

**IN THE MATTER OF CERTAIN AMENDMENTS
TO THE ADOPTED AND APPROVED SOLID
WASTE MANAGEMENT PLAN OF THE
SUSSEX COUNTY SOLID WASTE
MANAGEMENT DISTRICT**

**CERTIFICATION
OF THE OCTOBER 9, 2002
AMENDMENT TO THE SUSSEX 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 (now known as the New Jersey Meadowlands Commission) develop comprehensive plans for waste management in their respective districts. On June 1, 1981, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Sussex 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 Sussex County Board of Chosen Freeholders (County Freeholders) completed such a review and on October 9, 2002 adopted an amendment to its approved County Plan. The October 9, 2002 amendment proposes County Plan inclusion of the Grinnell Recycling, Inc. Material Recovery Facility (MRF) for the acceptance of a maximum of 400 tons per day (tpd), not to exceed 110,000 tons per year (tpy), of commingled construction and demolition waste, located at Block 26, Lot 38, 482 Houses Corner Road, Township

of Sparta.

The amendment was considered administratively complete for review by the Department on January 21, 2003 and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed this amendment, and has determined that the amendment adopted by the County Freeholders on October 9, 2002 is approved in part, and remanded in part, as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the October 9, 2002 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 the amendment is consistent, in part, with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the elements of the October 9, 2002 amendment which are included below.

In conjunction with the review of the amendment, the Department circulated copies to sixteen 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 Water Quality, DEP
- Division of Parks and Forestry, DEP
- Division of Fish and Wildlife, DEP
- Division of Compliance and Enforcement, DEP
- Division of Solid and Hazardous Waste, 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
- Office of Local Environmental Management
- Department of Agriculture
- Department of Health and Senior Services
- Department of Transportation
- Department of Community Affairs
- U.S. Environmental Protection Agency

Elements of the October 9, 2002 Amendment

Element: Facility History

On May 25, 1994, the Sussex County Freeholder Board adopted an amendment to include within the County Plan the Grinnell Recycling Center for Class B materials, located at Block 26, Lot 38, in the Township of Sparta. The facility was approved to accept 200 tpd of concrete, block, and brick and 100 tpd of wood. This County Plan amendment was certified as approved by the Department on November 15, 1995.

On May 24, 2000, the Sussex County Freeholder Board adopted an amendment to include within the County Plan an expansion of the Grinnell Recycling Center for Class B materials to allow for the acceptance of 400 tpd of commingled concrete, asphalt, brick, and block and raw wood waste. This County Plan amendment also included the expansion of the facility to include Block 26, Lot 36 and was certified as approved by the Department on November 9, 2000.

The October 9, 2002 amendment is proposing County Plan inclusion of the Grinnell Recycling, Inc. MRF for the acceptance of a maximum of 400 tpd, not to exceed 110,000 tpy, of commingled construction and demolition waste, located at Block 26, Lot 38, 482 Houses Corner Road, Township of Sparta. The October 9, 2002 amendment does not include Lot 36 for the proposed MRF, therefore Class B recycling operations can be conducted on Block 26, Lots 36 and 38, while material recovery operations will only be conducted on Block 26, Lot 38.

The October 9, 2002 amendment did not include the proposed days and hours of operation for the facility. This will need to be addressed during the permitting process. Lastly, the October 9, 2002 amendment notes that the facility is proposed to accept and process a maximum of 400 tpd of commingled construction and demolition waste. This waste is defined as waste type 13C pursuant to N.J.A.C. 7:26 2.13(g)1.iv.

Element: Plan Inclusion Conditions

The plan amendment noted several conditions for County Plan inclusion of the proposed MRF. Two of those conditions require further discussion. Condition 16 states that “An agreement based on the conditions listed above has been executed prior to the Freeholder Resolution adopting the Plan Amendment. Failure to comply with the conditions and terms of the agreement shall result in removal of the facility from the Sussex County District Solid waste Management Plan.” Condition 8 states that “Residual solid waste shall be disposed at the Sussex County Solid Waste Facility in Lafayette, New Jersey up to an amount to be determined at the discretion of S.C.M.U.A.” (Sussex County Municipal Utilities Authority). Regarding these Conditions, it must be noted that not only was the agreement mentioned above not included with the plan amendment, it is the Department’s understanding that negotiations are ongoing between the SCMUA and Grinnell Recycling, Inc. regarding the disposal of residual waste. It must further be noted that Sussex County has not modified its district Solid Waste Management Plan in response to the Atlantic Coast decision and thus the Department considers Sussex County a

free market provider of solid waste services. Therefore, unless there is a contractual arrangement between Grinnell Recycling, Inc. and the SCMUA for the disposal of the residual waste from the facility (the specific elements of which the Department takes no position on at this time), residual waste may be disposed of according to the free market provisions of the County Plan. However, inasmuch as this agreement is not fully negotiated at this time, and as further detailed in Section C. below, the Department remands this Condition until negotiations regarding the disposal agreement are concluded, and the disposal agreement submitted to the Department as an Administrative Action as per N.J.A.C. 7:26-6.11.

Furthermore, in the event of a failure by the SCMUA and Grinnell Recycling, Inc. to negotiate a disposal agreement as identified above, or in the event the County concludes that Grinnell Recycling, Inc. has failed to achieve any of the Conditions identified in the Plan Amendment, the County may initiate a process to remove the Grinnell Recycling, Inc. MRF from the Sussex County District Solid Waste Management Plan by the process detailed at N.J.A.C. 7:26-6.10.

Regulatory Requirements

If any operation of a material recovery facility will discharge pollutants as defined in N.J.A.C. 7:14-1.9, said operation must secure a New Jersey Pollutant Discharge Elimination System Permit and/or a Treatment Works Approval for pollutant discharge prior to operation.

Material recovery facilities are subject to the provisions of N.J.A.C. 7:27-5, "Prohibition of Air Pollution." This regulation prohibits the release of odors and other air contaminants which interfere with the enjoyment of life and property.

C. Certification of the Sussex 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 county solid waste management plans, I have reviewed the October 9, 2002 amendment to the approved County Plan and certify to the County Freeholders that the October 9, 2002 amendment is approved in part, and remanded in part.

The October 9, 2002 amendment proposing County Plan inclusion of the Grinnell Recycling, Inc. MRF for the acceptance of a maximum of 400 tpd, not to exceed 110,000 tpy, of waste type 13C, located at Block 26, Lot 38, 482 Houses Corner Road, Township of Sparta, is approved with a portion remanded as further noted below.

As noted in Section B., the plan amendment directs the disposal of residual waste from the proposed facility to the Sussex County Solid Waste Facility in Lafayette Township. However, the contractual agreement regarding this residual disposal has not been executed at this point. Unless there is a contractual arrangement between Grinnell Recycling, Inc. and the SCMUA for the disposal of the residual waste from the facility, the residual waste may be disposed of according to the free market provisions of the County Plan. Therefore, this Condition for the

inclusion of the facility in the District Plan is remanded until such time as the agreement has been executed, and submitted to the Department as an Administrative Action in accordance with N.J.A.C. 7:26-6.11.

The October 9, 2002 amendment notes that provisions have been made to delete the Grinnell Recycling, Inc. MRF from the County Plan in case of “failure to comply with the conditions and terms of the agreement”. However, County Plan deletion can only occur through the submission of a new plan amendment by the County Freeholder Board in accordance with the requirements of N.J.A.C. 7:26-6.10.

The construction or operation of any solid waste facility shall be preceded by the acquisition of all necessary permits and approvals pursuant to N.J.S.A. 13:1E-1 et seq., and all other applicable laws. This certification shall not be construed as an expression of the Department’s intent to issue a solid waste facility permit for any proposed facility or operation. The issuance of operating permits pursuant to the Solid Waste Management Act is limited to those applicants found by the Department and the Attorney General of the State of New Jersey to be deserving of licensing under the provisions of N.J.S.A. 13:1E-126.

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 County Plan

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

4. Certification to Proceed with Implementation of Amendment

This document shall serve as the certification of the Commissioner of the Department to the County Freeholders and pursuant to N.J.S.A. 13:1E-24c. and f., the County Freeholders shall proceed with the implementation of the approved components of the amendment certified 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 -99.12, N.J.A.C. 7:26-1.4, -2.13, and N.J.A.C. 7:26A-1.3.

6. Effective Date of Amendment

The approved components of the amendment to the County 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 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 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 in part, and remand in part, the amendment, as outlined in Section C. of this certification, to the Sussex County District Solid Waste Management Plan which was adopted by the Sussex County Board of Chosen Freeholders on October 9, 2002.

Date

Bradley M. Campbell, Commissioner
Department of Environmental Protection