be stored at the staging area for more than twenty four hours on a regular basis. The staging area status is similar to a collector/hauler garage or base of operations which needs no plan inclusion or permits from the Department to operate.

The staging area identified in the Pen Pac, Inc. proposal may be viable for use. The Department does not currently have complete information on this site. Therefore, should this site become unusable, another site may be substituted by Pen Pac, Inc.

Comment:

Comments were received questioning what methods will be used at the transfer stations to prevent spills from polluting ground water.

Response:

The Department's regulations and guidelines for designs require a totally enclosed building. The tipping floor and ramps must be constructed of suitable strength concrete to withstand the loading and unloading operation and secondly to contain and channel all waste water including wash down water to the sanitary sewer if permitted by local code or corrosion resistant holding tanks. The Department's Bureau of Groundwater Quality Management in the Division of Water Resources will review the design and the preliminary operations and maintenance plan, from the standpoint of potential discharges to groundwater. If necessary,

the facility will be required to obtain a New Jersey Pollutant Discharge Elimination System (NJPDDES) permit for ground water discharge. This permit will establish discharge limitations and monitoring requirements.

Comment:

Comments were received questioning how traffic impacts will be assessed. Specifically noted were numbers of trucks using a particular site and associated impacts.

Response:

As part of the Department environmental impact statement (EIS) evaluation, a traffic assessment is required. The background or existing level of service (LOS) will be determined by traffic surveys for intersections of concern. The intersection of concern will be established by developing the traffic profiles and routes by municipalities expected to utilize the facilities. These routes will be established as part of the waste flow to the proposed facilities and incorporated into the Passaic County District Solid Waste Management Plan. From the traffic profile, a peak hour of traffic will be established. This peak will be compared to the existing LOS as part of the requirements of the EHIS. If the LOS is adversely impacted, the Department will require mitigating measures such as redesign or expansion of the impacted roadway/intersection or restriction on the traffic flow to the facility. In addition to the LOS analysis, the Department requires that any restriction such as roadway height or weight limitation of the routes ingressing or egressing the site be explored and that the geometrics of the access roadway be evaluated.

Comment:

Comments were received questioning how the waste flows to the Pen Pac, Inc. transfer stations were assigned.

Response:

The proposed waste flows to the particular Pen Pac, Inc. transfer stations were contained in the Pen Pac, Inc. submission to the June 4, 1986 Request for Proposals issued by the Department. These requested waste flows were reviewed by the Department with respect to proximity of waste generation to the four transfer sites and found to be reasonable. As noted in the proposed plan amendment, the Department can, at any time, modify the waste flows in response to any identifiable operational problems.

Comment:

Comments were received stating that the traffic directions overlooked intersection problems near the Totowa transfer station site.

Response:

The Department is aware of traffic congestion in the area of the Totowa (IMRF) transfer station location. However, the limited number of trucks that will use the facility should not significantly increase any congestion problems in the area. As part of the review of the engineering designs and EHIS, the applicant

must demonstrate that there is no degradation of the level of service at the intersection as a result of the increased truck traffic from the proposed facility. Also, in the event significant traffic congestion was a factor, a permit condition could require the facility to restrict operations during peak traffic hours to help mitigate the problem.

### Legal

#### Comment:

Comments were received questioning the anticompetitive result of combining the four solid waste transfer stations to form Pen Pac, Inc.

#### Response:

The Department maintains that formation of the Pen Pac, Inc. as a new business entity does not result by its nature in anticompetitive activity. The Department established a need for facilities, issued an RFP to all potential proposers, evaluated submissions and selected Pen Pac, Inc. The RFP, specifically, Addendum 2, provides for and encourages the continued use of existing transfer stations. Prior to formation of Pen Pac, Inc., the four individual entities involved were competitors. Each competitor, however, needed to provide more transfer capacity than it could furnish on its own. Each was free to choose another operator or site. Such choices were entirely open to any station operator or site owner that would meet the RFP criteria.

The preference for use of existing transfer stations where possible, encourages utilization of existing investments and thereby allows an efficient and competitive waste management system.

#### Comment:

Comments were received stating that the proposed Passaic County Plan Amendment amounts to the approval of a franchise to Pen Pac, Inc. This action usurps powers given to the Board of Public Utilities under N.J.S.A. 48:13A-5.

#### Response:

The proposed Passaic County District Plan Amendment plans for the direction of waste flows. The Plan Amendment would not constitute a franchise. Waste flows differ from franchise by their failure to afford a property interest to their beneficiaries. A franchise would have to be pursued independently by the interested parties.

#### Comment:

Comments were received stating that no performance bond, with the exception of facility construction, will exist. A performance bond should be required for the cost of the project on at least a yearly basis.

#### Response:

The Department agrees that there is merit in obtaining a performance bond for the disposal of Passaic County's solid waste. However, the Department does not have

the legal authority to enter into a contract with Pen Pac, Inc. and is merely siting a facility and directing waste flows. The Department, as a condition to the Certificate of Registration and Engineering Design Approval, will consider requiring some form of a performance bond to ensure transportation and disposal of the county's solid waste.

Comment:

Comments were received stating that the Department has no legal authority to use the RFP process.

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 Department, 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-231.) 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.)

The proposed amendment only designates a transfer station site and directs waste flows to and from the transfer stations. The Request for Proposal (RFP) process utilized by the Department was not a procurement process under the Local Public Contracts Law. The RFP process only served to provide the Department with rational guidelines to evaluate the best proposal available for inclusion in the county plan under the provisions of the Solid Waste Management Act. Public hearings throughout this process have given (and will continue to give) the public the opportunity to comment and raise questions concerning this project.

Comment:

Comments were received stating that the standards and criteria contained in the RFP were never released to the general public for review from those people directly affected, thus violating due process.

Response:

On June 4, 1986, the Department issued a Request for Proposal (RFP) to solicit proposals from private vendors to site, design, construct and operate in-county transfer stations for out-of-district solid waste disposal. This document was made available to all interested parties, including the county, for review and comment. The entire RFP process was undertaken pursuant to the Plan Amendment certified on May 13, 1986 and was conducted in a public and open manner.

Comment:

Comments were received stating that neither the Department nor Passaic County will have an enforceable contract or any performance guarantee with Pen Pac, Inc. It was asked how the Department will address the situation should Pen Pac, Inc. default on its obligations.

Response

Regrettably, the Department is without statutory authority to enter into contracts for the disposal of solid waste. Had Passaic County attempted to address its waste disposal shortfall in a timely manner, it could have entered into such contracts. Should Pen Pac, Inc. fail to meet its commitments, the Department or Passaic County will have to secure alternative disposal options.

Although this information was not received as part of the public comment period, the Department has been advised that Passaic County has recently undertaken efforts to develop its own contractual arrangements with Pen Pac, Inc. to facilitate implementation of the project. The Department strongly encourages such direct relationships and believes that the county is in an excellent position to further reinforce the arrangements contemplated in this proposed plan amendment.

Comment:

Comments were received stating that the Department does not have the statutory authorization to direct solid waste out-of-state.

Response:

The only New Jersey case law on this point recognizes such authority in the Department. See In Re: Camden County Solid Waste Management Plan Amendments A-2687-85T7, (1986).

Comment:

Comments were received stating that Pen Pac, Inc. does not have A-901 approval. It was also stated that one of the principals of Pen Pac, Inc. is named in a civil law suit charging anticompetitive practices. This would make it improper for the Department to proceed with the plan amendment process until Pen Pac, Inc. passes A-901 review.

Response:

N.J.S.A. 13:1E-126 et seq. requires that no license shall be approved by the Department unless the Department finds that the applicant has exhibited sufficient reliability, expertise and competency to operate a solid waste facility. A license is defined by 13:1E-126 as the initial issuance of a Certificate of Approved Registration and Engineering Design Approval. Obtaining an A-901 disclosure statement approval is not required prior to including a solid waste facility into a district plan or designating a waste flow to that facility.

Comment:

Comments were received stating that N.J.S.A. 13:1E-21 does not authorize the Department to select a specific solid waste company to construct a solid waste facility.

Response:

The Department is not, by amendment to the Passaic County District Solid Waste Management Plan, authorizing any company to construct a solid waste facility. Only a Certificate of Registration and Engineering Design Approval and approved Environmental Impact Statement issued to the facility owner/operator permits (authorizes) construction of a solid waste facility. The Department has merely determined that a need for a transfer station exists and issued the terms of the Request for Proposals as a rational basis for choosing the best proposal available. Following the planning phase of the Department's permit process, the respective applicants will prepare a detailed Environmental Impact Statement and engineering design submissions for review in pursuit of authority to construct and operate solid waste facilities.

Waste FlowComment:

Comments were received stating that the waste flow to the Capone transfer station is unrealistic.

Response:

The Department maintains that the proposed waste flows to the four Pen Pac, Inc. transfer stations are realistic based on an area wide distribution covering the entire county. However, as part of the review of the engineering design and EIS, the applicant must demonstrate that the facility can operate without significant negative environmental impact at the proposed capacity. Also, should the waste flows need revision after the start-up of the transfer stations, the Department will undertake the necessary step to modify the waste flows.

Comment:

Comments were received questioning the proposed waste flow to the transfer stations from the Township of Wayne. Wayne Township requests to utilize the Totowa transfer station.

Response:

Waste flows to the four proposed Pen Pac, Inc. transfer stations were based primarily on the geographic relationship between the location of the transfer site and municipalities in Passaic County for purposes of local transfer efficiency. Every effort was made to send those municipalities closest to a given transfer station facility to that facility, provided that each transfer station facility received a sufficient amount of waste for which it was designed. Unfortunately, since Wayne Township generates over 200 tons per day of solid waste, not sending it to the West Milford site would reduce that facility's waste loading by about 50%. Likewise, sending Wayne Township's waste to another transfer station facility would increase that facility's waste loading well beyond its design capacity. Also, all the municipalities directed to the West Milford transfer station facility (including Wayne) are geographically located closest to the West Milford site.