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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 AUGUST 27, 1991
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 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, 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 August 27, 1991, adopted an amendment to its approved County Plan. The proposed amendment incorporates the Albert E. Barrett, Inc. recycling facility, located in Hamilton Township, for the recycling of construction and demolition debris.

The amendment was received by the Department of Environmental Protection and Energy (Department or DEPE) on September 6, 1991 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 August 27, 1991 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 August 27, 1991 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 were the following:

Division of Environmental Quality, DEPE
Division of Coastal Resources, 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 August 27, 1991 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
Green Acres Program, DEPE
New Jersey Turnpike Authority
Department of Agriculture
Department of Transportation
U.S. Environmental Protection Agency

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

Division of Coastal Resources, DEPE
Groundwater Quality Management Element, DEPE
New Jersey Advisory Council on Solid Waste Management
Department of Health
Department of Community Affairs
Department of the Public Advocate

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

Division of Environmental Quality, DEPE
Wastewater Facilities Regulation Element, DEPE
Division of Solid Waste Management, DEPE

2. Issues of Concern Regarding the August 27, 1991 Amendment

Issue: Permit Requirements

If the proposed operation will discharge pollutants as defined in N.J.A.C. 7:14A-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. Also, the recycling of asphalt may release organic substances to 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. 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 Enclosure Requirement

Ordinance Number 91-18, contains a condition in Section IIId which states that the facility shall enclose the concrete crushing equipment to minimize the amount of dust and noise generated.

Pursuant to N.J.A.C. 7:26A-4.1(a)7, the operation and related activities of a recycling center shall be in conformance with all applicable federal, state, county, municipal and other local laws and regulations including, but not limited to, the noise regulations at N.J.A.C. 7:29. Accordingly, the Department has assumed responsibility through the recycling rules for technical engineering concerns such as noise and dust generation at recycling centers. Once a complete application for a recycling center approval has been received by the Department, a technical review of the anticipated noise level will be conducted to determine if the facility can meet the noise standards. Similarly, a review of the measures to be taken to control dust will be conducted at that time. Because the Department does not have sufficient engineering information at the planning stage to determine whether or not equipment must be enclosed to reduce noise and dust generation to acceptable levels, the Department must reject Section IIId of County Ordinance 91-18. The County may be assured, however, that the Department will thoroughly investigate noise and dust generation during the technical phase of facility review, consistent with the recycling regulations at N.J.A.C. 7:26A-1 et seq.

Issue: Nullification of Planning Approval

Section IIIn of Ordinance 91-18 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. 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 IIIn 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 solid waste management plan without Department oversight, in violation of the express requirements of the Solid Waste Management Act.

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 27, 1991 amendment to the approved County Plan and certify to the County Freeholders that the August 27, 1991 amendment is approved as further specified below.

1. August 27, 1991 Amendment

The inclusion of Albert E. Barrett, Inc. recycling facility located at 2485 East State Street in Hamilton Township, on Block 62, Lot 23, for recycling of construction and demolition debris such as concrete, asphalt, cinder block, brick and stone is approved.

The construction and operation of any recycling center which will receive, store, process or transfer Class B recyclable materials shall be preceded by the acquisition of the necessary approval pursuant to N.J.A.C. 7:26A-3, and must comply with all other applicable laws.

However, the DEPE rejects that part of the certification, which includes the conditions placed upon the Barrett operations as described in Ordinance Number 91-18, Sections II d and II n. Ordinance Number 91-18 contains a condition in Section II d which states that the facility shall enclose the concrete crushing equipment to minimize the amount of dust and noise generated. As noted in Section B., pursuant to N.J.A.C. 7:26A-4.1(a)7, the operation and related activities of a recycling center shall be in conformance with all applicable federal, state, county, municipal and other local laws and regulations including, but not limited to, the noise regulations at N.J.A.C. 7:29. Accordingly, the Department has assumed responsibility through the recycling rules for technical engineering concerns such as noise and dust generation at recycling centers. Once a complete application for a recycling center approval has been received by the Department, a technical review of the anticipated noise level will be conducted to determine if the facility can meet the noise standards. Similarly, a review of the measures to be taken to control dust will be conducted at that time. Because the Department does not have sufficient engineering information at the planning stage to determine whether or not equipment must be enclosed to reduce noise and dust generation to acceptable levels, the Department must reject Section II d of County Ordinance 91-18. The County may be assured, however, that the Department will thoroughly investigate noise and dust generation during the technical phase of facility review, consistent with the recycling regulations at N.J.A.C. 7:26A-1 et seq., and require this enclosure if warranted.

Further, Section II n of Ordinance 91-18 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. As noted in Section B., Section I In 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 solid waste management plan without Department oversight, in violation of the express requirements of the Solid Waste Management Act.

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 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.

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 part 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 and N.J.A.C. 7:26-1.4 and -2.13.

6. Effective Date of the Amendment

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 August 27, 1991.

Jan 31, 1992
DATE

Scott A. Weiner
SCOTT A. WEINER
COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND ENERGY