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Department of Environmental Protection and Energy
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Scott A. Weiner
Commissioner

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 MARCH 12, 1991
AMENDMENT 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., (ACT) 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 of Environmental Protection (Department) approved, with modifications, the Cape May 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, 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 (County Freeholders) completed such a review and on March 12, 1991 adopted an amendment to its approved County Plan.

The March 12, 1991 amendment included four components. These components proposed to permanently close the Cape May County Municipal Utilities Authority's (CMCMUA) Sanitary Landfill in Woodbine Borough and Upper Township for the purposes of landfilling operations after December 31, 1992 in compliance with the Pinelands Commission's July 13, 1990 Resolution No. PC4-90-90; provided that no existing landfill within the Pinelands National Reserve shall be permitted to be reopened or to expand, except for the expansion of the CMCMUA existing landfill in Woodbine Borough and Upper Township; provided that no new landfill shall be sited or constructed in the Pinelands Area or the Pinelands National Reserve; and included the County's reservation of legal rights regarding existing litigation concerning the closure of the CMCMUA Landfill.

The amendment was received by the Department on April 12, 1991 and copies 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 County Plan, and has determined that the amendment adopted by the County Freeholders on March 12, 1991 is approved with the considerations discussed herein below.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I, Scott A. Weiner, Commissioner of the Department, have studied and reviewed the March 12, 1991 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 with the Statewide Solid Waste Management Plan.

In conjunction with the review of the amendment, the Department circulated copies to seventeen 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 as well as the Board of Public Utilities. These agencies included:

Division of Environmental Quality, DEPE
Division of Water Resources, DEPE
Division of Coastal Resources, DEPE
Division of Parks and Forestry, DEPE
Division of Fish, Game and Wildlife, DEPE
Division of Solid Waste Management, DEPE
Green Acres Program, DEPE
Board of Public Utilities
Pinelands Commission
New Jersey Turnpike Authority

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Green Acres Program, DEPE
Board of Public Utilities
Pinelands Commission
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
Department of the Public Advocate
U.S. Environmental Protection Agency

1. Agency Participation in the Review of the March 12, 1991 Amendment

The following agencies did not object to the proposed plan amendment:

Division of Water Resources, DEPE
Division of Parks and Forestry, DEPE
Green Acres Program, DEPE
Department of Agriculture
New Jersey Turnpike Authority
Department of Transportation
Board of Public Utilities

The following agencies did not respond to the Department's requests for comments:

Division of Coastal Resources, DEPE
Division of Fish, Game and Wildlife, DEPE
Department of Health
Department of Community Affairs
New Jersey Advisory Council on Solid Waste Management
Department of the Public Advocate
U.S. Environmental Protection Agency

The following agencies submitted substantive comments which are further addressed below:

Division of Environmental Quality, DEPE
Division of Solid Waste Management, DEPE
Pinelands Commission

2. Comments Received for the March 12, 1991 Amendment

Comment: The Division of Environmental Quality (DEQ) commented that closed landfills should be equipped with positive ventilation systems, which direct landfill gases to air pollution control devices. These vents and devices require air pollution control permits pursuant to N.J.A.C. 7:27-8.2(a)1 and 16. These regulations require permits for all stationary equipment used to ventilate a solid waste facility directly or indirectly to the ambient atmosphere.

Response: The County and CCMUA are notified of the above noted administrative codes concerning requirements for closure of the CCMUA Landfill. By copy of this certification, the County, CCMUA and DEQ are notified of this response.

Comment: The Division of Solid Waste Management (DSWM) commented that the CCMUA composting/materials recovery facility is currently under technical review for issuance of a solid waste facility permit. Accordingly, the CCMUA will be required to have a backup disposal facility to provide for residual wastes generated on site for the life of any solid waste facility permit approval.

Response: By copy of this certification, the County and the CCMUA are notified of this requirement relative to the pending permit application for the CCMUA's composting/materials recovery facility.

Comment: The DSWM also commented that the County notified the Department on July 31, 1991 that the June 27, 1991 certification of the January 22, 1991 Amendment to the County Plan included tires, tree stumps and branches, food waste, grass clippings and batteries as "designated" recyclables, instead of "recommended" recyclables, as proposed in the subject plan amendment.

Response: As noted in Section C. of this certification, the County Plan is modified and the above noted recyclables are included in the County Plan as "recommended" recyclables pending the availability of technologies and markets for these recyclables, at which time they will be considered "designated" recyclables. By copy of this certification, the County and the CCMUA are notified of this response.

Comment: The DSWM further commented that due to the County's failure to comply with condition #2 of the Pinelands Commission's Resolution No. PC4-90-90, which required the County to adopt a plan amendment by November 15, 1990 to provide permanent closure of the CCMUA Landfill by December 31, 1992, the Pinelands Commission issued a notice to the CCMUA on December 14, 1990 which required the closure of the landfill within 90 days or by March 14, 1991. In response to this notice, the County adopted this amendment to the County Plan to provide permanent closure of the CCMUA Landfill by December 31, 1992 with a provision that the amendment would not prejudice the existing litigation between the CCMUA and Pinelands Commission in this matter. In this regard, the DSWM is concerned, as previously noted in Section C.2. of the June 27, 1991 certification of Cape May County's January 22, 1991 plan amendment, that upon closure of the CCMUA Landfill on December 31, 1992, sufficient alternative in-state disposal sites are not clearly available until the County's composting/material recovery facility becomes operational in 1994 and a disruption in solid waste disposal services after December 31, 1992, becomes increasingly likely. Further, with closure of the CCMUA landfill, the County does not have designated disposal capacity for residue once the composting/materials recovery facility is operational. In this regard, the June 27, 1991 certification recommended that the County should be developing contingency plans which could be quickly implemented. The DSWM received such a contingency plan on August 28, 1991 which was adopted by the County Freeholders on July 23, 1991 to provide for solid waste disposal of the County's waste after December 31, 1992. Further, in-state opportunities for regionalization should also be thoroughly investigated, as required by the Department as part of its June 27, 1991 plan certification.

Response: As noted in Section C. of this certification, the County, the CCMUA and the Pinelands Commission are notified that, while the amendment is approved, the DEPE shall maintain ongoing review of the planning action concerning the closure of the CCMUA landfill as well as full review of the County's contingency plan and the investigation of in-state opportunities for regionalization as required by the Department as part of its June 27, 1991 certification. This response is not intended to address the legal issues in dispute in Cape May County Municipal Utilities Authority v. Pinelands Commission, Docket No. A-6717-89T2.

Comment: The Pinelands Commission (Commission) commented that although the stated purpose of the plan amendment is consistent with the requirements of condition #2 of the Commission's Resolution No. PC4-90-90, the Commission disagrees with the factual basis of the discussions and interpretations regarding the Commission's decisions concerning the CCMUA's application for a Waiver of Strict Compliance and the decision of the Administrative Law Judge (ALJ) concerning the matter. The Commission also takes issue with the conclusions offered as fact regarding the benefits of the continued long-term use of the landfill.

The Commission also indicated the plan amendment should be reviewed by the Department only as to the purpose of the amendment which is contained in Section I and the reservation of legal rights which is contained in Section IV. Sections II and III of the plan amendment, which address the historical development of the plan, overview of the solid waste system and current lack of feasible disposal alternatives, contain discussions and statements that are disputed and unnecessary to the amendment. Resolution of these issues, which are currently before the Appellate Division of the Superior Court, will occur during the pending appeal.

The Commission further commented that condition #4 of Resolution No. PC4-90-90 requires that by July 1, 1991, the Authority shall submit to the Commission staff, documentation including solid waste management plan amendments regarding the solid waste disposal alternatives selected. Such alternatives shall preclude the landfilling of any solid waste or any residuals from any resource recovery facility within the Pinelands Area or the Pinelands National Reserve. A schedule which demonstrates that the selected alternatives will be in place on or prior to January 1, 1993 shall also be provided. The current plan amendment does not address this requirement. The Commission's Resolution provided that failure to meet condition #4 would cause the landfill to cease operating and to be permanently closed within 90 days of notice of such failure.

Response: The Commission's comments concerning disagreement with the plan amendment's factual basis regarding the decisions pursuant to the Waiver and the decision of the ALJ are noted. Further, as noted in Section C, my final action on the March 12, 1991 amendment does not address Sections II and III which provide only background information relative to the County's planning programs since these sections do not need to be acted upon. Finally, the Commission's concern that the plan amendment does not address condition #4 of Resolution No. PC4-90-90 is noted. However, as indicated above and in Section C., Cape May County adopted an amendment to its

County Plan on July 23, 1991 which addressed condition #4 of the Pinelands Resolution. In this regard, the Pinelands Commission will have the opportunity to comment on the amendment as part of the administrative review process regarding the Department's certification of the amendment. By copy of this certification, the County, the CCMUA and the Commission are notified of this response.

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

I, Scott A. Weiner, Commissioner of the Department, 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, have reviewed the March 12, 1991 amendment to the approved County Plan and certify to the County Freeholders that the March 12, 1991 amendment is approved as further specified below.

1. March 12, 1991 Amendment

a. CCMUA Landfill Closure Policy

The inclusion in the County Plan that the CCMUA's existing Sanitary Landfill in Woodbine Borough/Upper Township shall permanently close for purposes of further landfilling operations as of December 31, 1992, is approved. This approval is premised on a recognition that in the first instance the County must plan its solid waste system in light of the particular considerations with respect to the Pinelands. However, it should also be recognized that development of a stable solid waste disposal system is of critical importance both to the state's environment and its economic development, as well as to the achievement of self-sufficiency in disposal by the state in an increasingly volatile interstate marketplace. As a result, the Department will maintain its surveillance of the County's disposal plan to assure continued stability.

Finally, in-state opportunities for regionalization should also be thoroughly investigated, as required by the Department as part of its June 27, 1991 plan certification, prior to final acceptance by the Department of the County's solid waste disposal strategy.

b. Landfill Expansion and New Landfill Policies

The inclusion in the County Plan that no existing landfill(s) within the Pinelands National Reserve may be permitted to be reopened or to expand, except for the expansion of the CCMUA's existing Sanitary Landfill in Woodbine Borough/Upper Township, is approved. Further, the inclusion in the County Plan that no new landfill(s) shall be sited or constructed in the Pinelands Area or the Pinelands National Reserve, is approved. This acceptance in no way diminishes the County's obligation to provide necessary in-state facilities to its citizens, nor does it preclude future consideration by the County or the Pinelands Commission of such facilities.

c. Reservation of Legal Rights

Cape May County's inclusion in the County plan that the Pinelands Commission's January 16, 1991 acknowledgement to the CCMUA representing that the March 12, 1991 amendment shall have no legal effect in any litigation between the Pinelands Commission and the CCMUA is approved. This approval permits the County and the Pinelands Commission to both continue the litigation in this matter and to seek an acceptable planning strategy in light of the concerns discussed above.

2. Cape May County District Solid Waste Management Plan Deficiencies

On June 27, 1991, the Department certified the January 22, 1991 amendment to the County Plan. In that certification were noted deficiencies which the County was directed to address within 180 days of the certification or December 25, 1991. Specifically, these deficiencies pertain to the lack of a financing plan for all of the solid waste facilities in the district and the need to address the recommendations of the Governor's Emergency Solid Waste Assessment Task Force Final Report relative to source reduction and regionalization. By copy of this certification, I am directing the County to comply.

3. Correction of Part of January 22, 1991 Amendment

The June 27, 1991 certification of the January 22, 1991 amendment to the County Plan erroneously stated that tires, tree stumps and branches, food waste, grass clippings and batteries were approved as "designated" recyclables in Cape May County. According to the January 22, 1991 amendment these recyclables were only proposed as "recommended" recyclables for future designation subject to the availability of technologies and markets. Therefore, as noted in Section B., tires, tree stumps and branches, food waste, grass clippings and batteries are included in the Cape May County Solid Waste Management Plan as "recommended" recyclables pending the availability of technologies and markets to the municipalities at which time they will be considered as "designated" recyclables.

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 Solid Waste Management 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 and shall not apply to liquid wastes, sewage sludge, septage, and hazardous wastes. All nonhazardous 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 set forth at N.J.A.C. 7:26-6.

4. Certification to Proceed with the Implementation of the Plan 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 shall proceed with the implementation of the approved 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 and N.J.A.C. 7:26-1.4 and -2.13.

6. Effective Date of the Amendment

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. The Department has published a

Statewide Solid Waste Management Plan, with appendices, which includes the Department's planning guidelines, rules, regulations, orders of the Department, 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 and Energy

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 approved Cape May County District Solid Waste Management Plan which was adopted by the Cape May County Board of Chosen Freeholders on March 12, 1991.

Sept 6 1991

DATE

Scott A. Weiner

SCOTT A. WEINER

COMMISSIONER

DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND ENERGY