



State of New Jersey  
Department of Environmental Protection and Energy  
Office of the Commissioner  
CN 402  
Trenton, NJ 08625-0402

Jeanne M. Fox  
Acting Commissioner

**IN THE MATTER OF CERTAIN AMENDMENTS  
TO THE ADOPTED AND APPROVED SOLID  
WASTE MANAGEMENT PLAN OF THE  
MIDDLESEX COUNTY SOLID WASTE  
MANAGEMENT DISTRICT**

**CERTIFICATION  
OF THE JUNE 3, 1993  
AMENDMENT TO THE MIDDLESEX COUNTY  
DISTRICT SOLID WASTE MANAGEMENT PLAN**

**BY ORDER OF THE ACTING 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 29, 1980, the Department of Environmental Protection approved, with modifications, the Middlesex 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 County Plan at any time and, if found inadequate, a new County Plan must be adopted. The Middlesex County Board of Chosen Freeholders (County Freeholders) completed such a review and on June 3, 1993, adopted an amendment to its approved County Plan.

The amendment proposed the County Plan inclusion of the Good Earth Recycling Facility, doing business as Brocon Petroleum, Inc., located in Perth Amboy, Middlesex County subject to certain terms and conditions for illegally stockpiling materials prior to obtaining an approval to operate a recycling center. The recycling center proposes to recycle both Class A and B materials. The Class A material proposed is glass and the Class B materials are nonhazardous petroleum contaminated soil, concrete, tires, and asphalt. Specifically, Brocon is seeking inclusion to accept a maximum of 900 tons per day (TPD) of nonhazardous petroleum contaminated soil, 25 TPD of glass, 25 TPD of concrete, 25 TPD of rubber tires, and 25 TPD of asphalt products. The facility's processing capacity would be 400 TPD based on two eight hour shifts, six days a week.

The amendment was received by the Department of Environmental Protection and Energy (Department or DEPE) on June 21, 1993 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 June 3, 1993 is rejected as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the June 3, 1993 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 this plan amendment is inconsistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders and the applicant are notified of the issues of concern relative to the June 3, 1993 amendment which are included in Section B.2 below.

In conjunction with the review of the amendment, the Department circulated copies to fifteen 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 Air Quality Management, DEPE  
Land Use Regulation Element, DEPE  
Wastewater Facilities 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

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 June 3, 1993 Amendment

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

Division of Parks and Forestry, DEPE  
Green Acres Program, DEPE  
Division of Fish, Game and Wildlife, DEPE  
New Jersey Turnpike Authority  
New Jersey Advisory Council on Solid Waste Management  
Department of Agriculture  
Department of Health  
Department of Community Affairs

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

Department of Transportation  
Department of the Public Advocate  
U.S. Environmental Protection Agency

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

Office of Air Quality Management, DEPE  
Land Use Regulation Element, DEPE  
Wastewater Facilities Regulation Element, DEPE  
Division of Solid Waste Management, DEPE

2. Issues of Concern Relative to the June 3, 1993 Amendment

**Issue: Regulatory Requirements**

The proposed site for the Good Earth Recycling Facility contains Freshwater Wetlands which were delineated on May 13, 1992. Should activities at this facility take place within the Freshwater Wetlands, a Freshwater Wetlands Permit will be required. Also, activities within 500 feet of the Woodbridge Creek may require a Waterfront Development Permit. Finally, activities within the floodplain may require a Stream Encroachment Permit. All three permits, if required, would be obtained from the DEPE's Land Use Regulation Element.

Recycling centers are subject to the provisions of N.J.A.C. 7:27-5, "Prohibition of Air Pollution" which prohibits odors and other air contaminants which interfere with the enjoyment of life or property. Further, recycling centers are considered solid waste facilities and 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 combustion of used oil and mixtures of used oil and other oil are subject to the provisions of N.J.A.C. 7:27-8.2(a)13 which requires the combustion of such oil only be done in controlled devices with air pollution control permits specific to the combustion of used waste oil. Furthermore, the use of crushers, chippers and shredders will necessitate the control of particulate emissions to 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 which crush asphalt, concrete and brick must comply with the noise control code N.J.A.C. 7:29.1. Additionally, 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 an 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. Finally, if the proposed recycling operation will discharge pollutants as defined in N.J.A.C. 7:14A-1.9, said operations may be required to secure a New Jersey Pollutant Discharge Elimination System Permit and/or a Treatment Works Approval for pollutant discharges prior to construction or operation.

**Issue: Pending Violations**

The Good Earth Recycling Facility has received numerous notices of violation from the DEPE for violating the Department's solid waste and recycling laws. The chronology of said violations is as follows:

a. March 18, 1992 - Brocon was advised by the DEPE that it could not solicit business as an approved DEPE recycling center until receipt of such an approval from the department. The company concurred that it would cease such solicitation until it was permitted to operate as a recycling center for Class B materials. However, in August 1992, the company violated this understanding by contracting with the City of Perth Amboy Board of Education to remove and thermally treat at its Good Earth Recycling Facility in Perth Amboy 500 tons of soil excavated during an underground storage tank removal job. Ultimately, the soil was dumped on its leased property.

b. June 30 and July 8, 1992 - A DEPE visit was conducted at the unapproved recycling center site and violations were issued for noncompliance with N.J.A.C. 7:26-2.8(f) and 7:26A-3.1(a) for operation of an illegal solid waste facility and a recycling center for Class B materials, respectively, due to the stockpiling of asphalt and concrete.

c. August 5, 1992 - A return DEPE site visit resulted in a repeat violation for the same stockpiles. As of that date, no response had been received from Brocon. Additionally, during this visit, the Middlesex County Health Department conducted sampling of soil piles stockpiled on site by Brocon. The sampling result exceeded permitted levels of contaminants and Brocon was fined in excess of \$12,000 by Middlesex County.

d. October 22, 1992 - A DEPE reinspection of the site was conducted. The concrete and asphalt appeared to have been removed. However, some soil piles observed on previous visits had been graded into the site. The site elevation had increased and pieces of plastic tarping, and small chunks of asphalt and concrete, were observed protruding throughout the soil. The soil mounds from which samples were taken were observed to be stable.

e. November 22, 1992 - A letter was forwarded to Brocon from DEPE advising the company that they were not permitted to fill or grade the site without further approvals. This was based on the fact that Brocon had not submitted documentation showing approval of the property owner.

f. January 22, 1993 - Another joint DEPE/Middlesex County Health Department inspection was conducted. Additional mounds of soil were observed on site, also stockpiling of scrap wood, asphalt and concrete. Another violation was issued to Brocon for operation of an unapproved solid waste facility, N.J.A.C. 7:26-2.8(f).

g. June 3, 1993 - The County Freeholders adopted a resolution formally including the Good Earth Recycling Facility within the County Plan subject to the following terms and conditions:

- (1) All soil currently on-site, estimated to be the 50,000 tons required to disrupt/close and grade the closed Bird Roofing Landfill site, must be properly processed in order to eliminate the hydrocarbon content of the ID 27 petroleum contaminated soil, pursuant to the DEPE Bureau of Air Pollution Permit/Certificate conditions. No additional ID 27 petroleum hydrocarbon contaminated soil should be delivered to the site until the existing stockpiled soil is processed, and the disruption/closure and grading process completed and approved by the County and DEPE. Under any circumstance this activity should not be allowed to exceed one year from the time the DEPE approves operations at the facility;
- (2) Brocon must comply with all conditions of those DEPE regulations and approvals issued to this facility including, but not limited to, recycling, solid waste, air pollution, water pollution, etc.;
- (3) Brocon must comply with any and all local and County regulatory requirements;
- (4) Brocon must resolve the matter of the Environmental Health Department's Notice of Violation Nos. 633 and 1025 and Penalty Assessment Nos. 157 and 310; and

- (5) In the event continued operation of the facility is approved after the subject contaminated soil is processed/applied, Middlesex County generated ID 27 petroleum contaminated soil should be given primary consideration for processing at the facility.

According to Middlesex County, the Notices of Violation identified in condition (4) above remained unresolved and the penalty assessment partially resolved as of November 17, 1993.

h. July 1, 1993 - Pursuant to correspondence received from the DEPE's Bureau of Underground Storage Tanks regarding the 500 tons of soil removed by Brocon in August 1992 from the Perth Amboy Board of Education, another DEPE/Middlesex joint inspection was conducted. Documentation was also received from the Perth Amboy Board of Education showing that Brocon had advertised themselves as a recycling facility in August 1992. Further violations were issued by the DEPE to Brocon for noncompliance with N.J.A.C. 7:26-2.8(f) for the operation of an illegal solid waste facility due to stockpiling the 500 tons of soil on site without prior approval.

Therefore, as noted in Section C. of the certification, due to Brocon's demonstrated inability to comply with the DEPE's solid waste and recycling laws, the Department must reject the County Plan inclusion of the Good Earth Recycling Facility.

C. Certification of the Middlesex 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 June 3, 1993 amendment to the approved County Plan and certify to the County Freeholders that the June 3, 1993 amendment is rejected as further specified below.

The County Plan inclusion of the Good Earth Recycling Facility, doing business as Brocon Petroleum, Inc., located at Block 475, Lots 1.04 and 1.05 on the corner of Amboy Avenue and Maurer Road, City of Perth Amboy, Middlesex County as a recycling center to process Class A and B materials is rejected. The Department's rejection is based on the applicant's demonstrated inability to comply with the DEPE's solid waste and recycling laws as documented in Section B. of the certification. Brocon's enforcement history demonstrates a blatant disregard for the solid waste management and recycling laws of the State such that the DEPE does not consider Brocon and its owners to be reliable and competent to operate a solid waste facility or recycling center in New Jersey.

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, but are subject to regulation in accordance with N.J.A.C. 7:26A-1 et seq.

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 and -2.13, and N.J.A.C. 7:26A-1.3.

5. 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 Rejection of the Amendment by the Acting 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 reject the amendment, as outlined in Section C. of this certification, to the Middlesex County District Solid Waste Management Plan which was adopted by the Middlesex County Board of Chosen Freeholders on June 3, 1993.

November 17, 1993  
DATE

Jeanne M. Fox  
JEANNE M. FOX  
ACTING COMMISSIONER  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AND ENERGY

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