



State of New Jersey

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Robert C. Shinn, Jr.
Commissioner

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 29, 1997
AMENDMENT TO THE PASSAIC COUNTY
DISTRICT SOLID WASTE MANAGEMENT PLAN

BY ORDER OF THE COMMISSIONER:

A. Introduction

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

The Act requires that all district plans be based on and accompanied by a report detailing the existing waste disposal situation in the district, and a plan which includes the strategy to be followed by the district in meeting the solid waste management needs of the district for a ten-year planning period. The report must detail the current and projected waste generation for the district, inventory and appraise all facilities in the district, and analyze the waste collection and transportation systems which serve the district. The disposal strategy must include the maximum practicable use of resource recovery techniques. In addition to this strategy, the plan must designate sufficient available suitable sites for the disposal of the district's waste for a ten-year period.

The Act further provides that a district may review its County Plan at any time and, if found inadequate, a new County Plan must be adopted. The Passaic County Board of Chosen Freeholders (County Freeholders) completed such a review and on December 29, 1997,

adopted an amendment to its approved County Plan known as Amendment #6-1997.

The amendment represents the County's supplemental response to the May 1, 1997 decision of the United States Court of Appeals for the Third Circuit which declared unconstitutional New Jersey's historic system of solid waste flow control. [See Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County et al. 112 F.3d 652 (3d Cir. 1997, cert. den., November 10, 1997.)] Specifically, each solid waste management district must reevaluate its solid waste disposal strategy in light of this recent court decision and, if necessary, initiate appropriate amendments thereto.

In general, the Department refers the County to the solid waste regulations at N.J.A.C. 7:26-1 et seq. to the extent they relate to specific procedural and substantive issues addressed in this and subsequent plan amendments. In addition, this certification is in no way intended by the DEP to represent a legal determination regarding the effect of the Atlantic Coast decision on any specific contract between public and/or private parties.

The December 29, 1997 amendment (1) revises the County's initial strategy in response to the Atlantic Coast decision contained within an October 1, 1997 amendment and (2) responds to DEP's directives relative to recovering Environmental Investment Costs (EIC) specified within a November 10, 1997 certification of the earlier amendment.

The amendment was circulated to various administrative review agencies for review and comment, as required by law, on January 27, 1998. The Department has reviewed this amendment and has determined that the amendment adopted by the County Freeholders on December 29, 1997 is remanded for readoption and recertification as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the December 29, 1997 amendment to the County Plan according to the objectives, criteria, and standards developed in the Statewide Solid Waste Management Plan and I find and conclude that this plan amendment is potentially inconsistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the issues of concern relative to the amendment which are included in Section B.2. below.

In conjunction with the review of the amendment, the Department circulated copies to fifteen federal and state administrative review agencies and solicited their review and comment. Pursuant to N.J.S.A. 13:1E-24a(2) and (3), these agencies included various

bureaus, divisions, and agencies within the Department. All agencies contacted are as follows:

Division of Parks and Forestry, DEP
Division of Fish, Game and Wildlife, DEP
Division of Compliance and Enforcement, DEP
Division of Solid and Hazardous Waste, DEP
Division of Water Quality, DEP
Office of Air Quality Management, DEP
Green Acres Program, DEP
Land Use Regulation Element, DEP
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
Department of Agriculture
Department of Health
Department of Transportation
Department of Community Affairs
U.S. Environmental Protection Agency

1. Agency Participation in the Review of the December 29, 1997 Amendment

The following agencies did not object to the proposed amendment:

Division of Parks and Forestry, DEP
Division of Compliance and Enforcement, DEP
Office of Air Quality Management, DEP
Department of Agriculture
Department of Transportation
Department of Community Affairs
New Jersey Turnpike Authority

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

Division of Water Quality, DEP
Division of Fish, Game and Wildlife, DEP
Green Acres Program, DEP
Land Use Regulation Element, DEP
Department of Health
New Jersey Advisory Council on Solid Waste Management
U.S. Environmental Protection Agency

The following agency provided substantive comments as shown in Section B. of the certification document.

Division of Solid and Hazardous Waste, DEP

2. Issues of Concern Regarding the December 29, 1997 Amendment

Issue: Initial Solid Waste Disposal Strategy

On October 1, 1997 the County adopted its initial amendment in

response to the Atlantic Coast decision. This amendment had three components:

- *Alliance Landfill License Agreement
- *Procurement of Solid Waste Transportation and Transfer Services
- *Recovering Environmental Investment Costs

On November 10, 1997 the Department certified the October 1, 1997 amendment. Specifically, the Department (1) approved the Alliance Landfill License Agreement since the County adequately demonstrated that this contract was secured in a nondiscriminatory manner (2) approved with modification the provision of transportation and transfer services for delivery of solid waste to the Alliance Landfill contingent upon receipt of documents awarding nondiscriminatorily bid contracts and (3) remanded for further consideration and evaluation the proposed \$47.94 per ton EIC. The EIC was remanded for further evaluation until such time as the procurement of all solid waste transportation and transfer services were completed with definitive costs ascertained.

Issue: Revised Solid Waste Disposal Strategy

The December 29, 1997 amendment proposes a revised strategy (as compared with that proposed within the October 1, 1997 amendment) in response to the Atlantic Coast decision. Specifically, since the County and the Passaic County Utilities Authority (PCUA) had not yet been able to procure all components of their solid waste system in a nondiscriminatory manner, on November 12, 1997 the PCUA declared an emergency and entered into a contract with American Ref-Fuel (operators of a resource recovery facility in Newark, Essex County) for a 90 day period to accept processible solid waste generated within Passaic County. This contract also provides that it may be extended upon mutual agreement of both parties. Until alternative procurements are completed and contracts are awarded, the PCUA will be operating under a voluntary waste flow system. During this time period generators delivering waste to the American Ref-Fuel facility will pay a \$54.00 tipping fee.

Issue: Revised Environmental Investment Charge

In the absence of regulatory flow control within the County, the December 29, 1997 amendment proposes that an EIC will be assessed directly against a municipality on the basis of historic waste generation for municipal and commercial waste generators. Municipalities may pay the EIC by raising the required amount as a part of an annual tax levy or allocating and billing the amount on a user basis through solid waste utility charges. The PCUA will enter into agreements to assist municipalities with billing and collection efforts. The revised EIC (as compared with that proposed within the October 1, 1997 amendment) reflects only annual debt service expenses and an approximate \$2.00 per ton administrative/operating expense charge adjusted by 3% per annum

for inflation.

In addition to submitting this amendment to the DEP, the PCUA filed a petition on November 19, 1997 with the Department of Community Affairs' (DCA) Local Finance Board (LFB) providing for the imposition of an EIC to pay financial debt obligations. On December 16, 1997 the LFB approved an order providing for the imposition of an EIC of \$28.64 per ton plus \$1.00 per ton for PCUA administrative charge for a total per ton EIC of \$29.64. The order specified that the \$1.00 per ton EIC administrative charge shall be billed for a two year period commencing on the date that the first bill is submitted to solid waste generators. Thereafter, no administrative charge shall be billed and collected as part of the EIC following the two year period unless and until the PCUA applies to the LFB for an increase or extension. The following chart indicates the EIC amounts proposed within the December 29, 1997 amendment and those approved by the LFB on December 16, 1997.

Year	Debt	Administrative Charge	Total Proposed	DCA Approved
1998	\$28.64	\$2.00	\$30.64	\$29.64
1999	28.64	2.06	30.70	29.64
2000	28.61	2.12	30.73	28.61
2001	28.58	2.18	30.76	28.58
2002	28.56	2.25	30.81	28.56
2003	28.52	2.32	30.84	28.52
2004	21.99	2.39	24.38	21.99
2005	21.49	2.46	23.95	21.49
2006	20.93	2.53	23.46	20.93
2007	7.93	2.61	10.14	7.53

Issue: Pending Litigation

The City of Paterson has initiated litigation regarding the December 29, 1997 amendment I/M/O City of Paterson et al., v. Board of Chosen Freeholders of Passaic County, et al., Law Division Docket No. L-PAS-176-98, on appeal, Appellate Division Docket Nos. A-3856-97T5 and A-4052-97T5. Paterson also filed an appeal of the Local Finance Board December 16, 1997 approval of the imposition of an EIC I/M/O Passaic County Utilities Authority Petition Requesting Determination of Financial Difficulty and Application for Refinancing Approval, Appellate Division Docket No. A-2572-97T5. Additionally, Paterson indicated its intent to appeal any certification issued by the DEP which approves the imposition of an EIC. On April 8, 1998, Paterson submitted a letter to the DEP which noted that Passaic County failed to include within its plan amendment submission package to the Department objections to the amendment raised by the City of Paterson. A review of the Act at N.J.S.A. 13:1E-23(g) only requires that a county submit "...a copy of the transcript of every public hearing held thereon..." and not to transmit a record of all comments received to the DEP.

Regardless of whether Passaic County was required to submit written objections, Paterson has now raised its objections before the New Jersey courts, and this certification is issued subject to whatever final decision is reached in the litigation described above.

Issue: Recent Amendment Action by the County Freeholders

Subsequent to the adoption of the December 29, 1997 amendment, newly elected County Freeholders took office on January 1, 1998 and began considering adoption of newly proposed amendments. Amendment #1-1998 proposed a redirection of waste types 10 (including incidental amounts of waste types 13, 13C, 25, and 27 that are combined with deliveries of type 10 waste) and 23 generated from within Passaic County to the resource recovery facility operated by American Ref-Fuel of Newark, Essex County for a two-year period pursuant to a contract procured in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11A-1 et seq. Further, this amendment proposed a redirection for disposal of waste types 13, 13C, 25, and 27 to the Hackensack Meadowlands Development Commission Landfill pursuant to negotiated terms and conditions following nondiscriminatory procurements for the disposal of these waste types. On February 27, 1998 the County Freeholders rejected this amendment since it contained no provision for municipalities to opt out of the County's solid waste disposal system.

The County Freeholders are presently considering Plan Amendment #2-1998 which proposed the same waste type redirections as Plan Amendment #1-1998 as well as an option to exit the County's solid waste disposal system. Specifically, this option would commence upon DEP certification of the amendment and would allow solid waste generators the right to exit the system upon the satisfaction of three conditions: (1) the generator shall submit a certification to the County attesting that its total costs for solid waste disposal services are more economical than the total costs to be incurred through use of the County's system; (2) the generator agrees to pay the EIC at a time and in a manner prescribed by the County; and (3) the generator demonstrates that the proposed alternate method of disposal is environmentally sound and satisfies all applicable DEP criteria for disposal services. Plan Amendment #2-1998 was formally proposed at a public hearing held on June 5, 1998 and the record has been held open until the end of June to allow for further comment.

Finally, on June 24, 1998 the Department received a letter from County Freeholder Director Peter Eagler. This letter "...requests the Department not approve the December 29, 1997 plan amendment which the County no longer supports." Therefore, in light of proposed Amendment #2-1998 which revises the County's solid waste disposal strategy from that identified within the December 29, 1997 amendment and the County Freeholder Director letter dated June 23, 1998, the Department within Section C. of this certification is constrained from certifying Amendment #6-1997 and remands for

readoption and recertification said amendment.

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

In accordance with N.J.S.A. 13:1E-1 et seq., specifically N.J.S.A. 13:1E-21, which establishes specific requirements regarding the contents of the district solid waste management plans, I have reviewed the December 29, 1997 amendment to the approved County Plan and certify to the County Freeholders that the December 29, 1997 amendment is remanded for readoption and recertification as further specified below.

Revised Solid Waste Disposal Strategy

The County Plan inclusion of the voluntary delivery of processible solid waste to the American Ref-Fuel resource recovery facility located in Newark, Essex County for an interim period is remanded for readoption and recertification. As noted within Section B., since the County is considering a revised solid waste disposal strategy in response to the Atlantic Coast decision, the Department is constrained from certifying the solid waste disposal strategy identified in Amendment #6-1997.

Revised Environmental Investment Charge

The County Plan inclusion of the assessment at the municipal level of an EIC for the years 1998 through 2007 as identified within the chart found in Section B.2. above is remanded for readoption and recertification. As noted within Section B., since the County is considering a revised solid waste disposal strategy in response to the Atlantic Coast decision, the Department is constrained from certifying the revised Environmental Investment Charge as identified in Amendment #6-1997.

D. Other Provisions Affecting the Plan Amendment

1. Contracts

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

application to the Department, and for good cause shown, obtain an extension of time to complete such renegotiation.

2. Compliance

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

3. Types of Solid Wastes Covered by the District Plan

The provisions of the District Plan shall apply to all solid wastes defined in N.J.S.A. 13:1E-3 and N.J.A.C. 7:26-2.13 including waste types 10, 13, 23, 25, and 27 and all applicable subcategories and shall not apply to liquid and hazardous waste. All nonhazardous materials separated at the point of generation for sale or reuse are subject to regulation pursuant to N.J.A.C. 7:26A-1 et seq.

4. Definitions

For the purpose of this amendment and unless the context clearly requires a different meaning, the definitions of terms shall be the same as those found at N.J.S.A. 13:1E-3 and -99.12, N.J.A.C. 7:26-1.4, -2.13, and N.J.A.C. 7:26A-1.3.

5. Effective Date of the Amendment

The remanded amendment to the County Plan contained herein shall take effect immediately.

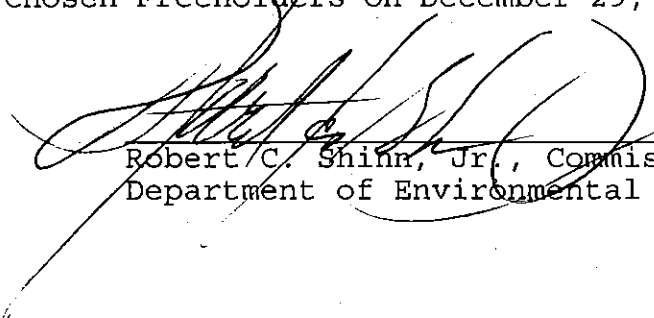
6. Reservation of Authority

Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's planning guidelines, rules, regulations, orders of the Department, and also includes the compilation of individual district plans and amendments as they are approved.

E. Certification of Remand of the Amendment by the Commissioner of the Department of Environmental Protection

In accordance with the requirements of N.J.S.A. 13:1E-1 et seq., I hereby remand for readoption and recertification 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 29, 1997.

6/25/98
Date


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

