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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
MIDDLESEX COUNTY SOLID WASTE
MANAGEMENT DISTRICT**

**CERTIFICATION
OF THE DECEMBER 28, 1992
AMENDMENTS TO THE MIDDLESEX 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 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. Amendments to the Act found in N.J.S.A. 13:1E-136 et seq. require that, among other things, counties amend their County Plan to include an outline of the proposed uses of moneys in the County Resource Recovery Investment Tax (RRIT) Fund as well as establish a schedule for disbursement of moneys in that fund. The Middlesex County Board of Chosen Freeholders (County Freeholders) completed such a review and on December 28, 1992, adopted two amendments to its approved County Plan.

Amendment #1992-6 proposed inclusion of the ODACO, Inc. recycling center in the Township of South Brunswick, Middlesex County. The recycling center will process Class B materials which include waste wood, brush, stumps, tree parts and other nonchemically treated wood. Additionally, Amendment #1992-7 proposed inclusion of a modified use and disbursement schedule for the County RRIT Fund for \$3,055,000.00 to finance the Municipal Recycling Assistance Program (MRAP). The moneys will provide the necessary financial assistance for the operation and expansion of local recycling programs.

The amendments were received by the Department of Environmental Protection and Energy (Department or DEPE) on January 11, 1993, and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed these amendments, as well as the entire County Plan, and has determined that the amendments adopted by the County Freeholders on December 28, 1992 are approved as provided in N.J.S.A. 13:1E-24. While the immediate plan amendment has been approved, deficiencies in the County Plan have been identified within Section C. of this certification.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the December 28, 1992 amendments to the County Plan according to the objectives, criteria, and standards developed in the Statewide Solid Waste Management Plan and N.J.S.A. 13:1E-150 and I find and conclude that these plan amendments are consistent with the Statewide Solid Waste Management Plan and N.J.S.A. 13:1E-150 in proposing an acceptable use of and disbursement schedule for moneys in the County RRIT Fund and in advancing recycling goals. In this regard, the County Freeholders and the applicant are also notified of the issues of concern relative to the December 28, 1992 amendments which are included below.

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
Groundwater Quality Management 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 Amendment #1992-6

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

Division of Parks and Forestry, DEPE
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
Department of Agriculture
Department of Transportation

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

Green Acres Program, 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

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

Land Use Regulation, DEPE
Division of Solid Waste Management, DEPE
Office of Energy, DEPE
Division of Fish, Game and Wildlife, DEPE

2. Agency Participation in the Review of Amendment #1992-7

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

Office of Energy, DEPE
Division of Parks and Forestry, 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 Transportation

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

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

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

Division of Solid Waste Management, DEPE

3. Issues of Concern Regarding Amendment #1992-6

Issue: Regulatory Requirements

The DEPE has undertaken an enforcement action at the ODACO, Inc. recycling center site for filling wetlands with wood chips. Further, a review of DEPE's National Wetlands Inventory and New Jersey Wetlands maps indicates the presence of forested wetlands in the vicinity of the ODACO, Inc. site. Facility development, whether new or an expansion, should avoid wetlands and/or comply with the Freshwater Wetlands Regulations if necessary. Therefore, a Freshwater Wetlands Letter of Interpretation must be applied for by ODACO, Inc. from the DEPE Land Use Regulation Element. Also, as noted in Section C., approval of this facility in the County Plan does not relieve the applicant from compliance with all outstanding Department enforcement actions.

Also, Recycling Centers are subject to the provisions 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 and property. Also, 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.

Further, the use of crushers, chippers and shredders may necessitate the control of particulate emissions to the air. Therefore, 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 may be required. Finally, facilities which crush and/or shred concrete, brick, etc. must also comply with the noise control code, N.J.A.C. 7:29.1.

4. Issues of Concern Regarding Amendment #1992-7

Issue: RRIT Fund Uses and Disbursement Schedule

On February 5, 1987 the County Freeholders adopted a plan amendment which proposed the use of the RRIT Fund for development, construction and operation of both an incinerator and a materials processing/recycling facility and allocated two percent to the County on an annual basis for administration of the fund. The Plan amendment also contained a disbursement schedule.

The Department in its certification of July 10, 1987 approved the uses but rejected the disbursement schedule because it lacked sufficient detail to satisfy the Department's criteria for allocation for activities over time. The County was required to submit a revised disbursement schedule as a minor modification which did not require an additional public hearing.

On January 14, 1988, the Department approved the minor modification disbursement schedule for the facilities which allocated \$887,000 for the design, financing and construction of the incinerator facility, and \$2,150,000 for design, finance, construction and operation of the recycling facility. Disbursement was limited to \$3,037,000 plus the annual 2% fund administration fee previously approved.

On October 28, 1992 the Department approved a May 26, 1992 plan amendment, which proposed utilization of RRIT Fund moneys for the collection, separation, recycling and recovery of materials for reuse, including the purchase and/or construction of new recycling and composting facilities, as consistent with the provisions of N.J.S.A. 13:1E-150 et seq. and as being consistent with the previously approved use. In this regard, the disbursement schedule which provided \$200,000 for consultant services for a preliminary facilities design and \$100,000 for project management services was also approved to the extent that these expenditures are consistent with previous approvals. The County was required to receive the Department's approval for a plan amendment for the remaining fund balance. Further, as noted in the amendment, the previously approved use of the funding for the County incinerator project was deleted.

On December 28, 1992, the County Freeholders adopted another amendment to their County Plan which proposed the modified use of moneys from the RRIT Fund and provided a schedule for disbursement of those moneys. The amendment proposed the use of moneys to finance the MRAP. The MRAP has been developed to provide financial assistance to the 25 municipalities in Middlesex County for the conduct and expansion of their local recycling programs. Specifically, the MRAP will provide an appropriation of \$3,055,000.00 for disbursement back to the municipalities for the explicit use of developing and implementing recycling programs and facilities. Each municipality will receive a base amount of \$30,000 with the remaining disbursement to be based upon certain percentages, namely, 40% will be based upon population, 50% based upon tonnage of recyclable materials claimed on the 1991 Bonus Grant form and 10% based upon land area of the

municipality. This program will allow municipalities to reduce operational costs of recycling programs and to reduce tipping rates at recycling centers thereby providing for a transition away from disposal at the Edgeboro landfill and toward the recovery of materials at local recycling centers. This will assist the County in achieving New Jersey's 60% total waste stream and 50% municipal waste stream recycling goals. However, the amendment did not contain a disbursement schedule for the existing fund balance, \$12,190,918 as of January 1, 1993, or for future deposits.

The RRIT Fund uses noted above are consistent with the requirements of N.J.S.A. 13:1E-150b and the disbursement schedule is also consistent with the DEPE's content and format criteria for provisions of a disbursement schedule. However, the County must receive the Department's approval for the disbursement of the remaining fund balance.

C. Certification of the Middlesex County District Solid Waste Management Plan Amendments

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, and N.J.S.A. 13:1E-150 which establishes uses and disbursement schedule requirements for a County's RRIT Fund, I have reviewed the December 28, 1992 amendments to the approved County Plan and certify to the County Freeholders that the December 28, 1992 amendments are approved as further specified below.

1. Amendment #1992-6

The County Plan inclusion of the ODACO, Inc. recycling center located at 234 Broadway Road, Block 5, Lot 25, in the Township of South Brunswick, to process Class B materials is approved. The proposed facility will process a maximum of 300 tons per day of brush, stumps, tree parts and other nonchemically treated wood subject to DEPE approval in the technical engineering review phase. The resulting product will be wood chips and soil products of different grade and quality. As noted in Section B., this plan inclusion does not relieve the applicant from compliance with all outstanding Department enforcement actions relative to wetlands infringement.

Any residue generated as a result of the operation of the recycling center shall be disposed of pursuant to the County Plan and the Interdistrict and Intradistrict Solid Waste Flow Rules (N.J.A.C. 7:26 et seq.). The construction or operation of a recycling center which receives, stores, processes or transfers 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 pursuant to N.J.A.C. 7:26A-3 et seq., and shall be in conformance with Departmental regulations and guidelines, including N.J.A.C. 7:26A-4.

Pursuant to N.J.A.C. 7:26A-4.1(a)1.iii, Class A recyclable materials may be commingled only with other Class A recyclables materials. Class B recyclable materials may be commingled only with other Class B recyclable materials and only to the extent authorized in the general approval.

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.

2. Amendment #1992-7

The County Plan inclusion of a proposed use for the County RRIT Fund to finance the MRAP to develop and implement recycling programs and facilities for the 25 municipalities in Middlesex County is approved. The proposed use is in conformance with the requirements of N.J.A.C. 13:1E-150b. since the moneys will be allocated to reduce operational costs of recycling programs and to reduce tipping rates at recycling centers thereby providing for a transition away from disposal of solid waste at the Edgeboro landfill and toward the recovery of solid waste at local recycling centers. Also, the County Plan inclusion of a disbursement schedule which provides for the expenditure of \$3,055,000.00 to finance the MRAP is consistent with the Department's content and format criteria for the disbursement of RRIT Funds as set forth in N.J.S.A. 13:1E-150c. However, the County must receive the Department's approval for the disbursement of the remaining fund balance, \$12,190,918 as of January 1, 1993, and for future deposits.

3. Middlesex County District Solid Waste Management Plan Deficiencies

In the Department's October 28, 1992 certification of the County's May 26, 1992 amendments, the DEPE directed the County to further address the recommendations of the Emergency Solid Waste Assessment Task Force (Task Force) Final Report pertaining to regionalization and to include specific implementation schedules to achieve source reduction and the 50% recycling goal for the municipal waste stream in a subsequent plan amendment submission within 180 days of the certification or by April 26, 1993. To date, the required amendment has not be received by the DEPE. I am hereby reminding the County of the need to immediately address these Task Force deficiencies within a subsequent plan amendment submission.

Additionally, the entire County Plan has been reviewed to determine whether the plan fulfills the requirements set forth in N.J.S.A. 13:1E-21. The result of that review is as follows:

- a. N.J.S.A. 13:1E-21b(4) requires a survey of proposed collection districts and transportation routes with projected transportation costs from collection districts to existing or available suitable sites for solid waste disposal facilities.

The County Plan does not include truck routes to the Edgeboro Landfill. Therefore, the County Plan remains deficient with respect to the requirements of N.J.S.A. 13:1E-21b(4). The County is hereby directed to submit a subsequent plan amendment, as previously directed, addressing the truck routes to the County's landfill.

- b. N.J.S.A. 13:1E-21b(6) requires a method or methods of financing solid waste management in the Solid Waste Management District pursuant to the Statewide Solid Waste Management Plan.

Although the March 7, 1991 plan amendment provided the method of financing the construction of the Edgeboro Landfill Phase II expansion, the County Plan still does not include the method of financing the other components of the County's solid waste system. Therefore, the County Plan remains deficient with respect to the requirements of N.J.S.A. 13:1E-21b(6).

The County is also hereby directed to submit a subsequent plan amendment immediately to address the above noted deficiencies.

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 these amendments to the County Plan and which was executed prior to the approval of these amendments 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 these amendments 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 amendments contained herein shall operate in compliance with these amendments 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. Certification to Proceed with the Implementation of the Plan Amendments

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 amendments certified herein.

5. Definitions

For the purpose of these amendments 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 Amendments

The amendments 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 of the Amendments and Notification of Deficiencies 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 the amendments, 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 December 28, 1992. I hereby also require, as noted in Section C., the Middlesex County Board of Chosen Freeholders to address the noted deficiencies immediately.

6-4-93
DATE



SCOTT A. WEINER
COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND ENERGY