



FILE

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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  
MERCER COUNTY SOLID WASTE  
MANAGEMENT DISTRICT

CERTIFICATION  
OF THE JULY 28, 1992  
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 develop comprehensive plans for waste management in their respective districts. On July 31, 1980, the Department of Environmental Protection approved, with modification, the Mercer County District Solid Waste Management Plan (County Plan).

The Act requires that all district plans be based on and accompanied by a report detailing the existing waste disposal situation in the district, and a plan which includes the strategy to be followed by the district in meeting the solid waste management needs of the district for a ten-year planning period. The report must detail the current and projected waste generation for the district, inventory and appraise all facilities in the district, and analyze the waste collection and transportation systems which serve the district. The disposal strategy must include the maximum practicable use of resource recovery techniques. In addition to this strategy, the plan must designate sufficient available suitable sites for the disposal of the district's waste for a ten-year period, which sites may be in the district or, if none are available, in another district. (The Act provides procedures for reaching any necessary interdistrict agreements.)

The Act further provides that a district may review its plan at any time and, if found inadequate, a new plan must be adopted. The Mercer County Board of Chosen Freeholders (County Freeholders) completed such a review and on July 28, 1992, adopted an amendment to its approved County Plan. The proposed amendment incorporates the Vinch Recycling, Inc. recycling center, located in Ewing Township, to receive, process and transfer source separated Class B construction and demolition waste.

The amendment was received by the Department of Environmental Protection and Energy (Department of DEPE) on September 14, 1992 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 July 28, 1992 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 Mercer County District Solid Waste Management Plan Amendment

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the July 28, 1992 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 approved part of this plan amendment is consistent with the Statewide Solid Waste Management Plan.

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  
Division of Parks and Forestry, DEPE  
Division of Fish, Game and Wildlife, DEPE  
Division of Solid Waste Management, DEPE  
Green Acres Program, DEPE  
Groundwater Quality Management Element, DEPE  
Wastewater Facilities Regulation Element, 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 July 28, 1992 Amendment

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

Division of Parks and Forestry, DEPE  
Division of Fish, Game and Wildlife, DEPE  
Department of Agriculture  
Department of Transportation  
New Jersey Advisory Council on Solid Waste Management

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

Land Use Regulation Element, DEPE  
Groundwater Quality Management Element, DEPE  
Wastewater Facilities Regulation Element, DEPE  
Department of Health  
Department of Community Affairs  
Department of the Public Advocate  
U.S. Environmental Protection Agency  
Green Acres Program, DEPE  
New Jersey Turnpike Authority

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

Office of Energy, DEPE  
Division of Solid Waste Management, DEPE

2. Issues of Concern Regarding the July 28, 1992 Amendment

Issue: Permit Requirements

The recycling of asphalt may release organic substances into the air. The recycling equipment and any bituminous concrete plant which uses the recycled asphalt may need air pollution control apparatus to control organic substance emissions. Air pollution control permits for existing bituminous concrete plants would have to be revised to include recycled asphalt and testing is necessary to demonstrate an insignificant organic emissions increase. Further, the use of crushers will necessitate the control of particulate emissions into 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 required. Facilities to crush asphalt, concrete, brick, etc., must comply with the noise control code, N.J.A.C. 7:29-1. Finally, recycling centers are subject to the provision of N.J.A.C. 7:27-5, "Prohibition of Air Pollution." This regulation prohibits odors and other air contaminants which interfere with the enjoyment of life or property. Recycling centers are considered solid waste facilities, which are subject to N.J.A.C. 7:27-8.2(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. The County and the applicant are notified of these requirements relating to the facility permit.

**Issue: Facility Requirements**

Mercer County Ordinance Number 92-10 contains various operational conditions in Section II by which the facility is required to abide, particularly, on site storage capacity, residue generation, facility access, maximum number of trucks per day, record keeping, etc. Pursuant to N.J.A.C. 7:26A-3 et seq. and N.J.A.C. 7:26A-4 et seq. the Department has assumed full regulatory control over the technical and engineering criteria which apply to all recycling centers which must obtain an approval from the Department. Once a complete application for a recycling center approval is received by the Department, a technical review of the application will be conducted to determine if the facility can meet all applicable environmental standards. Accordingly, regulation by the County of technical and engineering aspects of the recycling center is inconsistent with the Department's regulatory program and is therefore, preempted. By copy of this certification the County and applicant are notified of this requirement and the Department's action to reject this portion of the amendment in Section C.

**Issue: Nullification of Planning Approval**

Section II of Ordinance 92-10 states that any violation of the referenced ordinance at the facility will constitute a violation of the Mercer County Solid Waste Management Plan and will permit the County of Mercer to nullify the plan amendment.

Mercer County cannot impose a condition stating that any violation at this facility will nullify the plan amendment. Once a solid waste facility is certified by the Department as an approved part of the County Plan, the Mercer County Board of Chosen Freeholders may choose to take legal or other administrative actions, including the adoption of a plan amendment which removes the facility from the County Plan, to address problems at the facility. However, there is no existing mechanism which allows an instant nullification of a plan amendment certification upon the occurrence of an operational violation at a solid waste facility pursuant to N.J.S.A. 13:1E-1 et seq. Furthermore, Section II circumvents the Department's certification authority granted to it by N.J.S.A. 13:1E-24, inasmuch as it allows the County to unilaterally amend its district solid waste management plan without Department oversight, in violation of the express requirements of the Solid Waste Management Act. Accordingly, Section C. rejects this amendment condition. By copy of this certification the County and applicant are notified of this requirement and the Department's action to reject this portion of the amendment in Section C.

**Issue: Recycling Center Approval**

Because this recycling center will be handling Class B recyclable materials, as defined at N.J.A.C. 7:26A-1.3, it must obtain a recycling center approval from the Department pursuant to N.J.A.C. 7:26A-3 prior to operation. Also, pursuant to N.J.A.C. 7:26A-4.1(a)1.iii, Class B recyclable materials may be commingled only with other Class B recyclable materials and only to the extent authorized in the general approval.

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 district solid waste management plans, I have reviewed the July 28, 1992 amendment to the approved County Plan and certify to the County Freeholders that the July 28, 1992 amendment is approved in part and rejected in part as further specified below.

1. July 28, 1992 Amendment

The inclusion of the Vinch Recycling, Inc. facility located at 1607 North Olden Avenue, Ewing Township, on Block 13, Lot 21, for recycling of Class B materials including source separated construction and demolition debris consisting of concrete, asphalt, dirt, cinder block, brick, stone, non-treated wood, and asphalt shingles is approved. As noted in Amendment 92-10, the facility will receive, process and transfer an average of 600 tons per day of concrete, asphalt, stone, dirt or cinder block, 50 tons per day of non-treated wood, and 25 tons per day of asphalt shingles. Also, the facility will not receive more than 3,600 tons per week of concrete, asphalt, brick, stone, dirt or cinder block, 300 tons per week of non-treated wood and 150 tons per week of asphalt shingles.

As noted in Section B., Mercer County Ordinance Number 92-10 contains various operational conditions in Section II by which the facility is required to abide particularly, on site storage capacity, residue generation, facility access, maximum number of trucks per day, record keeping, etc. Pursuant to N.J.A.C. 7:26A-3 et seq. and N.J.A.C. 7:26A-4 et seq. the Department has assumed full regulatory control over the technical and engineering criteria which apply to all recycling centers which must obtain an approval from the Department. Once a complete application for a recycling center approval is received by the Department, a technical review of the application will be conducted to determine if the facility can meet all applicable environmental standards. Accordingly, regulation by the County of technical and engineering aspects of the recycling center is inconsistent with the Department's regulatory program and is therefore preempted. In this regard, the above noted conditions are hereby rejected.

Further, as noted in Section B, Mercer County cannot impose a condition stating that any violation at this facility will nullify the plan amendment. Once a solid waste facility is certified by the Department as an approved part of the County Plan, the Mercer County Board of Chosen Freeholders may choose to take legal or other administrative actions, including the adoption of a plan amendment which removes the facility from the County Plan, to address problems at the facility. However, there is no existing mechanism which allows an instant nullification of a plan

amendment certification upon the occurrence of an operational violation at a solid waste facility pursuant to N.J.S.A. 13:1E-1 et seq. Furthermore, Section II circumvents the Department's certification authority granted to it by N.J.S.A. 13:1E-24, inasmuch as it allows the County to unilaterally amend its district solid waste management plan without Department oversight, in violation of the express requirements of the Solid Waste Management Act. Accordingly, this condition of the amendment providing an instant nullification of a plan amendment certification is hereby also rejected.

As noted in Section B., because this recycling center will be handling Class B recyclable materials, as defined at N.J.A.C. 7:26A-1.3, it must obtain a recycling center approval from the Department pursuant to N.J.A.C. 7:26A-3 prior to operation. Also, pursuant to N.J.A.C. 7:26A-4.1(a)1.iii. Class B recyclable materials may be commingled only with other Class B recyclable materials and only to the extent authorized in the general approval.

Further, 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.

Finally, 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.

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 portion of 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 the approved portion 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 approved portion of 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 approved 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. Certification to Proceed with the Implementation of the Plan Amendment

This document shall serve as the certification of the Commissioner of the Department to the County Freeholders and pursuant to N.J.S.A. 13:1E-24c and f, the County shall proceed with the implementation of the approved portion 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 and -2.13, and N.J.A.C. 7:26A-1.3.

6. Effective Date of the Amendment

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


7. Reservation of Authority

Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan. The Department has published a Statewide Solid Waste Management Plan, with appendices, which includes the Department's planning guidelines, rules, regulations, orders of the Department, interdistrict and intradistrict waste flow rules, and also includes the compilation of individual district plans and amendments as they are approved.

E. Certification of Approval in Part and Rejection in Part of the Amendment by the Commissioner of the Department of Environmental Protection and Energy

In accordance with the requirements of N.J.S.A. 13:1E-1 et seq., I hereby approve in part and reject in part 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 July 28, 1992.

2-3-93  
DATE

  
SCOTT A. WEINER  
COMMISSIONER  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AND ENERGY

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