

State of New Jersey 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
HUDSON COUNTY SOLID WASTE
MANAGEMENT DISTRICT

CERTIFICATION
OF THE DECEMBER 10, 1992
AMENDMENT TO THE HUDSON 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 January 27, 1982, the Department of Environmental Protection approved, with modifications, the Hudson 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. The Hudson County Board of Chosen Freeholders (County Freeholders) completed such a review and on December 10, 1992, adopted a multifaceted amendment to its approved County Plan.

The amendment proposed, among other things, an expanded strategy for addressing the Emergency Solid Waste Assessment Task Force (Task Force) Report concerning source reduction, 60% recycling regionalization. The amendment was in response to the Department's March 16, 1992 certification of the County's September 26, 1991 plan amendment which directed the County to submit further information regarding source reduction, increased recycling and regionalization. amendment also contained proposed guidelines and application procedures for solid waste facility inclusion in the County Plan and the County's mixed waste policy. The amendment further proposed inclusion of the Edward Tempesta, Inc./Arrow Recycling materials recovery facility in Jersey City, the United Wood Recycling, Inc. recycling center in Jersey City, and a capacity expansion of the existing P&N/SJG recycling center in North Bergen to process Class B materials. Finally, the amendment proposed a modified use of and disbursement schedule for the County's Resource Recovery Investment Tax (RRIT) Fund.

The amendment was received by the Department of Environmental Protection and Energy (Department or DEPE) on February 16, 1993, and copies were distributed to various administrative review 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 December 10, 1992 is approved in part and rejected in part as provided in N.J.S.A. 13:1E-24. Deficiencies in the County Plan have been identified within Section C. of this certification.

B. <u>Findings and Conclusions with Respect to the Hudson County District Solid</u> <u>Waste Management Plan Amendment</u>

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the December 10, 1992 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 and N.J.S.A. 13:1E-150. In this regard, the County Freeholders and the applicants are also notified of the issues of concern relative to the December 10, 1992 amendment which are included in Section B.2. 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. These agencies are the following:

Office of Energy, DEPE Land Use Regulation Element, DEPE Groundwater Quality Management Element, DEPE Wastewater Facilities Regulation Element, DEPE-Division of Parks and Forestry, DEPE Division of Fish, Game and Wildlife, DEPE Division of Solid Waste Management, DEPE Green Acres Program, DEPE 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 December 10, 1992 Amendment

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

Division of Fish, Game and Wildlife, DEPE
Green Acres Program, DEPE
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
Department of Agriculture
Department of Health
Department of Community Affairs

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

Groundwater Quality Management Element, DEPE Division of Parks and Forestry, DEPE Department of the Public Advocate U.S. Environmental Protection Agency

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

Office of Energy, DEPE
Division of Solid Waste Management, DEPE
Land Use Regulation Element, DEPE
Wastewater Facilities Regulation Element, DEPE
Department of Transportation

2. <u>Issues of Concern Relative to the December 10, 1992 Amendment</u>

Issue: County Response to Task Force Recommendations

On September 29, 1991, the County adopted a multifaceted plan amendment which sought to address the recommendations of the Task Force Final Report. The Department, in its certification of March 16, 1992, reviewed the September 29, 1991 plan amendment in the context of the DEPE's June

1991 Solid Waste Policy Guidelines. Specifically, the amendment was reviewed to determine whether it addressed the provisions of source reduction, 60% recycling, and regionalization. In the certification, the County was directed to submit a subsequent plan amendment which evaluated the designation of additional recyclable materials and the development of specific collection and marketing strategies, blanket policies for facilitating plan inclusion of compost and recycling facilities, and the development of recycled product procurement guidelines that adhere to current and future state procurement goals for counties and local The County was further directed to governments. evaluate the establishment of a per capita waste generation cap and take into consideration and investigate waste audits, per container systems, yard trimmings management strategies, and financial incentives for reducing waste. Finally, the County was directed to identify annual goals for reaching the 50% municipal waste stream and 60% total waste stream recycling goals including specific tonnage targets for individual recyclables and to investigate the regionalization of its solid waste facilities and programs. The County was directed to submit the subsequent plan amendment by September 11, 1992. However, the required amendment was not received until February 16, 1993.

The Department has reviewed the County's response to the Task Force recommendations in the context of the previous directives with comments as follows:

a. Designation of Additional Materials

The amendment identifies mandatory materials to be recycled in addition to the County's previously designated materials as follows:

Residential Sector

asphalt roofing material*
used motor oil*
refrigerants-CFC's*
newspaper
glass
aluminum cans

Commercial and Institutional Sector

asphalt roofing material*
used motor oil*
refrigerants-CFC's*
corrugated cardboard
high grade office paper

*newly designated materials

The County intends to designate additional materials such as HDPE and PET containers, mixed paper, and grass as other programs are established and when the County has an operating "Central Recycling Facility." Consideration should be given to the designation of additional recyclable materials such as ferrous and bimetal cans, white goods, brush, batteries, wood waste and other recyclable construction and demolition debris since achievement of the 50% and 60% recycling rates may be difficult without designating additional recyclables. The County should provide in a subsequent plan amendment submission a description of how these rates can be achieved in the absence of expanded mandated recyclables and a specific timetable for the development of the proposed "Central Recycling Facility," as identified in Section 3.3.10 of the December 10, 1992 amendment.

b. Specific Collection and Marketing Strategies

To assist the County's municipalities in their recycling collection efforts, the Hudson County Improvement Authority (HCIA) is in the process of purchasing collection vehicles for distribution to municipalities conducting their own recycling programs. The County anticipates purchasing ten (10) vehicles for distribution. The HCIA has also purchased recycling containers which have been distributed to County office buildings, the County Police Department, the County parks and schools operated under the auspices of County government. However, the County should provide within a subsequent plan amendment submission specific marketing strategies to assist its municipalities in marketing the collected materials.

c. Blanket Inclusion Policies

The subject plan amendment does not address blanket policies for facilitating plan inclusion of compost and recycling facilities. Therefore, the County should still consider blanket inclusion policies for compost facilities and recycling facilities.

d. Procurement Guidelines

While the HCIA has adopted the principle that government should take the lead in recycling and the purchasing of recycled products, to date, it has not developed the requisite procurement guidelines. Therefore, the County should provide within a subsequent plan amendment submission procurement guidelines that adhere to current and future state procurement goals. Also, in this regard, on April 22, 1993 Governor Florio signed P.L. 1993, Chapter 109 which establishes specific goals for the purchase of recycled paper and allows preferential purchase of recycled nonpaper finished products. Additionally, Executive Order No. 91 on the procurement of recycled products was signed by the Governor on May 3, 1993. The County should consider the scope of these state level programs, as well as the state's cooperative purchasing program and state distribution and support services program for recycled products, for application at the County level.

e. Per Capita Waste Generation Cap

The County has decided that, at this time, the concept of imposing a per capita waste generation cap would not be practical to enforce in the County unless a per container charge program was in place. However, the County provided little substantive information for the DEPE to evaluate this determination. The County shall transmit its findings upon which this determination was based in a report to the DEPE's Division of Solid Waste Management for review. Notwithstanding the above, the County must indicate its strategy to cap per capita generation of waste at documented 1990 levels, cap total waste generation within five years, and then reduce total waste generation within ten years in a subsequent plan amendment submission.

f. Per Container Systems

While the HCIA will continue to monitor the success of pay-per-bag systems in other jurisdictions, the County has decided that its urban environment with many low-income multi-family dwellings may actually be counter productive to per container systems. It is anticipated by the HCIA that this type of program may lead to increased incidence of illegal dumping since residents will need to purchase disposal bags. However, the County provided little substantive information for the DEPE to evaluate this determination. The County should transmit its finding upon which this determination was based in a report to the DEPE's Division of Solid Waste Management for review. Notwithstanding the above, the County should, at a minimum, pursue a pay-per-bag pilot program in at least one municipality and provide within a subsequent plan amendment submission a schedule for accomplishing this program.

q. Waste Audits

To facilitate a waste audit program in Hudson County, the HCIA will conduct waste audits for all County governmental agencies and will also train municipal recycling coordinators to conduct audits of their local governments. Further, the amendment contains an implementation schedule to assist County businesses with more than 250 employees to conduct waste audits by the end of 1993 and businesses with more than 100 employees to conduct the audits in 1994. The HCIA also intends to sponsor a series of conferences, seminars and discussions regarding waste audits, to which representatives of various industries will be invited. The County should provide within a subsequent plan amendment submission a schedule for conducting waste audits at government buildings.

h. Yard Trimmings Management

The plan amendment identifies a cooperative yard trimmings management program with Bergen, Passaic and Middlesex Counties which consists of four main components: a) "Grass...Cut It and Leave It", b) "Leaves...Rake Them and Compost Them", c) "Brush...Chip It and Use It", and d) Rinds and Peels...Compost Them with Worms." These programs will be executed using County and municipally owned property for some aspects and individual residences for other aspects such as the organic backyard composting program. The first major event is scheduled for spring 1993 promoting the "Grass...Cut It and Leave It" program. The County should provide within a subsequent plan amendment submission a schedule for implementing the latter three programs.

i. Financial Incentives

The County has considered various options regarding funding mechanisms for rewarding recycling efforts. It has been decided that the simplest method of rewarding recycling is to insure that the cost of recycling is less than that of the disposal of recyclable commodities. Accordingly, efforts are being made to set the tipping fees at the planned county recycling facilities to favor recycling efforts. However, no timetable has been established for construction of the planned County recycling center. Therefore, the County should provide within a subsequent plan amendment a schedule for implementation of this program.

j. Regionalization

The HCIA, on behalf of the County, has held discussions with Bergen, Essex, and Union Counties as well as the Hackensack Meadowlands Development Commission (HMDC) to address various aspects of the management of the region's solid waste. The HCIA has also held preliminary discussions with the HMDC regarding a regional construction and demolition recycling operation and a household hazardous waste program. While the DEPE is encouraged with the County's regionalization discussions, the County continues to rely on out-of-state disposal for a large portion of its waste which is inconsistent with the Department's goal of achieving in-state self-sufficiency in solid waste disposal. Therefore, it is imperative that the County report back to the DEPE in a subsequent plan amendment submission with specific details of these regionalization discussions.

k. Public Education

The subject amendment identifies various education strategies to assist the County in both its source reduction and recycling goals. In an effort to facilitate its source reduction efforts, the County has established ongoing school education programs, environmental shopping tours beginning in February 1993, information brochures, and an environmental resource center which distributes magazines, books, brochures, videos, slides and various curricula for all grade levels. Further, the County has established numerous programs targeted at aiding its recycling campaign including television commercials, newspaper advertisements, multi-family recycling workshops, a quarterly newsletter published by the HCIA, a direct mail program, and continuous school programs for grades K-12. Finally, the County is developing a one-half hour cable television show which highlights the need for community involvement in recycling and source reduction.

1. Designated Recovery Targets

The amendment identifies 1991 tonnage figures for 24 separate recyclable materials by municipal and commercial sector. However, the County has not provided individual tonnage targets by material to indicate achievement of the 50% municipal waste stream and 60% total waste stream recycling goals by 1995. This data should be provided within a subsequent plan amendment submission.

As noted in Section C. of this certification, the Task Force strategy adopted by the County Freeholders concerning source reduction, recycling and regionalization is approved. However, the above noted areas of source reduction, recycling and regionalization should be considered by the County in further refinement and development of its solid waste program in a subsequent plan amendment to be submitted within 180 days of the date of this certification. Further, staff at the DEPE will be available to discuss the preceding comments and to work with the County to structure future plan amendment submissions.

Issue: County Mixed Waste Policy

The County is proposing a mixed waste policy which allows transfer stations to accept solid waste from various origins as long as the solid waste, or a similar amount and type, is ultimately disposed of at the facility designated in the Interdistrict and Intradistrict Waste Flow Rules (N.J.A.C. 7:26-6.5) and the transporter signs an agreement with the However, the Department has proposed amendments to the existing solid waste regulations at N.J.A.C. 7:26-2.11, 2.13 and 6.2; 14:3-10.15, and also new "mixed loads rules" at N.J.A.C. 7:26-2B.9, 2B.10 and 6.8; 14:11-7.10. These new and modified rules will formally codify historical policy in this area and include changes to meet current demands of both enforcement agencies and the solid waste industry through more detailed recordkeeping and reporting requirements. Therefore, since this rule, when adopted, will preempt the County's regulatory authority, the County's proposed mixed waste rule is rejected at this time as noted in Section C. of this certification. Once rulemaking is completed, the County may wish to repropose its policy for reconsideration consistent with any adopted rule.

Issue: Rules for Facility Plan Inclusion

The HCIA is proposing to submit complete applications for facility plan inclusion to the HCIA Board on a bi-annual basis only. While the Department appreciates the County's attempt to streamline the plan amendment process, the County should be aware that this procedure may be detrimental to the timely DEPE review of solid waste facility applications since the absence of plan inclusion is an immediate basis for a finding of administrative incompleteness, subsequent rejection, and return of a solid waste facility permit application to the applicant. Further, in accordance with the Doria Legislation, N.J.S.A. 13:1D-101 et seq., the Department can no longer hold an application for an extended period of time while an application is revised or while plan inclusion is pending. Finally, as noted above, the County has failed to adopt a blanket plan inclusion policy for recycling centers. This failure, combined with the proposed bi-annual inclusion policy, may seriously inhibit the expeditious plan inclusion and permitting of new recycling centers and is contrary to the clearly expressed goals of the Task Force Final Report and draft Statewide Solid Waste Management Plan Update. Therefore, while the DEPE respects the primacy of the County in developing policy in this area, the Department grants a cautioned approval in Section C. for the County's rules for facility plan inclusion. In this regard, the County is required to submit a subsequent amendment within 180 days in which the County reports back on considering a quarterly plan amendment adoption and submission period. Also, the December 10, 1992 amendment specifies conditions which constitute the removal of a solid waste facility from the County Plan. Although the amendment does not specifically indicate that such action must be taken through an amendment to the County Plan, a conversation with the County's solid waste coordinator indicates that any deletion will be accomplished through an amendment. The Solid Waste Management Act (N.J.S.A. 13:1E-24) clearly requires that all planning action by a solid waste management district be certified by the Commissioner. An amendment which removes a solid waste facility from the County Plan is necessary for the Commissioner to exercise this statutory certification authority.

Issue: Facility Violations

As noted in Section A., the County proposes to include two new facilities in the County Plan, a materials recovery facility and a recycling center, as well as expand the capacity of an existing recycling center. All three facilities have outstanding violations of the Department's solid waste management and other regulations. With regard to P&N/SJG Recycling Specialists and Edward Tempesta, Inc./Arrow Recycling, these facilities should be aware that the continued accumulation of violations may jeopardize existing permits and/or recycling approvals or the future issuance of same. Approval of these facilities in the County Plan does not relieve the applicants from complying with all outstanding Department enforcement actions. With regard to United Wood Recycling, the history of environmental violations of this facility is substantial. Furthermore, the United Wood site contains large quantities of stockpiled potentially combustible materials which have been brought onto the site by the property owner, Mr. Ed Siegel. Local fire officials have declared that the site presents an imminent fire hazard. Given the foregoing and as noted in Section C., the Department must reject United Wood from the County Plan at this time.

Issue: Regulatory Requirements

Recycling centers and transfer stations 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. Also, recycling centers and transfer stations are considered solid waste facilities which are subject to N.J.A.C. 7:27-9.2(a)16 which requires air pollution control permits for any equipment which vents a solid waste facility directly or indirectly into the outdoor atmosphere. Such vents may require devices to control odors and other air contaminants. Further, the use of crushers, chippers and shredders will necessitate the control of particulate emissions to the air. Pursuant to N.J.A.C. 7:27-8.2(a), 7, 11, 15 and 16, air pollution control permits to construct, install or alter control apparatus or equipment are also required.

If any operation of the planned recycling centers or transfer station 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 discharges prior to operation.

The construction and operation of all recycling centers which receive, store, process or transfer Class B recyclable materials, as defined at N.J.A.C. 7:26A-1.3, shall be preceded by the acquisition of the necessary approval as per N.J.A.C. 7:26A-3 et seq., and shall be in conformance with Department regulations and guidelines, including N.J.A.C. 7:26A-4 et seq.

Issue: RRIT Fund

The "McEnroe" legislation (N.J.S.A. 13:1E-136 et seq.), which established RRIT Fund accounts for the state's twenty-one (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.

Prior to disbursement from its RRIT Fund, however, a county must prepare a plan amendment which outlines the proposed uses of moneys in its RRIT 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 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-150b., projects not formally identified in the approved county plan shall not be funded with RRIT Fund moneys. Therefore, in order to ensure users' rate reduction and to facilitate timely project implementation, disbursements from a RRIT Fund shall be made only to projects formally identified in the approved county 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 the moneys must be provided through the plan amendment process established under the Act. 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.

The amendment proposed the use of \$5.8 million dollars from the County RRIT Fund (representing the receipts of fiscal years 1991 and 1992) as follows:

General operating expenses	\$ 370,276.00
Development of a materials recovery	1,851,000.00
facility and compost cost	
Source reduction and recycling awareness	1,188,000.00
Household hazardous waste collection	1,200,000.00
Nontraditional recycling programs	1,074,724.00
2% administrative fee	116,000.00
	\$5,800,000.00

The amendment contained a satisfactory disbursement schedule except that the source reduction and recycling awareness campaign and nontraditional recycling programs needed additional clarification. Therefore, on March 15, 1993 the Hudson County Improvement Authority (Authority) submitted additional material for the disbursement schedule for both of the above noted programs as follows:

Source Reduction and Recycling Awareness

Public relations contract	\$ 63,600.00
Cable television	97,201.00
Newspaper advertising	45,200.00
County wide mailings	183,149.00
Lunchtime school recycling	160,425.00
Scholarship	50,000.00
School assembly programs	247,500.00
Environmental shopping bags	155,125.00
Leaf bags	49,700.00
2,500 Backyard compost units	136,100.00
	61 100 000 00

\$1,188,000.00

Nontraditional Recycling

To attain County Plan recycling goals, the Authority has proposed by providing financial incentives targeting those materials not currently among those in the curbside collection programs, including, but not limited to, used tires, used motor oil, batteries and white goods. To this end, the Authority has proposed awarding \$900,000.00 in grants to all municipalities in the county to be reallocated on a per capita basis in accordance with the following schedule.

MUNICIPALITY	POPULATION	% ALLOCATION 1991/1992
Bayonne	11.1%	\$ 99,900.00
East Newark	.4%	3,600.00
Guttenberg	1.5%	13,500.00
Harrison	2.4%	21,600.00
Hoboken	6.0%	54,000.00
Jersey City	41.3%	371,700.00
Kearny	6.3%	56,700.00
North Bergen	8.8%	79,200.00
Secaucus	2.5%	22,500.00
Union City	10.5%	94,500.00
Weehawken	2.2%	19,800.00
West New York	7.0%	63,000.00
TOTAL	100.0%	\$900,000.00

The Authority will use the remaining balance of \$174,724 to pursue programs that would address the same goals from a county wide perspective. All towns will be required to submit a detailed plan and receive approval from the Authority for use of their funds. The Authority will be responsible for conformance with all RRIT statutory requirements under N.J.S.A. 13:1E-136 et seq.

The Department has determined that the programs proposed under the Source Reduction and Recycling Awareness Program totalling \$1,188,000.00 do not satisfy the requirements of N.J.S.A. 13:1E-150b. as shown in Attachment The uses for a public relations contract, newspaper and cable television advertising, county wide mailings, scholarship program, school programs, and the purchase of 2,500 backyard compost units, leaf bags, and environmental shopping bags totalling \$1,188,000.00 are not consistent with the statute's aim of providing resource recovery user rate relief and, therefore, cannot be approved. The DEPE recognizes the importance of such source reduction and recycling education initiatives and encourages the County to avail itself of other Departmental grants which provide for The other proposed RRIT Fund uses totalling such expenditures. \$4,612,000.00 are consistent with the Act and the amendment contained the required disbursement schedule. Therefore, the amendment is approved in part and rejected in part as outlined in Section C. of the certification.

C. <u>Certification of the Hudson County District Solid Waste Management Plan</u> <u>Amendment</u>

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 uses and disbursement schedule requirements for a County's RRIT Fund, I have reviewed the December 10, 1992 amendment to the approved County Plan and certify to the County Freeholders that the December 10, 1992 amendment is approved in part and rejected in part as further specified below.

1. December 10, 1992 Amendment

a. Designation of Additional Materials

The County Plan inclusion of additional designated recyclable materials as identified in Section B. is approved. Although the DEPE has previously approved the County's designated recovery targets in its March 16, 1992 certification, the County should consider designating additional mandatory recyclables to ensure achievement of the 50% municipal waste stream and 60% total waste stream recycling goals by December 31, 1995. Also, the County should provide within 180 days in a subsequent plan amendment submission a description of how these rates can be achieved in the absence of expanded mandated recyclables and a specific timetable for the development of the proposed central recycling facility.

b. Specific Collection and Marketing Strategies

The County Plan inclusion of specified collection strategies as described in Section B. is approved. However, as also noted in Section B. since the County has not identified specific marketing strategies, these should be provided within 180 days in subsequent plan amendment submission.

c. Waste Audits

The County's program to facilitate a waste audit program as described in Section B. is approved. However, as also noted in Section B. the County should provide within 180 days in a subsequent plan amendment submission a schedule for conducting waste audits at government buildings.

d. Yard Trimmings Management

The County's programs to promote yard trimmings management as described in Section B. is approved. The program consists of four main components: a) "Grass...Cut It and Leave It", b) "Leaves...Rake Them and Compost Them", c) "Brush...Chip It and Use It", and d) Rinds and Peels...Compost Them with Worms." The first major event is scheduled for spring 1993 promoting the "Grass...Cut It and Leave It" program. However, as also noted in Section B. the County should provide within 180 days in a subsequent plan amendment submission a schedule for implementing the latter three programs.

e. Regionalization

The Department's March 16, 1992 certification directed the County to determine the extent to which it can undertake long-term regionalization of its solid waste facilities and programs and develop an implementation schedule to reflect regionalization with other districts. In this regard, the HCIA, on behalf of Hudson County, has held discussions with Bergen, Essex and Union Counties as well as the HMDC to address various aspects of the management of the region's solid waste. The HCIA has also held preliminary discussions with the HMDC regarding a regional construction and demolition recycling operation and a household hazardous waste However, as further noted in Section C.2., the County's continued reliance on out-of-state disposal for a large portion of its is inconsistent with the Department's goal of achieving self-sufficiency in solid waste disposal. The County should provide within 180 days in a subsequent plan amendment submission the specific results of regionalization discussions held to date and a schedule for future management efforts.

f. County Mixed Waste Policy

The County's proposed mixed waste policy is rejected. As noted in Section B., the Department has proposed amendments to the existing solid waste regulations at N.J.A.C. 7:26-2.11, 2.13 and 6.2; 14:3-10.15 and new "mixed loads rules" at N.J.A.C. 7:26-2B.9, 2B.10 and 6.8; 14:11-7.10. These new and modified rules will formally codify historical policy in this area and include changes to meet current demands of both enforcement agencies and the solid waste industry through more detailed recordkeeping and reporting requirements. Therefore, since this rule, when adopted, will preempt the County's regulatory authority, the County's proposed mixed waste rule must be rejected at this time. However, once rulemaking is completed, the County may wish to repropose its policy for reconsideration.

q. Rules for Facility Plan Inclusion

The County's "Rules for the Submittal and Review of Application for the Inclusion of Sites of Solid Waste and Recycling Facilities in the Hudson County Solid Waste Management Plan" are granted a cautioned approval. As noted in Section B. while the Department appreciates the County's attempt to streamline the plan amendment process, the County should be aware that presenting complete applications for facility plan inclusion to the HCIA on a bi-annual basis may be detrimental to the timely DEPE review of solid waste facility applications since the absence of plan inclusion is an immediate basis for a finding of administrative incompleteness and subsequent rejection and return of a solid waste facility permit application to the applicant. Further, in accordance with the Doria Legislation, N.J.S.A. 13:1D-101 et seq., the Department can no longer hold an application for an extended period of time while an application is revised or while plan inclusion is pending. Finally, as noted above, the County has failed to adopt a blanket plan inclusion policy for recycling centers. This failure, combined with the proposed bi-annual inclusion policy, may seriously inhibit the expeditious plan inclusion and permitting of new recycling centers and is contrary to the clearly expressed goals of the Task Force Final Report and draft Statewide Solid Waste Management Plan Update. Therefore, the DEPE provides a cautioned approval of the County's bi-annual policy at this time and requires the County to submit a subsequent amendment within 180 days in which the County reports back on considering a quarterly plan amendment adoption and submission period. The Department will evaluate the effectiveness of this facility plan inclusion policy in the future. Finally, the County has specified conditions which constitute the removal of a solid waste facility from the County Plan. As noted in Section B., although the amendment does not specifically indicate that such action must be taken through an amendment to the County Plan, the County's solid waste coordinator has indicated to the DEPE that any deletion will be accomplished through an amendment. The Solid Waste Management Act (N.J.S.A. 13:1E-24) clearly requires that all planning action by a solid waste management district be certified by the Commissioner. An amendment which removes a solid waste facility from the County Plan is necessary for the Commissioner to exercise this statutory certification authority.

h. United Wood Recycling, Inc.

The County Plan inclusion of United Wood Recycling, Inc. to be located on Block 1627, Lots 5A, 3B, 4B, and 6A at 400 Sip Avenue, Jersey City is rejected. United Wood is seeking plan inclusion to operate a recycling center to process up to 300 tons per day of source separated wood waste, which is a Class B recyclable material, into wood chips. The Department's rejection is based upon United Wood's demonstrated inability to comply with the State's solid waste management and recycling laws, as well as the imminent fire hazard that exists at the United Wood site as the result of the illegal deposit of materials at the site.

The United Wood began to operate a solid waste facility at the Jersey City site in 1990 without any permit or approval from the Department, and without having obtained inclusion in the County Plan. United Wood was cited for numerous violations of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. In July 1991, the State was faced with an imminent threat of fire due to the illegal disposal of solid waste at the site. The State was required to seek injunctive relief in the Superior Court. Honorable Robert E. Tarleton, J.S.C., entered various orders in this litigation directing United Wood to abate the public nuisance at the site and to refrain from accepting any more waste at the facility prior to obtaining approvals from the Department, local authorities and the court.

In spite of Judge Tarleton's orders, the Department was notified by the Hudson Regional Health Commission on or about May 26, 1993 that the stockpiling of large amounts of waste at the site had begun again. June 2, 1993, the Department dispatched Principal Environmental Specialist Robert Leary to the site, where he observed that illegal dumping had occurred. Mr. Leary observed a huge stockpile consisting primarily of shredded roofing material approximately 1,000 feet long by 200 feet wide and varying in depths from two to eight feet high, particularly extending under the Pulaski Skyway. Officials from the Jersey City Incinerator Authority and the Jersey City Fire Department also assessed conditions at the site and issued a Notice of Imminent Fire Hazard to Mr. Siegel and to United Wood on June 7, 1993. The Notice directed Siegel and United Wood to remove the material from the site. Mr. Siegel thereafter indicated that he was responsible for the illegal deposit of materials at the United Wood site and allowed the State and Jersey City onto the site to remedy the imminent fire hazard. At the present time, the State is in Federal Court on an emergent basis seeking to remedy the imminent fire hazard at the United Wood site. In addition, Siegel has been cited for violations of the Waterfront Development Act, based upon depositing huge amounts of roofing shingles within 500 feet of a Tidal Waterway. The State is currently negotiating a consent order with Siegel for removal of the illegally deposited material.

One of the purposes of the Commissioner's certification of county plans is to ensure that each plan is consistent with statewide solid waste management objectives, criteria and standards. N.J.S.A. 13:1E-24a(1). The Department may reject a plan amendment which is contrary to the solid waste management or other environmental programs which it administers. N.J.S.A. 13:1E-24d. The inclusion of United Wood in the County Plan at this juncture is clearly contrary to the objectives, criteria and standards of the State's solid waste management and other environmental laws. The basis for this conclusion is twofold.

First, as noted above, United Wood has a demonstrated history of significant noncompliance with the State's solid waste management laws. Among other things, United Wood has blatantly disregarded the orders of the Superior Court requiring the State to obtain five different court orders before the site was cleaned up. In addition, Siegel has illegally stockpiled significant amounts of potentially combustible materials at its Jersey City site. The courts have supported the State's efforts to

exclude significant violators of the Solid Waste Management Act and Solid Waste Utility Control Act from the solid waste industry. See Matter of Scioscia, 216 N.J. Super. 644 (App.Div. 1987), certif. den. 107 N.J. 652 (1987); Matter of Robros Recycling Corp. 226 N.J. Super. 343, 352 (App. Div. 1988), certif. den 113 N.J. 638 (1988); I/M/O Petition of A-1 Carting Company to purchase Assets and Issue Evidence of Debt Due in More than Twelve Months, Unpublished Decision, Docket No. A-5545083T7 (App. Div. 1986); Trade Waste Management v. Hughey, 780 F.2d 221 (3rd Cir. 1985). The Department has determined that because United Wood and Siegel are likely to continue violating the State's solid waste management and other environmental laws, the inclusion of the United Wood site in the County Plan is contrary to the express purpose and design of the Solid Waste Management Act and Statewide Solid Waste Management Plan.

Second, the present conditions at the United Wood site pose an unacceptable threat to the environment and to the health, safety and welfare of local residents. As noted above, both Department inspectors and local fire officials have concluded that the stockpiling of solid waste materials at the United Wood's Jersey City site has created an imminent fire hazard. Of special concern is the fact that potentially combustible materials are stockpiled near the Pulaski Skyway, threatening the safety of a major transportation artery in a manner similar to the 1989 HUB disaster at Route 78. Given the present site conditions, United Wood's inclusion in the County Plan is thoroughly contrary to the objectives, criteria and standards of the Solid Waste Management Act and Statewide Plan. For the foregoing reasons, the Department rejects that portion of the County Plan which seeks to include United Wood as a recycling center for Class B recyclable materials.

i. P&N/SJG Recycling Specialists

The County Plan inclusion of a capacity expansion and revision of acceptable Class B materials to be processed at the P&N/SJG Recycling Specialists facility located on Block 91, Lot L1, North Bergen, is approved. The facility may process up to 353 tons per day of cardboard, metals (including electrical wire and cable), paper, wood (including pallets, construction and demolition debris, other non-treated wood, trees, tree parts and brush), concrete, brick, block, stone, plaster, ceramic tile, clean fill, asphalt shingles/roofing products and glass. The facility was originally included in the County Plan by the Department's June 20, 1992 certification of the County's January 9, 1992 amendment. At that time, the facility was approved to accept 75 tons per day of cardboard, metals, fine paper, glass, concrete, rock and wood pallets.

Recycling centers that will be handling Class B recyclable materials, as defined at N.J.A.C. 7:26A-1.3, must obtain a recycling center approval from the Department pursuant to N.J.A.C. 7:26A-3 prior to operation. Class B recyclable materials may be commingled only with other Class B recyclable materials and only to the extent authorized in the general approval.

Any residue generated as a result of the operation of the recycling centers shall be disposed of pursuant to the County Plan and the Interdistrict and Intradistrict Solid Waste Flow Rules (N.J.A.C. 7:26 et seq.). The construction or operation of a recycling center which receives, stores, processes or transfers Class B recyclable materials, as defined at N.J.A.C. 7:26A-1.3, shall be preceded by the acquisition of the necessary approvals pursuant to N.J.A.C. 7:26A-3 et seq., and shall be in conformance with Departmental regulations and guidelines, including N.J.A.C. 7:26A-4.

This certification shall not be construed as an expression of the Department's intent to issue a recycling center approval to any recycling center for Class B recyclable materials. A recycling center approval shall only be granted where the applicant has submitted an administratively complete application, as per N.J.A.C. 7:26A-3.5, where all substantive criteria for approval set forth in N.J.A.C. 7:26A 3.2, 3.3 and 3.4 are satisfied, where a fee has been paid in accordance with N.J.A.C. 7:26A-2, and where none of the criteria for denial of a recycling center approval are met, as per N.J.A.C. 7:26A-11 and 12. Finally, County Plan inclusion shall not relieve the applicant from compliance with all outstanding DEPE enforcement actions.

j. Edward Tempesta, Inc./Arrow Recycling

The County Plan inclusion of the designation of the Edward Tempesta, Inc./Arrow Recycling recycling center located on Block 2145, Lot 41.R, One Jersey Avenue, Jersey City as a materials recovery facility is approved. This facility shall accept, exclusively, commercial paper and office waste generated outside of Hudson County and New Jersey and all residue from the operation of the facility shall be disposed of at out-of-state landfills. The facility was originally included in the County Plan as a recycling center in the Department's January 24, 1991 certification of the County's September 27, 1990 plan amendment. However, the applicant has not received a solid waste facility permit from the DEPE to operate a materials recovery facility since County Plan inclusion was restricted to a recycling center. Although the facility is now included as a materials recovery operation, prior to the issuance of a solid waste facility permit from the DEPE, the County must adopt and submit to the Department an amendment specifying a capacity for this facility since the December 10, 1992 amendment did not include any capacity data.

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. The issuance of operating permits pursuant to the Solid Waste Management Act is limited to those applicants found by the Department and Attorney General to be deserving of licensing under the provisions of N.J.S.A. 13:1E-126. Further, this certification shall not be construed as an expression of the Department's intent to issue a solid waste facility permit. Finally, County Plan inclusion shall not relieve the applicant from compliance with all outstanding DEPE enforcement action.

k. RRIT Fund

The County Plan inclusion of the proposed uses of and disbursement schedule for the County RRIT Fund are approved in part and rejected in part. With the exceptions identified in the Source Reduction and Recycling Awareness Program, as described in Section B., which are rejected, the proposed uses totalling \$4,612,000.00 of the County RRIT Fund are in conformance with the requirements of N.J.S.A. 13:1E-150b. and, therefore, are approved. Also, the disbursement schedule for the \$4,612,000.00 is in conformance with N.J.S.A. 13:1E-150c. and, therefore, is also approved. The County must adopt and receive the DEPE's approval for a subsequent plan amendment containing both the use of and disbursement schedule for the remaining \$1,188,000.00 available in the RRIT Fund balance which has not been approved within this certification.

2. Hudson County Response to Task Force Final Report

The County Plan has been reviewed to determine whether it fulfills the recommendations of the Task Force Final Report accepted by the Governor on November 16, 1990. As adopted, the County Plan has addressed certain components pertaining to source reduction, recycling, and regionalization as approved in Section C.1. above. However, as also noted in Section C.1. above, the County is directed to address certain deficiencies within 180 Further, numerous days in a subsequent plan amendment submission. recycling, reduction, source pertaining to regionalization were identified in Section B. which also need to be deficiencies addressed within 180 days in a subsequent plan amendment submission.

3. Hudson County District Solid Waste Management Plan Deficiencies

On January 24, 1991, the Department certified the September 27, 1990 amendment to the County Plan. This amendment represented the County's short-term disposal strategy which included continued use of the HMDC baler/balefill as a landfill for waste type 10, and as a transfer station for the remaining waste types 13, 23, 25 and 27 to be transported for out-of-state disposal. This short-term strategy was intended to provide disposal capacity only for a period sufficient for the County to develop long-term in-county disposal facilities and/or negotiate necessary interdistrict agreements with other New Jersey districts, neither of which Further, the County's reliance on out-of-state disposal for a large portion of its waste is inconsistent with the has been addressed. Department's goal of achieving in-state self-sufficiency for solid waste This deficiency has been repeatedly noted in Departmental certifications of amendments to the County Plan. In the Department's January 24, 1991 certification the DEPE directed the County to submit a subsequent plan amendment within 90 days detailing a schedule outlining facility siting, project development and regionalization timeframes.

To date, the Department has not received an adopted amendment addressing this deficiency. It is imperative that the County adopt such an amendment to identify a long-term disposal plan for the entire waste stream of the County which provides a specific strategy, including a time schedule, for constructing in-county disposal capacity or for the negotiation of

interdistrict agreements for the shared use for other existing or planned New Jersey capacity. The County must adopt and submit this amendment within 180 days of this certification. Should the County continue to fail to identify a comprehensive long-term disposal plan, the Department may have no choice but to exercise its available options of withholding and reallocating Solid Waste Services Tax monies, withholding the County's Resource Recovery Investment Tax monies, and/or initiating appropriate enforcement action.

D. Other Provisions Affecting the Plan Amendment

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

4. <u>Certification to Proceed with the Implementation of the Plan</u> 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, N.J.A.C. 7:26-1.4 and -2.13, and N.J.A.C. 7:26A-1.3.

6. <u>Effective Date of the Amendment</u>

The approved amendment to the County Plan contained herein shall take effect immediately.

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. <u>Certification of Approval in Part and Rejection in Part of the Amendment and Notification of Deficiencies by the Commissioner of the Department of Environmental Protection and Energy</u>

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 Hudson County District Solid Waste Management Plan which was adopted by the Hudson County Board of Chosen Freeholders on December 10, 1992. I hereby also require, as noted in Section C., the Hudson County Board of Chosen Freeholders to address the noted deficiencies within the timeframe specified.

SCOTT A. WEINER

COMMISSIONER

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY