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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)
(CAPE MAY COUNTY SOLID WASTE)
(MANAGEMENT DISTRICT)

CERTIFICATION OF THE FEBRUARY 28, 1989
AND THE APRIL 11, 1989 AMENDMENTS
TO THE CAPE MAY 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 February 4, 1981, the Department approved, with modifications, the Cape May 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 Cape May County Board of Chosen Freeholders completed such a review, and on February 28, 1989 and April 11, 1989 adopted amendments to its approved district solid waste management plan.

The February 28, 1989 amendment proposed to include within the district plan the Intermediate Recycling Systems of Cape May, Inc., recycling facility in Middle Township. On April 11, 1989, two amendments were adopted by the freeholders. One amendment proposed district plan inclusion of the Daley's

Pit recycling facility in Upper Township. The other was a multifaceted amendment which proposed inclusion of the following: a disbursement schedule for the Resource Recovery Investment Tax Fund; a lot and block designation for the previously included Cape May County intermediate processing facility in Woodbine Borough and modifications to the district's recycling plan.

The amendments were received by the Department of Environmental Protection on May 22, 1989, and copies were distributed to various state level agencies for review and comment, as required by law. The Department has reviewed these amendments and has determined that the amendments adopted by the Cape May County Board of Chosen Freeholders on February 28, 1989 and April 11, 1989 are approved as provided in N.J.S.A. 13:1E-24.

B. Findings and Conclusions with Respect to the Cape May County District Solid Waste Management Plan Amendments

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 February 28, 1989 and April 11, 1989 amendments to the Cape May 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 these plan amendments are 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 and the Department of Transportation. Of these agencies, the following did not object to the proposed plan amendment: the N.J.D.E.P. Divisions of Water Resources and Parks and Forestry; the State Departments of Agriculture and Community Affairs; the Board of Public Utilities, and the New Jersey Advisory Council on Solid Waste Management. 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; the Green Acres Program, and the U.S. Environmental Protection Agency. The Divisions of Environmental Quality, Solid Waste Management and Fish, Game and Wildlife, and the Pinelands Commission submitted substantive comments which are further addressed below.

The Pinelands Commission commented that Daley's Pit, an existing sand and gravel mining operation, is located within the Pinelands National Preserve Designated Forest Area, but not the New Jersey Pinelands area. The recycling facility may be consistent with the policies of the Pinelands Comprehensive Management Plan provided the expansion of the sand and gravel mining operation to include pavement recycling would be generally of similar character to the pre-existing operation, and would not expand the operation by more than 50%. The Pinelands Commission also commented that the proposed intermediate processing facility in Woodbine Borough is consistent with the policies of the Pinelands Comprehensive Management Plan, but requires the

submission of a development application to the Commission. In response, by copy of this certification, Cape May County is informed of these requirements of the Pinelands Commission.

The Division of Fish, Game and Wildlife commented that all necessary precautions should be taken to avoid impacts on wetlands and endangered/threatened species. Old gravel pits and wetlands provide habitats for such species. In response, by copy of this certification, Cape May County is informed of these comments.

The Division of Environmental Quality commented that the use of shredders, grinders, crushers, and screens at recycling facilities will require an air pollution control permit pursuant to N.J.A.C. 7:27-8.2(a), 7, 11, 15, and 16. In response, by copy of this certification, Cape May County is informed of the requirements of the Division of Environmental Quality.

The Division of Solid Waste Management commented that the provisions of the "McEnroe" legislation (N.J.S.A. 13:1E-136 et seq.) which establish District Resource Recovery Investment Tax (RRIT) Fund accounts for the state's 21 counties, set out a clear state policy objective to generate revenues in order to subsidize anticipated resource recovery tipping fees to a level which is competitive with disposal costs at landfills utilized by the counties. The subsidies created by this legislation also were designed as incentives to make the transition from landfill disposal to capital intensive resource recovery technologies. Thus, the purposes of the Act are to provide financial assistance to counties in order to expedite resource recovery technology implementation and to provide user benefits through a reduction in the tipping fees at resource recovery facilities.

Prior to disbursement from its District Resource Recovery Investment Tax Fund, however, a county must prepare a plan amendment which outlines the proposed uses of the moneys in its district fund and establishes a disbursement schedule for those moneys in the fund. Thus, two tests must be met: an eligible use test, which uses are limited to those identified in N.J.S.A. 13:1E-150b. and a disbursement schedule test, which test criteria are not specifically provided in the Act.

Eligible uses of the fund are provided in Attachment I, Part I, of this certification. In consideration of the intent and objectives of the Act outlined above and the specific limitations upon eligible uses of the fund provided in N.J.S.A. 13:1E-150, projects not formally identified in the approved district solid waste management plan shall not be funded with Resource Recovery Investment Tax Fund moneys. Therefore, in order to ensure user rate reduction and facilitate timely project implementation, disbursements from a District Resource Recovery Investment Tax Fund shall be made only to projects formally identified in the approved district solid waste management plan.

Pursuant to law, in order to provide safeguards as to how the investment tax funds are to be spent, a schedule for the disbursement of moneys must be provided through the plan amendment process established under the New Jersey Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.). In this way, a formal procedure for quantifying contributions to and withdrawals from the fund is established in order to maintain a running fund balance. Such a

procedure may be followed using a variety of specific steps and methods of data presentation. In order to evaluate the adequacy of financial disbursement procedures, the Department has established criteria (see Attachment I, Part II).

The Division noted that the disbursement schedule for the RRIT Fund proposed the use of \$1.2 million of the available fund balance and provided a schedule for disbursement of that amount. The proposed uses of the fund are in conformance with the requirements of N.J.S.A. 13:1E-150b. Specifically, utilizing the fund for intermediate processing facility (IPF) equipment costs totaling \$1,140,303 and the purchase of residential recycling containers totaling \$59,697 is an eligible use pursuant to N.J.S.A. 13:1E-150b.(2). Such use will reduce rates to all users of the resource recovery facility. The amendment proposed funds to be disbursed by December 31, 1989. This proposed use of the fund is an approved use and these funds may be disbursed. However, the remaining estimated fund balance of \$238,675 may not be disbursed until a disbursement schedule addressing said remainder is approved by the Department.

Furthermore, the Division commented that it has identified tires, wood waste and certain construction demolition debris which a recycling facility accepts as source separated materials which must have the prior approval of the Department. The procedure employed by the Division in the review of recycling facilities accepting source separated tires, wood waste, and construction demolition debris was utilized in the review of the existing Daley's Pit recycling facility and International Recycling Systems of Cape May, Inc., proposed recycling facility. In the case of Daley's Pit, the recycling facility has met with all the Department's recycling center approval criteria with the exception of two. The outstanding issues include the issuance of an air pollution control permit and financial assurance in the form of a bonding agreement between Daley's Pit and Upper Township. In case of International Recycling Systems of Cape May, Inc., the proposed recycling facility did receive approval from the Division. However, this approval was rescinded and is subject to the receipt of financial assurances in the form of a letter of credit.

Also, the Division commented that although it recognizes that the county has legitimate claim to the inclusion of conditions on the operation of recycling facilities, the county is advised that issues such as percentage of allowable non-recyclable residue or amounts of materials that may be stored prior to or after processing, and other issues as determined by the Department remain under the authority of the Department. Specifically, the amendment states that no more than 15% of material received at the two recycling facilities shall remain as residual solid waste. Pursuant to the Division's policies, such a level of residual solid waste would classify the recycling facilities as material recovery facilities/transfer stations. As such, either facility would be subject to permitting requirements as a solid waste facility pursuant to the regulations found at N.J.S.A. 7:26-2.4(b).

In addition, the Division notes that the proposed International Recycling Systems of Cape May, Inc., facility is planned to process 109,600 tons of recyclables annually. A facility operating at such a scale of operation should undertake a truck traffic analysis to determine the level of service (LOS) at critical intersections through which vehicles routed to the

facility travel at peak hours of operation. In the event that degradation of LOS is found to occur, measures should be taken to use different hauling routes. Also, a study should be conducted to determine whether the operations of the facility meet the standards established in the New Jersey Noise Code.

Finally, the Division commented that the December 8, 1987 amendment to the Cape May County District Solid Waste Management Plan which included the district's recycling plan was approved on May 25, 1988. The only noted deficiency was the lack of sufficient leaf compost facilities within the district. Pursuant to Section C. of that certification, Cape May County was required to submit a plan amendment which would address Cape May County's strategy for the recycling of all leaves generated in the county. The April 11, 1989 amendment does satisfy the requirements of the December 8, 1987 certification by identifying the leaf recycling facilities to be utilized by each municipality. By copy of this certification, Cape May County is informed of the comments of the Division of Solid Waste Management.

C. Certification of Cape May County District Solid Waste Management Plan Amendments

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 February 28, 1989 and April 11, 1989 amendments to the approved Cape May County District Solid Waste Management Plan and certify to the Cape May County Board of Chosen Freeholders that the February 28, 1989 and April 11, 1989 amendments are approved as further specified below.

1. The district plan inclusion of the Daley's Pit recycling facility located on Block 453, Lot 3, in Upper Township, Cape May County, is approved. The operation of this facility shall be in conformance with Departmental regulations and guidelines.
2. The district plan inclusion of the International Recycling Systems of Cape May, Inc., recycling facility located on Block 475, Lot 6, in Middle Township, Cape May County, is approved. The operation of this facility shall be in conformance with Departmental regulations and guidelines.
3. The district plan inclusion of the Cape May County Intermediate Processing Facility located on Block 131.02, Lots 1, 2, 3, 4, 5, 6, 7, and 8 in Woodbine Borough, Cape May County, is approved. The operation of this facility shall be in conformance with Departmental regulations and guidelines. The construction and operation of such facilities shall be preceded by the acquisition of all necessary permits and approvals as per 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.

4. The proposed uses outlined in the Cape May County District Resource Recovery Investment Tax Fund are in conformance with the requirements of N.J.S.A. 13:1E-150b(1), as they reduce the costs for all users of the resource recovery facility, and are hereby approved. The ultimate demonstration of user rate reduction shall be the responsibility of the county. All interest earnings on the fund balance shall be used only for the uses approved herein.

This approval is limited to authorization to disburse \$1,200,000.00 before December 31, 1989 for the costs of the equipment at the Intermediate Processing Facility and for the purchase of residential recycling containers. The remaining estimated RRIT balance of \$238,675.74, including all accrued interest, shall not be disbursed unless and until the Department approves a plan amendment which outlines a proposed use and provides a detailed disbursement schedule for this balance, in accordance with N.J.S.A. 13:1E-150. Should any disbursements from the fund occur prior to authorization by the Department in violation of N.J.S.A. 13:1E-150(c) and this certification, the Department reserves the right to take appropriate enforcement action.

5. The Cape May County District Recycling Plan which was certified by the Department with minor modification on May 25, 1988 is approved. The outstanding deficiency, that of a strategy for recycling all the leaves generated within Cape May County, has been addressed in the April 11, 1989 amendment.

The Department has reviewed the entire Cape May 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:

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.

Cape May County adopted an amendment on September 17, 1987 to include a resource recovery facility site in Woodbine Borough. The Department certified this amendment on March 17, 1988. This amendment was followed by the submission of a Preliminary Environmental and Health Impact Study (PEHIS) for the site which the Department reviewed and noted deficiencies. Since then, Cape May County has not pursued further development of this facility. This lack of action, along with the Pinelands mandated cessation of putrescible landfilling at the Cape May Landfill on August 8, 1990, may create a solid waste disposal crisis within the county. To avert this crisis, Cape May County is urged to expeditiously pursue development of its planned transfer station in Woodbine Borough to ensure operation by August 8, 1990. Thereafter, Cape May County will be forced to rely on tenuous out-of-state disposal until the needed in-county facilities are available. The Department has taken the strong position that continued reliance upon out-of-state disposal beyond 1992 is inconsistent with Statewide policy and the provisions of the Statewide Solid Waste Management

Plan. Therefore, I find that Cape May County has not complied with N.J.S.A. 13:1E-21b(3) and that this section of the Cape May County District Solid Waste Management Plan is seriously deficient.

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 amendments to the Cape May County District Solid Waste Management Plan and which was executed prior to the approval of these amendments 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 these amendments and of the Cape May County District Solid Waste Management Plan if such renegotiation is not completed within ninety (90) days of the effective date of these amendments; 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 Cape May County and affected by these amendments contained herein shall operate in compliance with these amendments and all other approved provisions of the Cape May 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 Cape May 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 Amendments

This document shall serve as the certification of the Commissioner of the Department of Environmental Protection to the Cape May 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 amendments contained herein.

5. Definitions

For the purpose of these amendments 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 Amendments

The amendments to the Cape May County District Solid Waste Management Plan contained herein shall take effect immediately.

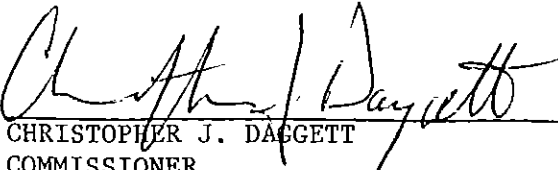
7. Reservation of Authority

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 Cape May 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 Amendments 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 amendments as outlined in Section C. of this certification to the Cape May County District Solid Waste Management Plan which were adopted by the Cape May County Board of Chosen Freeholders on February 28, 1989 and April 11, 1989. I also direct Cape May County to resolve the deficiency identified in Section C. of this certification in a expeditious manner.

OCTOBER 18, 1989
DATE


CHRISTOPHER J. DAGGETT
COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ATTACHMENT I

Content and Format Criteria for District Resource Recovery Investment Tax Fund
Plan Amendment Submissions, in Accordance with N.J.S.A. 13:1E-150

I. Proposed Uses

The moneys in the fund shall be disbursed only for the following purposes:

- 1) To reduce the rates charged to all users by a resource recovery facility serving the county in order to provide a gradual transition to resource recovery facility rates from sanitary landfill facility rates. A county may achieve reduction through the use of moneys in its district investment tax fund to pay directly part of the fees charged for disposal to all users of a resource recovery facility;
- 2) To design, finance, construct, operate or maintain environmentally sound state-of-the-art sanitary landfill facilities to be utilized for disposing of those solid wastes which cannot be processed by a resource recovery facility or the waste products resulting from the operation of a resource recovery facility;
- 3) To design, finance, construct, operate or maintain environmentally sound state-of-the-art sanitary landfill facilities to be utilized for disposal of those solid waste, on a long-term basis, if a county can demonstrate to the satisfaction of the department that utilization of a resource recovery facility is not feasible for disposal of the solid waste generated in that county;
- 4) To finance the closing costs for the proper closure of any terminated sanitary landfill facility located within a county whenever that county has made an investment tax rate adjustment for this purpose in accordance with the study conducted pursuant to N.J.S.A. 13:1E-146; and
- 5) To administer the investment tax fund, up to an amount not to exceed 2% of the total moneys appropriated to the fund during the fiscal year.

II. Disbursement Schedule

All disbursement schedules for District Resource Recovery Investment Tax Fund moneys shall be consistent with, but not be limited to, the following:

- *
- 1) Narrative which outlines the purpose, background and legislative justification of and authorization for the use of the funds;
 - 2) Narrative which provides the purpose, description and objectives of the project proposed for receipt of fund moneys;
 - 3) Narrative which provides specific project performance data, implementation schedules and project status;
 - 4) A spread sheet or other tabular or budgetary format which provides at least the following information, over time (choice of the time interval is at the discretion of the county, but shall not be longer than annually);

- a) Initial fund balance;
- b) Additional deposits to fund based upon tax rates and projected waste generation and disposal figures, under various recycling/reduction assumptions and population/economic growth assumptions;
- c) Interest accrued on fund balance, by year;
- d) Recipients of fund moneys, by amount, by proposed use, by time interval;
- e) Use of moneys by recipients, by amount, by time interval;
- f) If available, a budget for fund disbursements.

* A model format is attached. This format is from the approved Burlington County submission and is presented as guidance and need not be strictly adhered to. The Department recognizes that the data analysis may be presented in a variety of acceptable formats. For example, the Department has received a cash flow spreadsheet format that meets the criteria. This format is available for examination by the county.

Attachment