

**Office of the Commissioner
P.O. Box 402
Trenton, New Jersey 08625-0402
Tel. # (609) 292-2885
Fax. # (609) 292-7695**

Mr. James Lambert, Executive Director
Mercer County Improvement Authority
McDade Administration Building
640 South Broad Street
P. O. Box 8068
Trenton, New Jersey 08650-0068

Dear Mr. Lambert:

On December 16, 1997 the Department of Environmental Protection's (DEP or Department) Division of Solid and Hazardous Waste received the Mercer County Improvement Authority's (MCIA) request for administrative action pursuant to the provisions of N.J.A.C. 7:26-6.11(b)9. This request for administrative action is in 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. 112F.3d 652 (3rd Cir. 1997), cert. den., November 10, 1997.] As a result of that decision, 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.

The December 16, 1997 MCIA request for administrative action pursuant to N.J.A.C. 7:26-6.11(b)9 petitions the Department to reaffirm the designation of the MCIA Transfer Station located in Ewing Township as the sole facility to which all solid waste generated within Mercer County is directed. On August 21, 1997, Mercer County adopted its initial amendment in response to the Atlantic Coast decision. This amendment had three components:

- * Renegotiated GROWS Landfill License Agreement for Disposal Services;
- * Mercer County Transfer Station Procurement Process; and
- * Enforcement.

Within the Department's November 10, 1997 certification of the amendment, the DEP approved the GROWS Landfill Agreement, remanded the enforcement component, and approved with modification the transfer station procurement process. Specifically, regarding this latter component, it was approved with modification contingent upon receipt of documents awarding a nondiscriminatory bid contract for said services. The MCIA has submitted the required documentation as further described below.

On October 6, 1997, the MCIA issued bid specifications for the provision of transfer and transportation services for solid waste (including yard waste). Bidders had the option to submit bids for transfer and transportation services utilizing the MCIA Transfer Station or an alternative transfer station located either within Mercer County, in another county, or outside of New Jersey. Bidders also had the option to provide transportation services only utilizing the MCIA Transfer Station.

On November 5, 1997, the MCIA received three proposals for the provision of solid waste (including yard waste) transfer and transportation services utilizing the MCIA Transfer Station. The bidders included: 1) Longview of Mercer, Inc., Trenton, New Jersey; 2) GROWS Inc., Morrisville, Pennsylvania; and 3) Chambers Waste Systems of New Jersey, Inc., Hoboken, New Jersey. The MCIA did not receive any bids for utilization of an alternative transfer station or for provision of transportation services only.

On November 24, 1997, the MCIA's Board of Commissioners approved Resolution #97-156 awarding the contracts for transfer and transportation of solid waste (including yard waste) to the lowest responsible bidder which was Longview of Mercer, Inc. Pursuant to N.J.A.C. 7:26-6.11(b)9., the MCIA held a public hearing on December 15, 1997 to receive comment following proper public notice to reaffirm its existing transfer and transportation services strategy. Therefore, since the MCIA has sufficiently demonstrated that the procurement of transfer and transportation services was consistent with the criteria set forth in the Atlantic Coast decision, pursuant to N.J.A.C. 7:26- 6.11(f) the Department hereby approves as an administrative action the Mercer County Transfer Station procurement process. Accordingly, Mercer County may direct all solid waste (including yard waste) to the Mercer County Transfer Station located in Ewing Township, Mercer County effectively immediately.

Relative to implementation of the Mercer County solid waste system, the Department is concerned with two issues. First, the high disposal rate presently being charged users of the system. The MCIA must examine all possible options to reduce their tipping fee to a competitive rate as soon as possible. The Department is aware of ongoing efforts to remove the cost of recycling services from the County tip fee to municipal budgets which should result in a rate reduction of approximately \$18 per ton within the next six months, while still retaining the current level of recycling services for the residents of Mercer County.

Second, within the Department's November 10, 1997 certification, the DEP noted that if the contract awarded for disposal services does not provide for materials recovery, it may adversely 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 were the case, the County was directed to 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. Since the Longview of Mercer, Inc. contract does not address materials recovery, the County is hereby directed (pursuant to N.J.A.C. 7:26-6.11(b)6.) to submit with 45 days an Administrative Action which provides a narrative description of how it will meet or surpass the State's mandated recycling goals and provide for materials recovery, particularly for construction and demolition debris.

This administrative action 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.

Should you have any questions in this regard, please contact Gary Sondermeyer, Director, Division of Solid and Hazardous Waste, at 609-984-6880.

Sincerely,

Robert C. Shinn, Jr.
Commissioner