



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection

Robert C. Shinn, Jr.
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 MAY 24, 1994
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.) 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 or DEP) 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 County Plan at any time and, if found inadequate, a new County Plan must be adopted. Amendments to the Act found in N.J.S.A. 13:1E-136 et seq. require that, among other things, counties amend their plans to include an outline of the proposed uses of moneys in the District Resource Recovery Investment Tax (RRIT) Fund as well as establish a schedule for the disbursement of the moneys in that Fund.

The Cape May County Board of Chosen Freeholders (County Freeholders) completed such a review and on May 24, 1994, adopted an amendment to its approved County Plan to satisfy the requirements of N.J.S.A. 13:1E-150. The May 24, 1994 amendment proposed the use of moneys from the County's RRIT Fund to finance the operating expenses of both an intermediate processing facility (recycling center) and a household hazardous waste collection program. Also proposed was the establishment of a resource recovery rate stabilization fund for the operation of a permanent household hazardous waste collection facility, the permanent closure of the Cape May County Landfill, or for any publicly funded resource recovery project. Finally, the amendment included a RRIT Fund disbursement schedule for program years 1989 through 1996.

The amendment was received by the Department on June 1, 1994, 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 May 24, 1994 is approved in part and rejected in part 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 Amendment

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the May 24, 1994 amendment to the County Plan according to the objectives, criteria and standards developed in the Statewide Solid Waste Management Plan and N.J.S.A. 13:1E-150 and I find and conclude that the approved portions of this plan amendment are consistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the issue of concern relative to the May 24, 1994 amendment which is included in Section B.2. below.

In conjunction with the review of the amendment, the Department circulated copies to fifteen 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. These agencies include the following:

Office of Air Quality Management, DEP
Division of Parks and Forestry, DEP
Division of Fish, Game and Wildlife, DEP

Division of Solid Waste Management, DEP
Green Acres Program, DEP
Land Use Regulation Element, DEP
Division of Water Quality, 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
Pinelands Commission

1. Agency Participation in the Review of the May 24, 1994 Amendment

The following agencies did not object to the proposed amendment:

Office of Air Quality Management, DEP
Division of Parks and Forestry, DEP
Division of Fish, Game and Wildlife, DEP
Green Acres Program, DEP
Division of Water Quality, DEP
New Jersey Turnpike Authority
Department of Agriculture
Department of Transportation
Pinelands Commission

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

Land Use Regulation Element, DEP
New Jersey Advisory Council on Solid Waste Management
Department of Health
Department of Community Affairs
U.S. Environmental Protection Agency

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

Division of Solid Waste Management, DEP

2. Issue of Concern Regarding the May 24, 1994 Amendment

Issue: RRIT Fund Use and Disbursement Schedule

The Department previously certified, on October 18, 1989, the County's April 11, 1989 amendment which had initially disbursed \$1,200,000.00 in RRIT Fund moneys for equipment to establish the County recycling center and for the purchase of residential recycling containers. After this disbursement, the remaining balance including all accrued interest was retained by the State until such time as a subsequent amendment which outlined the

proposed use of and a detailed disbursement schedule for RRIT Fund moneys, in accordance with N.J.S.A. 13:1E-150, was submitted by the County and approved by the Department. The May 24, 1994 amendment represents such a submission.

The May 24, 1994 amendment would use RRIT Fund moneys to off-set the operational costs associated with the recycling center and the household hazardous waste collection program. In addition, RRIT Fund moneys would be used to establish a resource recovery rate stabilization fund which would serve to reduce any "rate shock" associated with the development and operation of a permanent household hazardous waste collection facility, the closure of the Cape May County Landfill, or for any publicly funded resource recovery project. The moneys used for this rate shock fund would be generated from the payment of the Solid Waste Importation Tax Fund which is part of the RRIT Fund. This tax represents moneys paid by Atlantic County to Cape May County as part of the Department's January 14, 1994 emergency redirection order (ERO) which redirected a portion of Atlantic's solid waste stream to the Cape May Landfill through May 1, 1996, the Pinelands Commission mandated closure date. This order was issued by the DEP to maximize the remaining capacity at the Cape May County Landfill and to assist the county in retiring outstanding debt to ensure the proper closure of the landfill since sufficient time did not exist for the Department to follow the formal rule proposal/adoption procedure to amend the Interdistrict and Intradistrict Solid Waste Flow Rules (N.J.A.C. 7:26-6 et seq.) to implement the interdistrict agreement.

It must be noted, however, that on July 20, 1994, Judge Coleman, Presiding Judge, Appellate Division, in the matter of Emergency Redirection of Solid Waste from Atlantic County to Cape May County, Docket Nos. A-2849-93T3 and A-2850-93T3, ruled that the January 14, 1994 ERO was invalid because there was no emergent need for DEP to issue the order. Consequently, Atlantic County ceased the delivery of waste to the Cape May County Landfill effective July 19, 1994. The Department in certifications dated August 24, 1994 of March 22, 1994 and April 12, 1994 amendments to the Cape May and Atlantic County Plans, respectively, directed both counties to notify the DEP of their intent to proceed with the interdistrict agreement prior to the commencement of the formal rule proposal/adoption procedure. Therefore, the amount of moneys available in the resource recovery rate stabilization fund will be considerably less than that anticipated by the County at the time the May 24, 1994 amendment was adopted due to the cessation of the delivery of Atlantic County waste to the Cape May County Landfill.

Pursuant to N.J.S.A. 13:1E-150(b), the Department has reviewed the eligibility of each of the proposed uses for RRIT Fund moneys. The use of RRIT Fund moneys for the reimbursement of expenses associated with the operation of the recycling center and the household hazardous waste collection program for program years 1989 through 1993 is approved. However, the Department is encouraging

counties to develop permanent household hazardous waste collection facilities rather than the continued reliance on household hazardous waste collection days. Burlington County is the first New Jersey county to construct and operate a permanent household hazardous waste collection facility. This facility cost about \$400,000.00 to develop and has an anticipated cost of \$300,000.00 to operate on an annual basis. Rather than the County continuing to allocate approximately \$50,000.00 annually to finance household hazardous waste collection days, these RRIT Fund moneys should be allocated toward the development of a permanent household hazardous waste collection facility or the entering into of a regional agreement for the shared use of such a facility. Therefore, Section C. of the certification approves the reimbursement for operating expenses of the recycling center through program year 1996. However, the reimbursement for operating expenses of the household hazardous waste collection program is only approved through program year 1994. Thereafter, such use is rejected to encourage the County to utilize RRIT Fund moneys to finance the development of a permanent household hazardous waste collection facility or enter into a regional agreement for the shared use of such a facility.

Regarding the use of RRIT Fund moneys to establish a resource recovery rate stabilization fund for the operation of a permanent household hazardous waste collection facility, the permanent closure of the Cape May County Landfill, or any publicly funded resource recovery project, the County has failed to provide sufficient detail within the amendment to properly evaluate this proposal. Estimated costs and a disbursement schedule for each project, the commencement and duration of each project, and the location for the applicable projects has not been provided. Additionally, one of the resource recovery projects under consideration is the materials recovery/composting facility which is the subject of litigation for breach of contract. Finally, as noted above, the amount of moneys available in the rate stabilization fund will be considerably less than that anticipated due to the cessation of the delivery of Atlantic County waste to the Cape May County Landfill. Therefore, Section C. of the certification rejects the use of RRIT Fund moneys to finance the rate stabilization fund.

C. Certification of the Cape May 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, and N.J.S.A. 13:1E-150 which establishes eligible uses and disbursement schedule requirements for a district RRIT Fund, I have reviewed the May 24, 1994 amendment to the approved County Plan and certify to the County Freeholders that the May 24, 1994 amendment is approved in part and rejected in part as further specified below.

The County Plan inclusion of the use of and disbursement schedule for RRIT Fund moneys for reimbursement of operating expenses for the recycling center for program years 1989 through 1996 and the household hazardous waste collection program for program years 1989 through 1994 is approved. However, reimbursements for operating expenses for the household hazardous waste collection program beyond program year 1994 is rejected to encourage the County to utilize RRIT Fund moneys for the development of a permanent household hazardous waste collection facility or enter into a regional agreement for the shared use of such a facility. Finally, the use of future RRIT Fund moneys generated from the payment of the Solid Waste Importation Tax to finance a rate stabilization fund is rejected. As noted within Section B., the amount of moneys within this fund will be significantly less than that anticipated due to the cessation of the delivery of Atlantic County waste to the Cape May County Landfill. Also, the County failed to provide both specific programmatic detail and a disbursement schedule to properly evaluate this concept.

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 approved portions of this amendment to the County Plan and which was executed prior to the approved portions 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 the approved portions of this amendment and of the County Plan if such renegotiation is not completed within ninety (90) days of the effective date of the approved portions 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 approved portions of the amendment contained herein shall operate in compliance with the approved portions of 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 Waste 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. 7:26A-1 et seq.

4. Certification to Proceed with the 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 shall proceed with the implementation of the approved portions 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 the Amendment

The approved portions of the amendment contained herein shall take effect immediately.

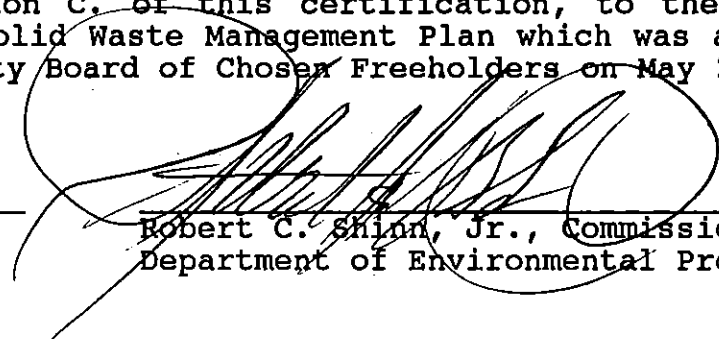
7. Reservation of Authority

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 DEP, 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 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 Cape May County District Solid Waste Management Plan which was adopted by the Cape May County Board of Chosen Freeholders on May 24, 1994.

9/25/94
Date


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