



STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
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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 DECEMBER 21, 1988
AMENDMENT TO THE PASSAIC COUNTY DISTRICT
SOLID WASTE MANAGEMENT PLAN

BY ORDER OF THE COMMISSIONER:

A. Introduction

The New Jersey Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.) established a comprehensive system for the management of solid waste in New Jersey. The Act designated all twenty-one (21) of the state's counties, and the Hackensack Meadowlands District, as Solid Waste Management Districts, and mandated that the Boards of Chosen Freeholders and the Hackensack Meadowlands Development Commission develop comprehensive plans for waste management in their respective districts. On August 13, 1980, the Department approved, with modifications, the Passaic County District Solid Waste Management Plan.

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

The Act further provides that a district may review its plan at any time and, if found inadequate, a new plan must be adopted. The Passaic County Board of Chosen Freeholders completed such a review and on December 21, 1988, adopted an amendment to its approved district solid waste management plan. The amendment proposed to include within the county plan all existing, private solid waste incinerators.

A complete amendment package was received by the Department of Environmental Protection on March 2, 1989 and copies of the amendment were distributed to various state level agencies for review and comment, as required by law. The Department has reviewed this amendment, as well as the entire Passaic County District Solid Waste Management Plan, and has determined that the amendment adopted by the Passaic County Board of Chosen Freeholders on December 21, 1988 is approved in part, and rejected in part, as provided in N.J.S.A. 13:1E-24. With regard to the district plan, while the requirements of the Act concerning the report have been met, the district's plan remains deficient in some important ways.

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, Christopher J. Daggett, Commissioner of the Department of Environmental Protection, have studied and reviewed the December 21, 1988, amendment to the Passaic County District Solid Waste Management Plan according to the objectives, criteria, and standards developed in the Statewide Solid Waste Management Plan, and I find and conclude that the portion of this plan amendment approved by the Department is consistent with the Statewide Solid Waste Management Plan.

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

The Division of Environmental Quality (DEQ) commented that the inclusion of small scale medical and certain industrial waste incinerators is consistent with programs which they administer, as long as the incinerators comply with all air pollution control requirements. However, DEQ also indicated that the policy of directing solid waste to small apartment house incinerators and other such small scale incinerators when a state-of-the-art resource recovery facility is available to process such waste is generally not consistent with air pollution control plans. In the past, less stringent controls were accepted for incineration facilities with a charging capacity of less than 800 pounds per hour. However, DEQ is reconsidering this policy, and may, in the future, require retrofitting of better air pollution

control equipment for existing waste incinerators. Currently, such incinerators are subject to the provisions of N.J.A.C. 7:27-8.2, "Permits and Certificates Required," and all other applicable regulations. In response, by way of this certification, the county is notified of these comments for consideration with respect to any future plan amendment.

The Board of Public Utilities (BPU), while not objecting to the proposed amendment, noted that any disposal facilities which accept solid waste other than their own for incineration might be considered public utilities which would subject them to BPU registration requirements. By way of this certification, the Department notifies Passaic County of the BPU's comment. However, with regard to medical waste incinerators, on March 6, 1989, Governor Kean signed into law the "Comprehensive Regulated Medical Waste Management Act," P.L. 1989, c. 34. This legislation provides a distinction between a commercial facility and a non-commercial facility. A non-commercial facility is defined in P.L. 1989, c. 34 Section 3, as one which "accepts regulated medical waste from other generators for on-site disposal for a cost based fee not in excess of the costs actually incurred by the facility or on-site generator for the treatment or disposal of the regulated medical waste." Further, Section 12. c. of this Act provides that "The Board of Public Utilities shall not have jurisdiction over rates or charges for the disposal of regulated medical waste imposed by any non-commercial facility in this State that accepts regulated medical waste for disposal, without regard to whether the regulated medical waste was generated on-site or otherwise." Therefore, those hospital incinerators operating as non-commercial facilities would fall outside the scope of the economic regulations of the BPU.

The Division of Solid Waste Management (DSWM) commented that each facility approved for inclusion within Passaic County's plan is required to obtain a solid waste facility permit pursuant to N.J.A.C. 7:26-2 and 7:26-2B, prior to the expiration of the facility's current air pollution control permit issued by the Division of Environmental Quality pursuant to N.J.A.C. 7:27. However, DSWM also noted that, pursuant to N.J.S.A. 13:1E-99.30, "the Department shall not issue a registration statement or engineering design approval for any new or expanded solid waste facility in any county unless. . .the goals of the relevant district recycling plan have been incorporated into the plans for the proposed facility." While Passaic County has not yet received Departmental approval of its district recycling plan, the mandatory source separation requirements of the district plan and N.J.S.A. 13:1E-99.11 et seq. must still be met. Thus, designated recyclable materials generated by the hospitals, schools, businesses, residential housing authorities, and other entities listed in the proposed amendment to the county's solid waste management plan must be source separated and recycled, and shall not be disposed of in the private solid waste incinerator facilities. Therefore, these incinerators will be required to develop and submit a waste inspection plan to the Passaic County Planning Board and to DSWM's Office of Recycling, to ensure that the materials designated to be source separated and recycled are not disposed of as solid waste at the incinerators. By way of this certification, Passaic County is notified of these requirements to which the incinerators will be subject.

DSWM also noted that the December 21, 1988 amendment differed significantly from the original proposal for which a hearing notice was issued, a public hearing held, and related public documents filed. The hearing notice for the October 5, 1988 public hearing proposed to amend the Passaic County

Solid Waste Managment Plan to provide for the closure of all solid waste incinerators with the exception of five hospital incinerators in Passaic County which were then specifically identified for plan inclusion by location. Those incinerators which were to be closed were not specifically identified. In response to comments received at the October 5, 1988 public hearing, the amendment was revised to provide for plan inclusion of all 32 existing, private solid waste incinerator facilities located within Passaic County. However, no additional public comment was solicited with regard to the revised amendment. In this regard, DSWM is concerned that required public hearing procedures were not followed in that the public was not given the opportunity to comment on the plan inclusion of the majority of the private solid waste incinerators proposed, and the existing facilities were not even identified in the originally proposed amendment. In response, the Department agrees that appropriate public notification requirements were not followed for the proposed amendment. Although this matter was subsequently discussed at a December 7, 1988 Freeholder Conference Meeting, which was open to the public and advertised in accordance with the Open Public Meetings Act, such notification procedures are not sufficient to meet the requirements of N.J.S.A. 13:1E-23. Persons who may have been interested in or affected by this modification did not receive proper notification, and were, therefore, not afforded an opportunity to comment. Therefore, the 27 facilities which were not proposed for plan inclusion in the original plan amendment for which a hearing notice was issued and related public documents were filed are rejected as outlined in Section C. below. The five hospital incinerators are being approved as proposed in the plan amendment.

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

I, Christopher J. Daggett, 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, have reviewed the December 21, 1988 amendment to the approved Passaic County District Solid Waste Management Plan and certify to the Passaic County Board of Chosen Freeholders that the December 21, 1988 amendment is approved in part, and rejected in part, as further specified below.

- 1) The following existing, private solid waste incinerator facilities are hereby approved for inclusion within the Passaic County District Solid Waste Management Plan:
 - A) Beth Israel Hospital Association
70 Parker Avenue
Passaic, New Jersey
Block 57, Lot 2
 - B) Passaic General Hospital Association
350 Boulevard
Passaic, New Jersey
Block 225, Lot 1

- C) Sisters of Charity
St. Mary's Hospital
211 Pennington Avenue
Passaic, New Jersey
Block 254, Lot 37
- D) St. Joseph's Hospital
703 Main Street
Paterson, New Jersey
Block 1064, Lot 4
- E) Barnert Memorial Hospital Center
674-688 Broadway
Paterson, New Jersey
Block 1385, Lots 1, 3, and 5;
Block 1386, Lots 1, 2, 4, 7, and 13;
Block 1387, Lots 1, 3, and 4;
Block 1391, Lots 1, 2, and 3;
Block 1394, Lots 1, 2, 3, 5, 7, 8, and 9; and
Block 1395, Lots 1 and 15

It should be noted that under the Comprehensive Regulated Medical Waste Management Act (P.L. 1989, c. 34) signed by Governor Kean on March 6, 1989, a moratorium or a ban of up to one year is imposed on Departmental approval or consideration of any new commercial medical waste incinerator. Therefore, the plan inclusion approval of new facilities which were not in operation and accepting regulated medical waste on or prior to March 6, 1989 is restricted to non-commercial use. Further, the construction and/or operation of any solid waste facility shall be preceded by the acquisition of all necessary permits and approvals under N.J.S.A. 13:1E-1 et seq., and all other applicable laws. Issuance of operating permits pursuant to the Solid Waste Management Act is limited to those applicants found by the Department and the Attorney General to be deserving of licensing under the provisions of N.J.S.A. 13:1E-126 et seq.

- 2) The inclusion within the Passaic County Solid Waste Management Plan of all remaining private solid waste incinerator facilities is hereby rejected.

As previously indicated, the remaining private solid waste incinerators were not specifically referenced as part of the original plan amendment for which a public hearing notice was issued, a public hearing held, and related public documents filed. In fact, the hearing notice indicated that, with the exception of incinerators operated by hospitals, all solid waste incinerators were proposed to close. Correspondence from the Passaic County Planning Director, dated February 27, 1989, and May 10, 1989, indicated that the draft plan amendment was revised in response to public comment that existing facilities were legally entitled to plan inclusion. However, appropriate public notice procedures were not followed in adopting the December 21, 1988 amendment. Persons who may have been interested in or affected by the continued operation of those incinerators, which were not specifically referenced in the draft plan amendment, were not

provided an opportunity to comment on the revision. The Department is not making a determination on the technical merits of the inclusion of these 27 facilities, but is rejecting this portion of the amendment on procedural grounds. The Department is willing to reconsider plan inclusion of these facilities in the event that Passaic County follows the public notification procedures outlined at N.J.S.A. 13:1E-23.

In addition, 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 result of that review is as follows:

1. 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.

Passaic County remains deficient with respect to N.J.S.A. 13:1E-21b(3), due to the failure to include, within the district plan, all properties being utilized for the Passaic County Resource Recovery Facility and the failure to address the primary disposal of residual, bypass, and non-processible waste after 1992. Passaic County was directed to address these issues, in writing, by June 16, 1989 according to the May 3, 1989 Certification of a November 23, 1988 plan amendment. Until these issues are addressed, the Passaic County plan remains deficient with respect to N.J.S.A. 13:1E-21b(3).

2. 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.

Passaic County has not yet submitted a complete financing plan for both a district landfill and resource recovery facility. Therefore, the Passaic County plan remains deficient with respect to the requirements 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., the county shall proceed with the implementation of the approved portions of the amendment as contained herein.

5. Definitions

For the purpose of this amendment, and unless the context clearly requires a different meaning, the definitions of terms shall be the same as those found at N.J.S.A. 13:1E-3 and N.J.A.C. 7:26-1.4 and -2.13.

6. Effective Date of Amendment

The approved portions of the December 21, 1988 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 in Part, and Rejection in Part, of the Amendment and Notification of Deficiencies 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 in part, and reject in part, 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 December 21, 1988, and further direct the Passaic County freeholders to remedy the deficiencies outlined in Section C. of this certification as previously directed in the May 3, 1989 Certification of the November 23, 1988 Passaic County Plan Amendment.

July 14, 1989
DATE


CHRISTOPHER J. DAGGETT
COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION