



State of New Jersey

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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 OCTOBER 2, 1997
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 (DEP or 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.

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 Cape May County Board of Chosen Freeholders (County Freeholders) completed such a review and on October 2, 1997, adopted an amendment to its approved County Plan.

The amendment represents the County's 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., 112F.3d 652 (3rd Cir. 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 Department to represent a legal determination regarding the effect of the Atlantic Coast decision on any specific contract between public and/or private parties.

The October 2, 1997 amendment proposes the following:

- * The County will become a market participant for solid waste generated within the County;
- * The weighing of all solid waste at designated weigh stations;
- * The establishment and collection of an Environmental Investment Charge (EIC) to recover the stranded debt and pay enforcement costs; and
- * The possible acceptance of out-of-county solid waste at the Cape May County Municipal Utilities Authority (CMCMUA) landfill.

The amendment was received by the Department on October 7, 1997, and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed this amendment on an expedited basis and has determined that the amendment adopted by the County Freeholders on October 2, 1997 is approved in part and modified in part as provided in N.J.S.A. 13:1-24.

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

Pursuant to N.J.S.A. 13:1-24a(1), I have studied and reviewed the October 2, 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, as modified, is consistent with the Statewide Solid

Waste Management Plan. In this regard, the County Freeholders are notified of the issues of concern relative to the October 2, 1997 amendment which are included within Section B.2. below.

In conjunction with the review of the amendment, the Department circulated copies to seventeen administrative review agencies and solicited their review and comment. Pursuant to N.J.S.A. 13:1-24a(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, Game and Wildlife, DEP
Division of Compliance and Enforcement, DEP
Division of Solid and Hazardous Waste, DEP
Green Acres Program, DEP
Land Use Regulation Element, DEP
Office of Air Quality Management, DEP
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
Pinelands Commission
Department of Agriculture
Department of Health
Department of Transportation
Department of Treasury
Department of Community Affairs
U.S. Environmental Protection Agency

1. Agency Participation in the Review of the October 2, 1997 Amendment

The following agencies did not object to the proposed amendment:

Division of Compliance and Enforcement, DEP
Division of Parks and Forestry, DEP
Green Acres Program, DEP
Department of Agriculture
Department of Community Affairs
Department of Transportation
New Jersey Turnpike Authority

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

Division of Land Use Regulation, DEP
Division of Water Quality, DEP
Division of Fish, Game and Wildlife, DEP
Division of Air Quality, DEP
Department of Health
Department of Treasury
New Jersey Advisory Council on Solid Waste Management
Environmental Protection Agency

Pinelands Commission

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 October 2, 1997 Amendment

Issue: Market Participation Strategy

The October 2, 1997 amendment outlines the County's proposed strategy to become a market participant for the solid waste generated within the County. As such, all solid waste generated from within Cape May County may be ultimately disposed of at the CMCMUA landfill located in Woodbine Borough/Upper Township, or any legally permitted out-of-county or out-of-state disposal facility selected by individual municipalities, solid waste generators and/or their designated solid waste haulers.

The CMCMUA will establish a tipping fee at the landfill that will attempt to be competitive with other solid waste disposal facilities. The CMCMUA tipping fee will be in addition to the payment of the EIC. The tipping fee will consist of all direct costs related to accepting and disposing of waste delivered to the facility including operations and maintenance costs, equipment, administration and overhead expenses and any applicable host community benefits and State mandated solid waste taxes or other costs. The CMCMUA landfill tipping fee will include the cost to provide or subsidize any recycling programs and services provided by the CMCMUA. The CMCMUA is estimating that the tipping fee will not exceed \$50 per ton.

Unless arrangements are made with the CMCMUA, recycling services provided by the CMCMUA will be restricted to those who utilize the CMCMUA landfill and pay the established tipping fee. However, all State legislatively mandated and County Plan included recycling goals and other recycling requirements remain in effect and must be complied with by all residents of the County. As noted in Section C., the certification approves the County's strategy to become a market participant for the solid waste generated within the County.

Issue: Weighing Requirements

Pursuant to the provisions of N.J.A.C. 7:26-2.13(k), to fulfill its record keeping requirements and solid waste planning responsibilities and establish a mechanism for the collection of the EIC, Cape May County is proposing to require all nonrecyclable solid waste generated from within the County to be weighed at either the CMCMUA transfer station located in Middle Township or the CMCMUA landfill located in Woodbine Borough/Upper Township. Provisions for the creation of additional weighing stations are

also contained in the amendment should the need for additional weighing facilities arise.

The Department recently adopted regulations at N.J.A.C. 7:26-6.10(b)2. which restrict such weighing to a 6 month period and require the submission of a subsequent plan amendment which identifies a long-term strategy for collection of the outstanding debt that examines all reasonable available alternatives including but not limited to direct billing or tax assessments. Therefore, within Section C. of the certification, this component of the amendment is approved with modification contingent upon the submission of a subsequent plan amendment which identifies an alternative method for collection of outstanding debt. Following the submission of this plan amendment, the County may continue to collect any fees and charges through in-district weighing pending the Department's review of the alternative method of collection.

Issue: Environmental Investment Charge

The October 2, 1997 amendment proposes the establishment and collection of an EIC at the designated weighing stations. The EIC consists of: all outstanding debt incurred by the CCMUA in the development of the County solid waste management system prior to the Federal Court ruling affecting solid waste flow control authority in New Jersey; and, the cost of providing an effective Countywide enforcement program to ensure compliance with weighing, monitoring, inspection and EIC collection procedures. The EIC is calculated on the actual tonnage of nonrecycled solid waste generated within the County for disposal. The amendment indicates that the annual debt service on the outstanding debt (year 1998) is \$4,348,612. The estimated costs for enforcement (year 1998) are projected to be \$258,943. The estimated annual billable tons based on the average quantity of waste received during the last 3 full years is 119,061. (The County is assuming that 10% of the billable tons will by-pass the weighing facilities and illegally avoid payment of the EIC.) Therefore, based upon these figures, the County estimates the EIC will be \$43 per ton.

Concurrent with the action noted above under the weighing requirement, within Section C. of the certification this component of the amendment is approved with modification contingent upon the submission of a subsequent plan amendment which identifies an alternative method for collection of outstanding debt. Following the submission of this plan amendment, Cape May County may continue to collect any fees and charges through in-district weighing pending the Department's review of the alternative method of collection. In addition, the County is cautioned to ensure that its enforcement actions are consistent with a market participant seeking to recover accounts receivable and do not rise to the level of market regulation, thus threatening the County's market participant status.

Issue: Out-of-County Waste Acceptance

The October 2, 1997 amendment also proposes that the CMCMUA have the ability to accept the delivery of solid waste generated from outside of Cape May County at the CMCMUA landfill, and the CMCMUA may establish a differential disposal rate for such waste. Within Section C. of this certification the concept of solid waste generated from outside of Cape May County being accepted for disposal at the CMCMUA landfill is approved.

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, I have reviewed the October 2, 1997 amendment to the approved County Plan and certify to the County Freeholders that the October 2, 1997 amendment is approved in part and modified in part as further specified below.

Market Participation

The County Plan inclusion of the strategy to become a market participant for the solid waste generated within Cape May County is approved. Upon the required weighing and collection of the EIC, the solid waste generated from within the County may be disposed of at the CMCMUA landfill or at any other legally permitted out-of-county or out-of-state solid waste disposal facility.

Weighing Requirements

The County Plan inclusion of the requirement that all solid waste generated within the County must be weighed at one of two designated weigh stations prior to disposal (with the provision for creation of additional weigh stations should the need arise) is approved with modification. Specifically, pursuant to N.J.A.C. 7:26-6.10(b)2., such weighing is restricted to a 6 month period and requires the submission of a subsequent plan amendment which identifies a long-term strategy for collection of the outstanding debt that examines all reasonable available alternatives including but not limited to direct billing or tax assessments. Following the submission of this plan amendment, the County may continue to collect any fees and charges through in-district weighing pending the Department's review of the alternative method of collection.

Environmental Investment Charge

The County Plan inclusion of the establishment and collection of an Environmental Investment Charge to recover the stranded debt incurred in the development of a County solid waste management system and to pay enforcement program costs is approved with

modification. Specifically, concurrent with the action noted above under the weighing requirement, this component of the amendment is approved with modification contingent upon the submission of a subsequent plan amendment which identifies an alternative method for collection of outstanding debt. Following the submission of this plan amendment, Cape May County may continue to collect any fees and charges through in-district weighing pending the Department's review of the alternative method of collection.

Out-of-County Waste Acceptance

The County Plan inclusion of the policy to accept for disposal at the CMCMUA Landfill solid waste generated from outside of Cape May County is approved.

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 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 subject to regulation in accordance with N.J.A.C. 7:26A-1 et seq.

4. Certification to Proceed with the Implementation of the Plan Amendment

This document shall serve as the certification of the Commissioner of the DEP 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, as modified, 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 amendment, as modified, to the County Plan shall take effect as of the date of final disposition of Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County.

7. Reservation of Authority

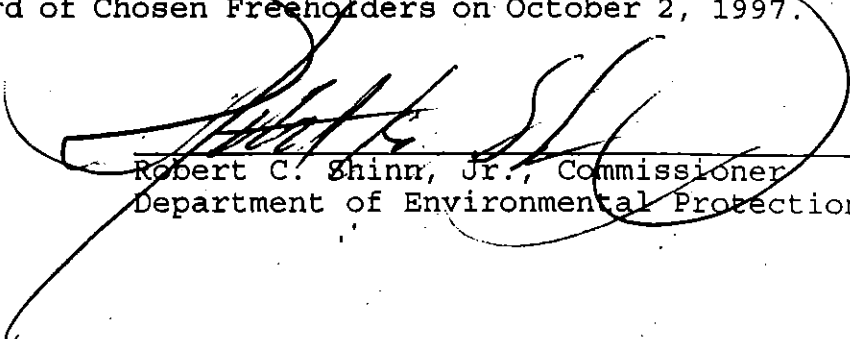
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's 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 and Modification 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 modify 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 October 2, 1997.

Date

11/10/97


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