



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection

Robert C. Shinn, Jr.
Commissioner

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

CERTIFICATION
OF THE OCTOBER 25, 1995
AMENDMENT TO THE MORRIS 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 January 29, 1981, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Morris 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 Morris County Board of Chosen Freeholders (County Freeholders) completed such a review and on October 25, 1995, adopted an amendment to its approved County Plan.

The amendment proposed County Plan inclusion of the FCR Morris, Inc. recycling center for Class A materials located in Mine Hill Township, Morris County and the clarification of issues related to the use of out-of-state landfilling in connection with the utilization of the Essex County Resource Recovery Facility (ECRRF).

The amendment was received by the Department on November 6, 1995 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 October 25, 1995 is approved as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the October 25, 1995 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 consistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the issues of concern relative to the October 25, 1995 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 DEP. All agencies contacted are as follows:

Office of Air Quality Management, DEP
Division of Parks and Forestry, DEP
Division of Fish, Game and Wildlife, DEP
Division of Solid and Hazardous Waste, DEP
Division of Enforcement, DEP
Green Acres Program, DEP
Land Use Regulation Element, DEP
Division of Water Quality, 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
U.S. Environmental Protection Agency

1. Agency Participation in the Review of the October 25, 1995 Amendment

The following agencies did not object to the proposed amendment:

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

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

Office of Air Quality Management, DEP
Land Use Regulation Element, DEP
Department of Health
Department of Transportation
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 Water Quality, DEP

2. Issues of Concern Relative to the October 25, 1995 Amendment

Issue: Regulatory Requirements

Recycling centers, such as the FCR Morris, Inc. proposed facility, are subject to the provisions of N.J.A.C. 7:27-5, "Prohibition of Air Pollution." This regulation prohibits the release of odors and other air contaminants which interfere with the enjoyment of life and property. Also, recycling centers are subject to the regulations set forth at N.J.A.C. 7:26A-1 et seq. which include but are not limited to operational standards and general rules for recycling centers which receive, store, process, or transfer Class A and/or Class B recyclable materials.

Also, if any operation of a recycling center 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 discharge prior to construction or operation.

Issue: Historical Background on Out-of-State Landfilling

On November 22, 1994, the County Freeholders adopted an amendment providing for the long-term utilization of the ECRRF pursuant to

certain terms and conditions contained within an August 23, 1994 Memorandum of Understanding (MOU) between the Morris County Utilities Authority (MCMUA) and the Essex County Utilities Authority (ECUA). Specifically, the amendment directs up to 225,000 tons annually of Morris County processible waste to the ECRRF and requires that the ECUA be responsible for the disposal of: ash residue produced as a result of the processing of Morris County solid waste; processible solid waste originating from Morris County but not processed at the ECRRF due to operating conditions; and Morris County solid waste that cannot be processed at the ECRRF due to the character, size, or composition of the solid waste.

Subsequent to the adoption of the November 22, 1994 amendment, the amendment and the MOU were the subject of action in the Law Division of the Superior Court of New Jersey instituted by Waste Management of Pennsylvania, Inc. (WMPA). This action sought to block implementation of the MOU since its terms were allegedly inconsistent with the terms of the January 6, 1993 Easement Agreement executed by the MCMUA and the WMPA for the provision of landfill space. On April 24, 1995, the New Jersey Superior Court ruled that the terms of the disposal agreement between WMPA and MCMUA allowed for processible Morris County solid waste to be delivered to the ECRRF, but that the prorata share of ash residue attributable to Morris County as well as all bypass and nonprocessable waste generated within Morris County must be disposed at WMPA landfills pursuant to the terms of the Easement Agreement. The court directed the Morris County Freeholders and the MCMUA to amend the County Plan to incorporate these requirements and to seek DEP approval of same.

On May 11, 1995, the Department certified the November 22, 1994 amendment by approving in part and remanding in part for modification the amendment. Specifically, the certification approved the delivery of up to 225,00 tons per year of Morris County processible waste to the ECRRF but remanded for modification those provisions of the amendment pertaining to the disposal of ash, bypass, and nonprocessable waste attributable to Morris County in accordance with the April 24, 1995 court order.

Prior to the April 24, 1995 court order, WMPA and the MCMUA entered into a Supplemental Agreement dated April 21, 1995 regarding the handling of de minimus quantities of bypass and unacceptable waste through the Essex County solid waste disposal system.

In accordance with the provisions of the April 24, 1995 court order and the May 11, 1995 certification, the County Freeholders adopted the October 25, 1995 amendment. Specifically, the amendment stipulates that:

a. During the term of the January 6, 1993 Easement Agreement, Morris County processed residue shall be disposed of at the landfill provided by WMPA under the terms of the Agreement; and

b. During the term of the Easement Agreement, Morris County bypass and unacceptable waste shall be disposed of at the landfill provided by WMPA under the terms of the Agreement; provided, however, that de minimus quantities of bypass and unacceptable waste, if delivered to the ECRRF, may be (a) delivered to the transfer station located in the City of Newark, New Jersey which is owned and operated by a private operator pursuant to an existing contract with Essex County, or (b) subsequent to the expiration of the existing transfer station contract, delivered to a landfill provided by the ECUA.

Therefore, since the October 25, 1995 amendment complies with both the April 24, 1995 court order and the May 11, 1995 certification, within Section C. the clarification of issues relating to the use of out-of-state landfilling is approved.

C. Certification of the Morris 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 October 25, 1995 amendment to the approved County Plan and certify to the County Freeholders that the October 25, 1995 amendment is approved as further specified below.

1. FCR Morris, Inc.

The County Plan inclusion of FCR Morris, Inc. as a recycling center for Class A materials to be located at 103 Iron Mountain Road, Block 201, Lots 31.01 and 32 in Mine Hill Township, Morris County is approved. This facility will have a capability of receiving up to 100 tons per day of commingled Class A materials including aluminum, PET, HDPE-pigmented, HDPE-natural, flint glass, green glass, amber glass, ferrous/tin, and aerosol containers, and empty paint cans.

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 recyclable materials. Also, 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.).

2. Out-of-State Landfilling

The County Plan inclusion of the clarification of issues relating to the use of out-of-state landfilling in connection with the utilization of the ECRRF is approved. Specifically approved are the stipulations that:

a. During the term of the January 6, 1993 Easement Agreement,

Morris County processed residue shall be disposed of at the landfill provided by WMPA under the terms of the Agreement; and

b. During the term of the Easement Agreement, Morris County bypass and unacceptable waste shall be disposed of at the landfill provided by WMPA under the terms of the Agreement; provided, however, that de minimus quantities of bypass and unacceptable waste, if delivered to the ECRRF, may be (a) delivered to the transfer station located in the City of Newark, New Jersey which is owned and operated by a private operator pursuant to an existing contract with Essex County, or (b) subsequent to the expiration of the existing transfer station contract, delivered to a landfill provided by the ECUA.

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. 7:26A-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 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 amendment to the County Plan contained herein shall take effect immediately.

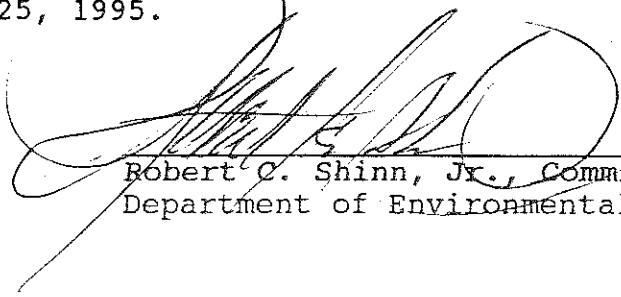
7. Reservation of Authority

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 with appendices which includes the DEP'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 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 the amendment, as outlined in Section C. of this certification, to the Morris County District Solid Waste Management Plan which was adopted by the Morris County Board of Chosen Freeholders on October 25, 1995.

12/26/95
Date


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