

Bels



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection
Office of the Commissioner
CN 402

Robert C. Shinn, Jr.
Commissioner

Trenton, NJ 08625-0402
Tel. # 609-292-2885
Fax. # 609-292-7695

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

CERTIFICATION
OF THE DECEMBER 5, 1995
AMENDMENT TO THE SOMERSET 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 31, 1980, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Somerset 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 Somerset County Board of Chosen Freeholders (County Freeholders) completed such a review and on December 5, 1995, adopted an amendment to its approved County Plan.

The amendment revises the County's strategy for addressing the State requirements for source reduction and recycling.

The amendment was received by the Department on December 28, 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 December 5, 1995 is approved in part and modified in part as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the December 5, 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, as modified, 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 December 5, 1995 amendment which are included in Section B.2. below.

In conjunction with the review of the amendment, the Department circulated copies to fifteen federal and state 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. All agencies contacted are as follows:

Division of Parks and Forestry, DEP
Division of Fish, Game and Wildlife, DEP
Division of Solid and Hazardous Waste, DEP
Division of Enforcement, DEP
Division of Water Quality, DEP
Office of Air Quality Management, DEP
Green Acres Program, DEP
Land Use Regulation Element, 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 December 5, 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 Water Quality, DEP
Green Acres Program, DEP
New Jersey Turnpike Authority
Department of Agriculture
Department of Community Affairs

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

Office of Air Quality Management, DEP
Land Use Regulation Element, DEP
New Jersey Advisory Council on Solid Waste Management
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 Enforcement, DEP

2. Issues of Concern Regarding the December 5, 1995 Amendment

Issue: Designated Materials

The amendment designates 33 materials to be recycled by nonresidential generators of solid waste. The Department is concerned with the number of materials designated for recycling by the commercial sector and the availability of markets for the materials. Due to the lack of specifics contained within the amendment to address these concerns, both the Somerset County Health Officer and the Manager of the Somerset County Solid Waste Division were contacted to obtain clarification relative to these concerns. Department staff met with these County officials on March 29, 1996 and were informed that Somerset County was seeking to copy the State's "designation" of recyclable materials (the 33 materials that are tracked for purposes of the Municipal Tonnage Grants Program). DEP staff detailed the statutory difference between a "recyclable material" for purposes of the Municipal Tonnage Grants Program and a "designated recyclable material", among other things.

On April 4, 1996, the County sent a letter to DEP to provide further clarification by indicating that "materials listed in this section represent potential items designated for recycling

depending on market availability and economic viability. The County intends to assist generators of nonresidential waste in locating markets for their potentially recyclable materials". However, the Recycling Act contains neither a reference to "potentially recyclable materials" nor does it make any provision for recycling to be based on "economic viability". In fact, the definition in the Recycling Act for "market" was amended in 1992 specifically to remove an economic standard (previously a "market" did not exist if the cost of recycling exceeded the cost of disposal of that same material as solid waste).

Furthermore, the Recycling Act at N.J.S.A. 13:1E-99.14 requires "Each county shall, within six months of the adoption and approval by the Department of a district recycling plan required pursuant to section 3 of this amendatory and supplementary act, solicit proposal from, review the qualifications of, and enter into contracts or agreements on behalf of municipalities with persons providing recycling services or operating recycling centers for the collection, storage, processing, and disposition of recyclable materials designated in the district recycling plan in those instances where these services are not otherwise provided by the municipality ..." Therefore, by the actions taken in the December 5, 1995 amendment, Somerset County will be obligating its municipalities to potentially provide separate recycling collection services for all the designated materials, and the County will be obligated to act as the marketer of last resort for all the designated materials.

If the County is designating recyclables subject to market availability, then it must be prepared to adopt a subsequent amendment within 180 days to delete those designated materials for which markets can not be secured. Therefore, within Section C. of this certification, the Department approves the entire list of designated recyclables but directs the County to adopt within 180 days a subsequent amendment to delete those designated materials for which markets have not been secured.

Issue: Enforcement Prerogatives

Section 16.B. of the amendment states that "Any person violating any of the provisions of the this Solid Waste Management Plan [amendment] for the first time shall not be liable for any penalty, but shall immediately, upon receipt of a written notice of non-compliance, take immediate measures to mitigate the effects of the violation or prevent future violations." However, it must be noted that the DEP has excluded certain violations from any grace period consideration due to their potential environmental impact. The list of violations the Department deems severe enough to warrant enforcement action will be published in the New Jersey Register in the near future. Therefore, within Section C. of this certification, Section 16.B. of the amendment is approved with modification to comply with Department policy relative to

enforcement penalties for first time violators of the Solid Waste Management Act.

C. Certification of the Somerset 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 December 5, 1995 amendment to the approved County Plan and certify to the County Freeholders that the December 5, 1995 amendment is approved in part and modified in part as further specified below.

The County Plan inclusion of the following components of the County's revised strategy for addressing the State requirements for source reduction and recycling is approved:

- * Additional definitions as identified on pages 5 and 6 of the December 5, 1995 amendment.
- * Standards for and responsibilities of residential generators of solid waste as identified on page 7 and pages 12 through 14, respectively, of the December 5, 1995 amendment.
- * Standards for and responsibilities of nonresidential generators of solid waste as identified on pages 8 through 12 and pages 14 through 17, respectively, of the December 5, 1995 amendment. However, as noted within Section B. of this certification, the County is directed to adopt within 180 days a subsequent amendment to delete those designated materials for which markets have not been secured.
- * Responsibilities of a municipal recycling coordinator and the County Recycling Coordinator as identified on page 17 and pages 24 through 25, respectively, of the December 5, 1995 amendment.
- * Responsibilities of solid waste transporters as identified on page 17 of the December 5, 1995 amendment.
- * Responsibilities of the County Health Officer (enforcing official) and/or his/her designee including inspections and right-of-entry as identified on pages 18 and 19 of the December 5, 1995 amendment.
- * Special requirements for generators of construction and demolition materials as identified on pages 23 and 24 of the December 5, 1995 amendment.

The County Plan inclusion of the following component of the County's revised strategy for addressing the State requirements for source reduction and recycling is approved with modification:

* Enforcement action, violations, and penalties as identified in Section 16.B. on pages 19 through 22 of the December 5, 1995 amendment. As noted within Section B. of this certification, the Department has excluded certain violations of the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.) from any grace period consideration (as proposed within the December 5, 1995 amendment) due to their potential environmental impact. The specific list of violations the Department deems severe enough to warrant enforcement action will be published in the New Jersey Register in the near future. Therefore, Section 16.B. of the amendment is approved with modification to comply with Department policy relative to enforcement penalties for first time violators of the Solid Waste Management Act.

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 Waste Covered by the District 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 waste, construction and demolition waste, sewage sludge, septage, and hazardous waste. 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 Implementation of the 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 amendment, as modified, 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, as modified, to the County Plan contained herein shall take effect immediately.

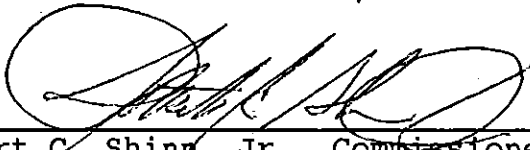
7. Reservation of Authority

Nothing contained herein shall be construed as a limitation on any other action taken by the DEP 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 Department's planning guidelines, rules, regulations, orders of the DEP, 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 with Modification 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 with modification the amendment, as outlined in Section C. of this certification, to the Somerset County District Solid Waste Management Plan which was adopted by the Somerset County Board of Chosen Freeholders on December 5, 1995.

5/25/96
Date


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