



State of New Jersey

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CERTIFICATION OF THE MAY 27, 2010 AMENDMENT TO THE MERCER 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 (now known as the New Jersey Meadowlands Commission) develop comprehensive plans for waste management in their respective districts. On July 31, 1980, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Mercer County District Solid Waste Management Plan (County Plan).

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 Mercer County Board of Chosen Freeholders (County Freeholders) completed such a review and on May 27, 2010 adopted an amendment to its approved County Plan.

The May 27, 2010 amendment proposes County Plan deletion of F&M Holdings Class A recycling facility which would accept up to 700 tons per day of Class A recyclable materials located at 500 Breunig Avenue, Block 22901, Lot 5 in the City of Trenton.

The amendment was considered administratively complete for review by the Department on June 22, 2010 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 27, 2010 is rejected, as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the May 27, 2010 amendment to the County Plan according to the objectives, criteria, and standards developed in the Statewide Solid Waste Management Plan and I find and conclude that the amendment is inconsistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the elements relative to the May 27, 2010 amendment which are included below.

Elements of the May 27, 2010 Amendment

Element: Background

On August 20, 2009, the Department of Environmental Protection's (Department's or DEP) Solid and Hazardous Waste Program received a request for an administrative action to include in the Mercer County District Solid Waste Management Plan (County Plan) a Class A recycling facility to be owned and operated by F&M Holdings, LLC (F&M). The proposed Class A recycling facility, located at 500 Breunig Avenue on Block 22901, Lot 5, in the City of Trenton, would accept up to 700 tons per day of newspapers, cardboard, magazines, mixed paper, plastic, tin and bi-metal, aluminum and glass containers.

Within the August 20, 2009 administrative action request were various documents that included: a resolution from the Zoning Board of the City of Trenton finding that no use variance was necessary; a resolution from the Planning Board of the City of Trenton granting the preliminary and final site plan approval for use of an existing industrial building; a resolution from the Planning Board of the City of Trenton approving the de minimus changes of its approved site plan that adds a compressor for the installation of natural gas fuel pumps; and a resolution from the Mercer County Solid Waste Advisory Council in support of including the facility into the Mercer County District Solid Waste Management Plan (County Plan).

In review of the relevant documents pertaining to the August 20, 2009 administrative action, the Department noted several concerns of residents in the immediate area of the proposed facility, as related to potential negative impacts of the operation of this facility on these residents. The Department noted that regulations governing the operation of recycling centers found at N.J.A.C. 7:26A-4.1 et seq. required adherence to all relevant Federal and State environmental laws and regulations. Further, N.J.A.C. 7:26A-4.1 required "conformance with municipal ordinances, including but not limited to ordinances concerning ingress and egress, traffic patterns" and other considerations.

During the Department's review of the administrative action, correspondence was received from the City of Trenton and the Eyes of Trenton Civic Association expressing concern over potential traffic impacts to local residents. Meetings were also held involving the appropriate government agencies to discuss potential mitigation strategies to address local traffic concerns. For their part, F&M submitted a traffic study to the Mercer County Improvement Authority (MCIA) which demonstrated that operation of the proposed Class A recycling center would not result in an unacceptable decrease in the existing level of service of any major intersection or public roadway within a one-half mile radius of the pile.

On October 5, 2009, the Department issued a modification of this administrative action which noted certain traffic issues that needed further examination. The MCIA was required to further evaluate the traffic issues raised by the Department. Also, the MCIA was directed to meet with representatives of the Department, F&M, the City of Trenton and the Eyes of Trenton Civic Association regarding potential traffic mitigation measures.

On October 26, 2009, a meeting was held with the Department, the City of Trenton, F&M, and the Eyes of Trenton Civic Association regarding the above referenced traffic mitigation topic. As a result of the meeting, F&M proposed to route all traffic to and from its facility onto Enterprise Avenue via Plum Street.

Further, the MCIA was directed by the Department to submit a report detailing the results of the evaluation of the traffic issues noted in the October 5, 2009 administrative action modification. The MCIA contracted with Horner & Canter Associates, a transportation and traffic consulting firm, to perform a traffic engineering assessment study which was subsequently submitted to MCIA on October 27, 2009 and to the Department on December 4, 2009. Based upon the traffic impact study, F&M will generate about 85 peak hour trips dispersed to Enterprise Avenue via Plum Street. It was found that the intersection of Enterprise Avenue and Plum Street has excess capacity to accommodate the site traffic with LOS B delays being maintained.

On December 4, 2009, the Department received an administrative action letter detailing the results of the MCIA's evaluation of the issues raised in the October 5, 2009 administrative action modification. On January 4, 2010, the Department approved the December 4, 2009 Administrative Action request that sufficiently addressed the concerns noted in the October 5, 2009 modification of the August 20, 2009 administrative action and approved the County Plan inclusion of F&M.

Finally, a fundamental tenet of the Solid Waste Management Act is that each county is to develop a comprehensive plan for the collection, transportation and disposal of all solid waste generated in the district. The Department reviews and certifies each district plan to ensure its consistency with statewide solid waste management objectives, criteria and standards. The Department gives wide latitude to the counties as to the determination for the need and location of solid waste and recycling facilities. However, as noted in Section C. of this document, the Department is rejecting the County Plan deletion of this recycling center due to procedural flaws

in the adoption process.

Element: Lack of an Environmental Impact Statement

On August 17, 2010, the County submitted a Resolution with findings relative to the deletion of this facility from the Plan. One of the findings cited was the lack of an environmental impact statement having been prepared for the proposed Class A recycling center. However, it must be noted that, pursuant to the provisions of N.J.S.A. 13:1E-99.34a., “no recycling center shall be required to obtain a registration statement, engineering design approval, or approval of an environmental and health impact statement prior to the commencement of operations”.

Element: Public Hearing Process

Mercer County conducted three public hearings concerning the May 27, 2010 proposed County Plan amendment- March 9, 2010, April 20, 2010 and May 27, 2010. The March 9, 2010 public hearing was adjourned to a later date due to the lack of adequate space for all the public present. The County provided documentation pursuant to the provisions of N.J.S.A. 13:1E-23 and N.J.A.C. 7:26-6.10 (c)1 that the April 20, 2010 meeting was properly noticed in the newspaper. However, the County failed to adhere to the above noted public hearing notice provisions for the May 27, 2010 meeting, where public testimony was taken by the Board of Chosen Freeholders. Therefore, as noted within Section C. of this document the adoption process for the May 27, 2010 amendment was procedurally flawed and the May 27, 2010 County Plan amendment is rejected.

C. Certification of the Mercer 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 county solid waste management plans, I have reviewed the May 27, 2010 amendment to the approved County Plan and certify to the County Freeholders that the May 27, 2010 amendment is rejected, as further specified below.

The May 27, 2010 plan amendment is hereby rejected pursuant to N.J.A.C. 7:26-6.10(h) on the grounds that the County Plan amendment adoption process was flawed as it relates to the public hearing notification provisions of N.J.S.A. 13:1E-23 and N.J.A.C. 7:26-6.10 (c)1.

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. Certification to Proceed with 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 Freeholders shall proceed with the implementation of the approved components of the amendment certified herein.

4. 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.

5. **Effective Date of Amendment**

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


6. **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 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 reject the amendment, as outlined in Section C. of this certification, to the Mercer County District Solid Waste Management Plan, which was adopted by the Mercer County Board of Chosen Freeholders on May 27, 2010.

11/18/2010
Date



Bob Martin, Commissioner
Department of Environmental Protection