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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
HMDC SOLID WASTE
MANAGEMENT DISTRICT

CERTIFICATION
OF THE MAY 27, 1992
AMENDMENT TO THE HACKENSACK
MEADOWLANDS DEVELOPMENT COMMISSION
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 HMDC District Solid Waste Management Plan (District 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 Hackensack Meadowlands Development Commission completed such a review and on May 27, 1992, adopted an amendment to its approved District Plan.

The proposed amendment incorporates a regional nonprocessable waste landfill to be located at the site of the old Keegan landfill or MSLA 1-B landfill on Block 205, Lots 18, 19, 24, 27, 28, 29, 30, 31, 32 and 33 in Kearny, into the District Plan. The amendment proposes that the facility will accept up to 1500 tons per day (TPD) of nonprocessable waste that has been generated within New Jersey which is currently being disposed of out-of-state. The proposed facility will primarily landfill those materials which can neither be recycled nor incinerated. Additionally, the facility will recycle construction and demolition (C&D) materials. In this regard, the HMDC indicated that they intended to recycle up to 300 TPD of the 1500 TPD entering the facility. This facility will also serve as a consolidation center for concrete and brick debris which will be used as road-base on site.

The amendment was received by the Department of Environmental Protection and Energy (Department or DEPE) on July 7, 1992 and copies were distributed to various administrative review agencies for comment, as required by law. The Department has reviewed this amendment, as well as the entire District Plan, and has determined that the amendment adopted by the HMDC Commissioners on May 27, 1992 is approved as provided in N.J.S.A. 13:1E-24.

B. Findings and Conclusions with Respect to the Hackensack Meadowlands Development Commission District Solid Waste Management Plan Amendment

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the May 27, 1992 amendment to the District 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 HMDC Commissioners are notified of the issues of concern relative to the May 27, 1992 amendment 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, which are listed below, included various bureaus, divisions and agencies within the Department.

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 the May 27, 1992 Amendment

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

Division of Parks and Forestry, DEPE
Wastewater Facilities Regulation Element, DEPE
New Jersey Turnpike Authority
Department of Agriculture
New Jersey Advisory Council on Solid Waste Management

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

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

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

Division of Fish, Game and Wildlife, DEPE
Division of Solid Waste Management, DEPE
Office of Energy, DEPE
Department of Transportation

2. Issues of Concern for the May 27, 1992 Amendment

Issue: Regional Waste Flow

This project proposes a tipping fee rate of \$75 per ton which does not appear sufficient to cover all of the facility's costs. For example, the HMDC is proposing that the facility will accept 1500 tons of waste per day, 300 days per year which, at \$75 per ton, will provide approximately \$337,500,000 of revenue to the HMDC over a ten year period. Of this revenue, 97% is allocated to fixed expenditures leaving only 3% or approximately \$1.0 million per year (\$3.31 per ton), available to pay administration, permitting, debt service, recycling operations, site improvements and contingencies. Through further conversations with the HMDC, it was determined that these figures are projections that have been based on previous HMDC projects and are subject to change as the development of this facility progresses. Since the HMDC is a utility, and as such, must file and justify all base rates and increases with the State, these preliminary figures included in the amendment will need to be

reevaluated when finalized. In addition, all expenditures are subject to State review and approval. Further, this project anticipates a commitment of nonprocessable waste from New Jersey counties, but the HMDC has not yet identified waste flows and types of specific materials to be received at the facility. Therefore, although waste flows from the entire northeast region of the State may be available to the facility, it is necessary that the HMDC negotiate and enter into interdistrict agreements with other districts for the receipt of material to the proposed facility prior to the issuance of any departmental permits.

Issue: Permit Requirements

Landfills 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 or property.

New and closed landfills should be equipped with positive ventilation systems which direct landfill gases to air pollution control devices. These vents and devices require air pollution control permits pursuant to N.J.A.C. 7:27-8.2(a)1 and 16. These regulations require permits for all stationary equipment used to ventilate a solid waste facility directly or indirectly to the ambient atmosphere.

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.

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 to crush asphalt, concrete, brick, etc., and shred must comply with the noise control code N.J.A.C. 7:29.1.

If access to a State Highway is needed, an Access Application must be filed and possibly a Drainage Application.

Issue: Site Remediation

According to HMDC estimates, the existing landfill is currently generating 65 million gallons of leachate per year, potentially polluting the adjacent wetlands and associated wildlife. Therefore, while the May 27, 1992 amendment does address site remediation prior to the acceptance of any refuse, any permit potentially issued will be contingent upon successful remediation of the site.

Issue: Task Force Report Requirement

The HMDC plan amendment to incorporate a regional landfill and a C&D recycling facility addresses regionalization pursuant to the Task Force Final Report and recommendations. Through conversations with the HMDC, the Department is aware that the HMDC will further address source reduction and recycling via subsequent plan amendments. However, the HMDC

is reminded that the Department's March 16, 1992 certification to the District's October 3, 1991 amendment required the HMDC to submit a subsequent plan amendment to address specific recommendations previously outlined within the Task Force Report including source reduction, recycling a minimum of 60% of the total waste stream and 50% of the municipal waste stream, as well as regionalization. This plan amendment was required to be submitted within 180 days of the certification or by September 16, 1992.

Issue: Additional Planning concerns

A series of economic and environmental concerns about the site, particularly with respect to property values, fires, acceptance of asbestos, traffic and site concerns, have been expressed regarding the proposed amendment, particularly by local citizens and public officials. Most of these concerns will be addressed in great detail during the technical phase of the Department's permitting process. In general, from a planning perspective, the proposed site is located in the midst of an industrial area and was used for decades as a landfill. Proper landfill closure and/or remediation was never accomplished and the site may represent an ongoing source of pollution in the area. The HMDC proposal to reactivate the site to remediate existing pollution problems, and to develop a modern construction and demolition debris processing/recycling/disposal facility under state-of-the-state environmental standards, represents significant positive benefits locally and to the State. At the local level, existing sources of pollution would be remediated. The project will improve, not lessen the environmental condition of the site. From a statewide perspective, a regional facility to process construction and demolition debris would further advance both New Jersey's statewide recycling goals and primary policy objective of achieving disposal self-sufficiency. This is particularly important since no long-term landfills currently exist or are actively being planned in the entire northeastern portion of the state.

This facility can be a cornerstone to solving the State's deficiencies in disposal capacity thereby greatly reducing our dependence on out-of-state landfills. Based on these considerations, the proposed facility has been approved at the planning phase of the project development process as outlined in Section C. Notwithstanding this approval, concerns have been expressed by state agencies, as well as local citizens and officials. These concerns must be addressed in great detail during the technical engineering and environmental and health impact phase of the Department's permitting process. A permit will not be issued for the proposed project in the absence of satisfactory responses to the noted concerns and a demonstration that all remediation/construction/operation aspects of the proposed project meet the Department's regulatory requirements.

C. Certification of the Hackensack Meadowlands Development Commission 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 May 27, 1992 amendment to the approved District Plan and certify to the Hackensack Meadowlands Development Commission that the May 27, 1992 amendment is approved as further specified below.

1. May 27, 1992 Amendment

The HMDC's proposed regional facility to be located on Block 205, Lots 18, 19, 24, and 27-33 inclusive, in Kearny, New Jersey, is approved. As indicated in the amendment, the facility will accept up to 1500 tons per day of nonprocessable waste generated within New Jersey which is currently being disposed of out-of-state. The facility will primarily landfill those materials which can neither be recycled nor incinerated. Additionally, the facility will recycle construction and demolition (C&D) materials. In this regard, the HMDC intends to recycle up to 300 TPD of the 1500 TPD entering the facility. This facility will also serve as a consolidation center for concrete and brick debris which will be used as road-base on site.

As noted in Section B., of major concern is the proposed site remediation. According to HMDC estimates, the old Keegan landfill is currently generating 65 million gallons of leachate annually, potentially polluting the adjacent wetlands and associated wildlife. Therefore, while the May 27, 1992 amendment does address site remediation, any permit issued shall be contingent upon successful remediation of the site. In fact, the development of this facility can be viewed as an effective vehicle to remediate sites which would not otherwise be so addressed.

Also, as noted in Section B., this project proposes a tipping fee rate of \$75 per ton which does not appear sufficient to cover all of the facility's costs. However, through further conversations with the HMDC, it was determined that these figures are projections that have been based on previous HMDC projects and are subject to change as the development of this facility progresses as well as Department review and approval.

Further, this project anticipates a commitment of nonprocessable waste from New Jersey counties, but the HMDC has not yet identified waste flows and types to be received at the facility. Therefore, although waste flows from the entire northeast region of the State may be available to the facility, it is necessary that the HMDC negotiate and enter into interdistrict agreements with other districts for the receipt of materials to the proposed facility prior to the issuance of any departmental permits.

The operation of this facility shall be in conformance with Departmental regulations and guidelines. The construction and operation of such a facility shall be preceded by the acquisition of all necessary permits and approvals as per N.J.S.A. 13:1E-1 et seq., and all other applicable laws. Issuance of operating permits pursuant to the Solid Waste Management Act is limited to those applicants found by the Department and the Attorney General to be deserving of licensing under the provisions of N.J.S.A. 13:1E-126.

Additionally, because the proposed recycling center will be handling Class B recyclable materials, as defined at N.J.A.C. 7:26A-1.3, it must obtain a recycling center approval from the Department pursuant to N.J.A.C. 7:26A-3 prior to operation. Also, pursuant N.J.A.C. 7:26A-4.1 (a) 1.iii, Class B recyclable materials may be commingled only with other Class B recyclable materials and only to the extent authorized in the general approval.

The construction and operation of all recycling centers which receive, store, process or transfer Class B recyclable materials, as defined at N.J.A.C. 7:26-A-1.3, shall be preceded by the acquisition of the necessary approval as per N.J.A.C. 7:26A-3 et seq., and shall be in conformance with Department regulations and guidelines, including N.J.A.C. 7:26A-4 et seq.

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. Solid Waste Task Force Recommendations

The HMDC District plan amendment to incorporate a regional landfill and C&D recycling facility addresses a portion of the recycling and regionalization components of the Task Force Final Report and recommendations. In this regard, the Department recognizes that the HMDC is comprised of a portion of two counties and, although it is a designated solid waste district, its responsibilities are unique with respect to the Task Force Final Report and recommendations. Nevertheless, as noted in Section B., the HMDC District is again reminded that the March 16, 1992 certification to the October 3, 1991 amendment required the HMDC to submit a subsequent plan amendment by September 16, 1992 addressing source reduction, recycling a minimum of 60% of the total waste stream and 50% of the municipal waste stream and regionalization. While the HMDC has not yet submitted the required amendment, discussions have been held with HMDC representatives towards development of the Task Force requirements and a submission is anticipated in the immediate future.

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 District 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 District 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 District and affected by the amendment contained herein shall operate in compliance with this amendment and all other approved provisions of the District 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 there under 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 District 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 Amendment

This document shall serve as the certification of the Commissioner of the Department to the HMDC and pursuant to N.J.S.A. 13:1E-24c and f, the District 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 and -2.13, and N.J.A.C. 7:26A-1.3.

6. Effective Date of the Amendment

The amendment to the District 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 District 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 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 the amendment, as outlined in Section C. of this certification, to the Hackensack Meadowlands Development Commission District Solid Waste Management Plan which was adopted by the Hackensack Meadowlands Development Commission on May 27, 1992. I hereby also require the Hackensack Meadowlands Development Commission to address all of the components of the Task Force Final Report and recommendations as noted in Section C.

DATE

12/2/92



SCOTT A. WEINER

COMMISSIONER

DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND ENERGY

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