



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection
Office of the Commissioner
P.O. Box 402
Trenton, NJ 08625-0402
Tel. # 609-292-2885
Fax. # 609-292-7695

Robert C. Shinn, Jr.
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 AUGUST 21, 1997
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 (Department or DEP) approved, with modifications, 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.

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 August 21, 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., 112 F.3d 652 (3d 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 emergency 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 DEP to represent a legal determination regarding the effect of the Atlantic Coast decision on any specific contract between public and/or private parties.

The August 21, 1997 amendment has three components:

- *Renegotiated GROWS Landfill License Agreement for Disposal Services
- *Mercer County Transfer Station Reprourement Process
- *Enforcement

The amendment was received by the Department on September 11, 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 August 21, 1997 is approved in part, modified in part, and remanded 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 August 21, 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 the 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 August 21, 1997 amendment which are included in Section B.2. below.

In conjunction with the review of the amendment, the Department circulated copies to sixteen federal and state 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. All agencies contacted are as follows:

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
Division of Water Quality, DEP
Office of Air Quality Management, DEP
Green Acres Program, DEP
Land Use Regulation Element, DEP
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
Department of Agriculture
Department of Health
Department of Transportation
Department of Community Affairs
Department of Treasury
U.S. Environmental Protection Agency

1. Agency Participation in the Review of the August 21, 1997 Amendment

The following agencies did not object to the proposed amendment:

Green Acres Program, DEP
Department of Agriculture
New Jersey Turnpike Authority
Office of Air Quality Management, DEP

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

Division of Water Quality, DEP
Division of Parks and Forestry, DEP
Division of Fish, Game and Wildlife, DEP
Land Use Regulation Element, DEP
Department of Health
Department of Transportation
Department of Community Affairs
Department of Treasury
New Jersey Advisory Council on Solid Waste Management
U.S. Environmental Protection Agency

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

Division of Solid and Hazardous Waste, DEP
Division of Compliance and Enforcement, DEP

2. Issues of Concern Regarding the August 21, 1997 Amendment

Issue: Renegotiated GROWS License Agreement for Disposal Services

On February 17, 1988 the Mercer County Improvement Authority (MCIA) executed a License Agreement with Geological Reclamation and Operations Waste Systems, Inc. (GROWS) providing the MCIA the right to deposit up to 4.5 million tons of waste at Waste Management Inc. landfills during the term of the License Agreement. An Amended License Agreement dated August 5, 1997 between the noted parties provides for, among other things, the following:

*The License Agreement shall expire on December 31, 2007.

*The Operation and Maintenance (O&M) Fee for all acceptable waste shall be as follows:

<u>Time Period</u>	<u>O&M Fee Per Ton</u>
Amendment effective date to December 31, 1997	66.79
January 1, 1998 to December 31, 1998	45.00
January 1, 1999 to December 31, 1999	46.35
January 1, 2000 to December 31, 2000	47.74
January 1, 2001 to December 31, 2001	49.17
January 1, 2002 to December 31, 2002	50.65
January 1, 2003 to December 31, 2003	52.17
January 1, 2004 to December 31, 2004	53.74
January 1, 2005 to December 31, 2005	55.35
January 1, 2006 to December 31, 2006	57.01
January 1, 2007 to December 31, 2007	58.72

Since the County has adequately demonstrated that it secured a disposal contract in a nondiscriminatory manner with an out-of-state landfill, the Department, within Section C. of the certification, approves this component of the amendment. Therefore, the County may continue to direct its solid waste to the GROWS Landfill.

Issue: Mercer County Transfer Station Procurement Process

The Mercer County Transfer Station located in Ewing Township is presently operated by Longview Waste Systems under a short-term contract awarded by the MCIA. In procuring this contract, the MCIA did not solicit bids from transfer stations located outside of Mercer County. Therefore, the proposed amendment provides that the MCIA shall solicit bids for the provision of transfer and transportation services for solid waste to the GROWS Landfill. Interested bidders shall have the opportunity to bid on either (a) the operation of the existing Mercer County Transfer Station and provision of transfer services or (b) the provision of transfer and transportation services from a regulated and lawfully permitted transfer station located either within Mercer County, in another

county, or outside New Jersey according to the following schedule:

<u>Activity</u>	<u>Date</u>
Advertisement of Bid Specifications	October 6, 1997
Pre-Bid Conference	October 16, 1997
Receipt of Bids	October 27, 1997
Contract Award	November 24, 1997
Commence Performance of Work	December 1, 1998

Since this procurement process has not yet been completed, within Section C. of the certification this component of the amendment is approved with modification contingent upon receipt by the DEP of documents awarding a nondiscriminatory bid contract to provide transfer and transportation services. Therefore, if the stay of the injunction against enforcement of waste flow is lifted, the County may not continue to direct solid waste to the MCIA Transfer Station until a subsequent plan amendment or administrative action adopting the results of the nondiscriminatory procurement process is submitted to and approved by the Department.

Finally, the Department is concerned that if the contract(s) awarded for disposal services does not provide for materials recovery, it may have an adverse impact upon the recycling rates achieved by the County and may conflict with the allowance for procurement of recycling services afforded to commercial waste generators [see N.J.S.A. 13:1E-99.16(d)]. If this is the case, the County must amend the County Plan to identify its strategy to ensure the continuing availability of materials recovery services toward complying with this statutory exemption for the commercial sector. Such action may be initiated as an Administrative Action pursuant to N.J.A.C. 7:26-6.11(b)6.

Issue: Enforcement

The amendment anticipates that the MCIA exercise sole jurisdiction to enforce compliance with the proposed solid waste system. Specifically, the MCIA would be authorized to establish and implement a program for the inspection of solid waste and to enforce or prosecute violators of the system. This amendment authorizes the MCIA to directly exercise enforcement powers under the auspices of the County Environmental Health Act (CEHA) found at N.J.S.A. 26:3A2-21 et seq. However, Mercer County is one of only two counties within the State that has failed to create a CEHA county enforcement program. CEHA is very clear that only county health agencies qualify for certification as a CEHA agency. The MCIA could participate as a subcontractor under CEHA to address solid waste enforcement matters. Therefore, within Section C. of the certification, this component of the amendment is remanded for modification consistent with the creation of a CEHA agency in Mercer County with the MCIA acting as a subcontractor for enforcement of solid waste matters.

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 August 21, 1997 amendment to the approved County Plan and certify to the County Freeholders that the August 21, 1997 amendment is approved in part, modified in part, and remanded in part as further specified below.

Renegotiated GROWS Landfill License Agreement for Disposal Services

The County Plan inclusion of the GROWS License Agreement executed on February 18, 1988 is approved. Specifically, since the County has adequately demonstrated that it secured a disposal contract in a nondiscriminatory manner with an out-of-state landfill, the Department approves this portion of the amendment and the County may continue to direct its solid waste to the GROWS Landfill.

Mercer County Transfer Station Procurement Process

The County Plan inclusion of a nondiscriminatory procurement process to solicit bids for the provision of transfer and transportation services for solid waste to GROWS Landfill is approved with modification contingent upon receipt by DEP of documents awarding a nondiscriminatory bid contract to provide said services. Specifically, as noted within Section B. of the certification, this process has not yet been completed. Therefore, if the stay of the injunction against enforcement of waste flow is lifted, the County may not continue to direct solid waste to the MCIA Transfer Station until a subsequent plan amendment or administrative action adopting the results of the nondiscriminatory procurement process is submitted to and approved by the Department.

Enforcement

The County Plan inclusion of an enforcement program created under the auspices of the County Environmental Health Act (CEHA) (N.J.S.A. 26:3A2-21 et seq.) to authorize the MCIA to enforce compliance with the proposed solid waste system is remanded for modification consistent with the creation of a CEHA agency in Mercer County with the MCIA acting as a subcontractor for enforcement of solid waste matters.

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 Solid Waste Management Plan

The provisions of the District 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 waste, sewage sludge, septage, and hazardous waste. 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 Department to the County Freeholders and pursuant to N.J.S.A. 13:1E-24c. and f., the County shall proceed with the implementation of the approved portions of the amendment certified herein.

5. Definitions

For the purpose of this amendment and unless the context clearly requires a different meaning, the definitions of terms shall be the same as those found at N.J.S.A. 13:1E-3 and -99.12, N.J.A.C. 7:26-1.4, -2.13, and N.J.A.C. 7:26A-1.3.

6. Effective Date of the Amendment

The approved portion of the amendment 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

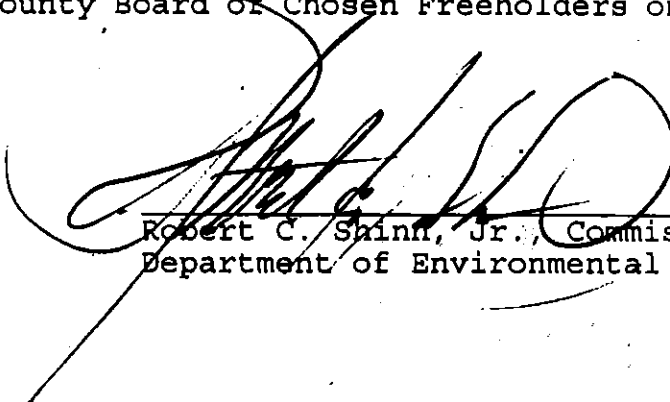
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's 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, Modification, and Remand 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, modify in part, and remand 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 August 21, 1997.

Date

11/10/97


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