

State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER
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CERTIFICATION OF APPROVAL
OF THE JANUARY 17, 1986
AMENDMENT TO THE UNION 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 August 30, 1980, the Department approved, with modifications, the Union County District Solid Waste Management 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 the 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 the 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. Under the New Jersey Solid Waste Management Act, counties are given the primary role in solid waste management planning. Counties are required to develop comprehensive plans which, among other things, describe a strategy for handling waste generated in the county,

which designate the sites for sufficient facilities to implement the strategy, and which describe the financial and institutional arrangements for implementation of the required facilities and activities.

It is the policy of the Department of Environmental Protection to affirm the primacy of the counties in this process. The Department has provided advice and support for the required decisions, but until now, hasn't found it necessary to directly intervene in the basic decisions regarding strategy and siting, except as required to ensure that county activities conform to the requirements of the Act. However, the Act does provide that the Commissioner may propose and adopt amendments to solid waste management plans to remedy any deficiencies.

On January 17, 1986, the Department proposed an amendment to the Union County District Solid Waste Management Plan. Primarily, the amendment proposed the incorporation of a short-term disposal strategy to provide for the development of a transfer station(s) to prepare the county's waste for transport to out-ofdistrict disposal facilities. In addition, the amendment addressed landfill site selection in Union County and the need for an expedited mandatory recycling In order to receive public comment, the Department followed the public notice procedures outlined in the Solid Waste Management Act, specifically N.J.S.A. 13:1E-23.d. In doing so, each mayor in Union County was sent a copy of the proposed plan amendment on January 17, 1986. In addition, each mayor was later sent a copy of the public hearing notice on January 22, 1986 prior to publication. The same notice was given to the Union County Board of Chosen Freeholders and to the county's solid waste coordinator. Publication of the hearing notice appeared in The Daily Journal and the Newark Star Ledger on January 24 and 31, 1986. The proposed amendment was also available for public inspection during this period at the municipal offices of each municipality in Union County, at the county offices and at the Division of Waste Management Offices, 32 East Hanover Street, Trenton, New Jersey. The public hearing to receive testimony on the proposed amendment was held at the Council Chambers of the city of Elizabeth Municipal Building on February 13, 1986. Copies of the proposed amendment were also distributed to various state level agencies for review and comment as required by law. The Department has reviewed all testimony received at the public hearing and during the comment period, as well as those comments generated by the state level review process, and has determined that the amendment proposed by the Department of Environmental Protection on January 17, 1986, as modified below, is approved as outlined in Section C. of this document,

B. Findings and Conclusions with Respect to the Department's Proposed Amendment to the Union County Solid Waste Management Plan

1. The Division of Waste Management circulated the proposed Union County plan amendment to sixteen review agencies and solicited their review and recommendations. Pursuant to N.J.S.A. 13:1E-24a(2) and (3), these agencies included various agencies, bureaus, and divisions within the Department of Environmental Protection as well as the Board of Public Utilities. Also among these agencies were the Department of Community Affairs, the

Department of the Public Advocate, the Department of Health, the Office of Recycling, the Department of Agriculture, the Department of Transportation, and the New Jersey Turnpike Authority. Of these agencies, the following did not object to the proposed plan amendment: the N.J.D.E.P. Divisions of Environmental Quality and Fish, Game and Wildlife; the State Departments of Agriculture and Transportation; the Green Acres Program and the New Jersey Turnpike Authority. The following agencies failed to respond to our requests for comments: the N.J.D.E.P. Divisions of Water Resources, Parks and Forestry, and Coastal Resources; the State Departments of Health, Community Affairs and the Public Advocate; the New Jersey Advisory Council on Solid Waste Management and the U.S. Environmental Protection Agency. The Board of Public Utilities and Office of Recycling submitted substantive comments which are further addressed below.

The Board of Public Utilities expressed concern that the proposed amendment appeared to exclude the Board from its jurisdiction of evaluating the economic consequences of the transfer station strategy. Briefly, the role of the Board with respect to solid waste management includes its authority under the law to provide economic regulation over the solid waste This is accomplished through uniform licensing procedures and industry. rate regulation as well as the power to grant franchises. Additionally, the Board of Public Utilities in conjunction with the Department designates waste flows to specific solid waste facilities which serve specific geographic areas. With respect to the Board's expressed concern, it must be noted that the Department circulated the proposed amendment to sixteen state level review agencies, including the Board of Public Utilities, as part of its standard review process required by law. This process afforded the Board its appropriate opportunity to comment as with any other proposed plan amendment. The proposal of the amendment in no way excluded the Board and, to the contrary, provided the proper means for the receipt of comments related to the Board's concerns. The approval of the proposed amendment primarily incorporates a new short-term solid waste strategy into the approved Union County Plan. Following issuance of the approval contained herein, a private consultant to the Department will complete a Request For Proposals to be released to the private sector for the siting, design, construction and operation of a transfer station(s) within Union County. For each step in the process where additional site specific plan amendments will be required, the Board of Public Utilities will once again have the opportunity to evaluate economic consequences of the project as part of the state level review process.

The Office of Recycling recommended that the Department expand the provisions of the recycling component of the proposed amendment to require that each municipality separate, collect and market at least three recyclable materials. It was further recommended that if a county has already adopted a more stringent recycling plan than that required in the proposed plan amendment, the more comprehensive plan should supersede the DEP's requirement. In response, the Department would agree in concept with the above recommendations. However, for the purposes of this initial requirement, the Department has a primary interest in the successful establishment of programs to address one major recyclable component in each municipality in the county on an expedited basis. Upon the establishment

of successful programs for one major recyclable, the Department would fully endorse, and may require in the future, an expansion to cover at least three materials. Further, the initial requirements of the plan amendment should not be construed as prohibiting or discouraging the development or continued operation of more aggressive programs covering more than one recyclable component.

2. As noted above, in accordance with the requirements of N.J.S.A. 13:1E-23, a public hearing on the proposed amendment was conducted by the Department on February 13, 1986 at the Council Chambers of the city of Elizabeth Municipal Building. At the hearing, sixteen individuals gave testimony. In addition, individuals submitted written comments during the official comment period. The questions raised during these proceedings have been specifically addressed in the Response to Public Hearing Document included within this certification as Appendix A.

While Appendix A. addresses specific comments, it is possible to briefly summarize the testimony given. In general, a majority of those individuals commenting were vigorously opposed to the Department's proposed transfer station strategy. Objections centered on four issues: the potential economic repercussions of constructing a new transfer station and increased transportation costs; the interrelationship of the proposed transfer station and resource recovery projects; landfill siting in Union County, and the imposition of mandatory recycling.

The predominant objection centered on the economic repercussions of constructing a new transfer station and transporting solid waste long distances for out-of-district disposal. The Department of Environmental Protection does not question the assertion that, if implemented, the transfer station strategy would result in higher solid waste disposal cost, particularly with respect to increased transportation costs. At this time it is impossible to determine the extent of cost escalation. Department will seek proposals that represent the most advantageous economic arrangements for the residents of Union County. However, it must be noted that cost considerations are only relevant when suitable alternatives exist to enable comparative analysis. As noted in Section B.3. of the proposed amendment, Union County does not at present have viable short-term solid waste disposal alternatives. Continued utilization of Middlesex County disposal facilities is unacceptable in the absence of an interdistrict agreement in light of the limited remaining capacity at the Edgeboro Landfill and the negative impact that this disposal will have on the Middlesex County and Statewide Solid Waste Management Planning Programs.

Concerning the interrelationship of the proposed transfer station strategy and the planned resource recovery project, it should be noted that the useful life of certain transfer station equipment is relatively short in any case and would, under normal use, exhaust its effectiveness within five years or less. This useful life span should coinside with the development of an operational resource recovery facility in Union County which is projected for operation in 1990. In addition, other buildings and equipment that would be necessary at a transfer station will have a substantial value which could be applied to alternative uses. Alternative uses of buildings and equipment, such as the establishment of a county

recycling station or warehouse, will be addressed in the development of the transfer station Request For Proposal document.

A third area commonly addressed in the hearing testimony pertained to landfill siting in Union County. It was stated that no suitable landfill sites exist in the county and that the county's municipalities should be allowed to continue disposal at the Edgeboro Landfill in Middlesex County. It was further advocated that the DEP should intervene to secure additional interim capacity within the State of New Jersey but outside of Union County pending the operation of the proposed resource recovery facility in the city of Rahway. The Department recognizes that Union County is currently studying the availability of suitable landfill sites within its borders. The requirements of the proposed plan amendment pertaining to landfill siting require the completion of this study and selection of a candidate As noted above, Union County does not have an acceptable near term landfilling and long term solid waste residuals disposal plan. Pending the negotiation of an interdistrict or other contractual agreement to provide for landfill capacity, Union County must move as expeditiously as possible to identify a landfill site within the county. Direct intervention by the Department to arrange for in-state capacity outside of Union County would be inappropriate at this time primarily because it could negatively affect ongoing planning efforts in other counties.

The final topic frequently addressed was the recycling component of the proposed amendment. This portion of the amendment was generally endorsed in principle, but opposed with respect to timing of implementing mandatory recycling of at least one major component of the solid waste stream within each municipality. It was commonly asserted that significantly more time would be needed to implement mandatory programs and that material marketing would have to be addressed by the state to sustain effective programs. The Department, after consultation with the New Jersey Office of Recycling, recognizes the timing issue raised at the hearing as it pertains to implementing mandatory programs in each of Union County's municipalities. In light of the fact that the county has not previously instituted a mandatory county-wide recycling program, it would be difficult for municipal governments to provide appropriate funding mechanisms for program implementation within six months of the certification of this amendment. As a result, the Department has extended, within Section C. below, the timeframe for the implementation of proposed recycling programs to two (2) months after the completion of the next municipal budget cycle.

C. Certification of the Department's Proposed Amendment to the Union County District Solid Waste Management Plan

I, Richard T. Dewling, Commissioner of the Department of Environmental Protection, in accordance with N.J.S.A. 13:1E-1 et seq. and N.J.S.A. 13:1E-23(d), which established specific requirements regarding the contents of district solid waste management plans and the Department's powers regarding approval, rejection or modification of district plans, hereby declare that the portion of the Union County Solid Waste Management Plan which pertains to interim disposal arrangements (hereinafter referred to as "interim plan") is deficient. The county's current "interim plan" relies upon continued utilization of the Edgeboro Landfill in Middlesex County in the absence of an interdistrict agreement. As noted above, this strategy is not feasible and is

amended herein to provide for contingency measures that may be necessary prior to implementation of the proposed Union County resource recovery facility.

Therefore, I hereby adopt as a replacement the following plan amendments based upon the January 17, 1986 proposed amendment to the Union County District Solid Waste Management Plan and certify that the January 17, 1986 amendment is approved as further specified below:

 The inclusion in the plan of the short-term disposal strategy outlined below, which provides for the development of an in-county transfer station(s) to be used in conjunction with out-of-district disposal is approved.

Short-Term Disposal Strategy

The Department of Environmental Protection (Department) will seek proposals from private entities for siting, design, construction and operation of an in-county transfer station(s) for the county for purposes of out-of-district disposal. The Department will select a proposal after evaluating the proposals according to site suitability, environmental impact, cost and other appropriate considerations. The Department will then propose to amend the county's plan to designate the facility and its operational plan and to direct all waste generated in the county to the transfer station(s) until such time as an alternative facility is available for the county's wastes and incorporated into the county plan. To carry out this strategy, the Department will undertake the activities listed below utilizing, as appropriate, the services of an environmental consulting firm.

The following steps will be undertaken in order to further amend the Union County District Solid Waste Management Plan and issue a permit to the planned facility:

- 1. The nature and quantity of the disposal needs of the county prior to implementation of in-county long-term facilities will be determined.
- 2. The availability of out-of-district facilities to receive wastes generated in the short-term will be studied.
- 3. The types of transfer facilities required to handle the waste flows will be specified along with performance criteria for operation.
- 4. The criteria for siting of transfer stations to provide for interim needs will be developed.
- 5. Alternative cost proposal systems and alternative uses for which the transfer station facility could be adapted in the future will be investigated.
- 6. A Request for Proposal of transfer stations and out-of-district disposal arrangements by private enterprise will be developed.
- 7. The Request for Proposal will be publicly advertised and applications received.

- 8. The Department of Environmental Protection will select a Proposal to meet the short-term disposal needs of the county by evaluating the proposals according to site suitability, appropriateness of the proposed technology, the nature and reliability of the proposed out-of-district disposal options, the qualifications of the proposer, the total cost of waste disposal and any other appropriate criteria.
- 9. The Department will propose an amendment to the county plan to include in the plan the selected facility site, its operational plan and redirection of all of the waste stream of Union County to the transfer station(s) for the purpose of out-of-district disposal according to the schedule furnished in the Request for Proposal.
- 10. The Department will review the transfer station facility design and, in accordance with applicable state law, issue a draft permit, receive comments at a public hearing on the draft permit, respond to comments and, if appropriate, issue a final permit which will authorize construction and operation of the facility in accordance with applicable permit conditions. Additionally, the applicant must apply to the Board of Public Utilities for a tariff rate, setting forth prices to be charged at the facility to assure a fair rate of return to the facility owner and to protect the public interest.
- 11. The Department will undertake the implementation of one (1) through ten (10) above and prepare relevant plan amendments to supplement the results of these activities. However, the Department will consider a request by the county to undertake portions of these activities at the county level.

In order to implement this strategy, the Department has selected a vendor to develop a Request For Proposal to solicit proposals from private entities for siting, design, construction and operation of an in-county transfer station(s). However, as noted above, the Department will consider a request from Union County to undertake portions of the transfer station planning and implementation process at the county level. Further, the Department would advocate and support the highest feasible level of county participation in this process.

- 2. The requirements set forth in Section C. 2. of the January 17, 1986 Proposed Amendment to the Union County Plan related to landfill siting and the implementation of mandatory recycling are also approved. Therefore, in order to implement a landfill facility, Union County shall, within 90 days of the date of this certification, adopt and submit a plan amendment identifying a landfill site.
- 3. In order to reduce the amount and volume of waste materials requiring disposal, it is necessary to implement mandatory recycling in Union County. Therefore, the following requirements pertaining to the development of mandatory recycling are approved.

Every municipality in Union County shall, within four months of the adoption of this amendment, submit to the county a report detailing the steps the municipality intends to take to implement the mandatory separation, collection and marketing of at least one major recyclable

component of the solid waste stream. In addition, every municipality shall have proposed ordinance(s) to implement this plan by the same date. For the purposes of this section, "marketing" means the disposition of a recyclable material entailing a transportation and disposition cost which is less than or equal to the cost of transportation and disposal of the recyclable material at the solid waste facility utilized by the municipality.

Within five months of the adoption of this amendment, the county shall submit the municipal plans and describe any coordinating or support efforts, to be undertaken by the county to the Department.

No later than six months from the adoption of this amendment, every municipality shall have adopted such ordinance(s) as may be required to implement mandatory source separation, collection and marketing of at least one major recyclable component of the solid wastes generated in the municipality within the first two months following the completion of the upcoming municipal budget cycle. The Department, at this time, is requiring programs to address one major recyclable component, namely paper, glass, ferrous or non-ferrous metals. However, this requirement is intended to facilitate initial program development and in no way should be construed as prohibiting or discouraging more aggressive programs covering more than one recyclable component.

Administrative, legal and logistical support shall be provided, as necessary, by the county to each municipality in the development and implementation of these plans. Specifically, the county shall assist the municipalities to find markets for the recyclables to be collected in each municipality and, where feasible, to enter into agreements on behalf of the municipalities for recycling services.

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 the within amendment to the Union County District Solid Waste Management 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 Any solid waste collection operation or disposal facility registered by the Department of Environmental Protection and operating pursuant to a contract as herein described, shall be deemed to be in violation of this amendment and of the Union County District Solid Waste Management 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 of Environmental Protection, and for good cause shown, obtain an extension of time to complete such renegotiation.

2. Compliance

All solid waste facility operators and collector/haulers registered with the Department of Environmental Protection 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 Union County District Solid Waste Management Plan. Any facility operator or collector/hauler 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 of Environmental Protection and shall be subject to the provisions and penalties of N.J.S.A. 13:1E-9, 10, and 12 and all other applicable laws.

3. Types of Solid Wastes Covered by the District Solid Waste Management Plans

The provisions of the Union County District Solid Waste Management 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. Also, all non-hazardous 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 (N.J.A.C. 7:26-6).

4. Certification to Proceed with the Implementation of Plan Amendment

This document shall serve as the certification of the Commissioner of the Department of Environmental Protection and pursuant to N.J.S.A. 13:1E-24C. and F., the implementation of the approved amendment contained herein shall proceed in accordance with all specified timeframes.

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 N.J.A.C. 7:26-1.4 and -2.13.

6. Effective Date of Amendment

The amendment to the Union County District Solid Waste Management 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 of Environmental Protection pursuant to its authority under the law. The Union County District Solid Waste Management 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 and rules, regulations, and orders of the Department, including the interdistrict and intradistrict waste flow rules, and also includes the compilation of individual district plans and amendments as they are approved.

E. <u>Certification of Approval of the Amendment by the Commissioner of the Department of Environmental Protection</u>

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 Union County District Solid Waste Management Plan which was proposed by the Department on January 17, 1986.

14 MAY 1985

DATE

RICHARD T. DEWLING

COMMISSIONER

DEPARTMENT OF ENVIRONMENTAL PROTECTION

APPENDIX A Union County Response to Public Hearing Document

1. Local Authority

Comment:

Local planning boards and local land use laws will preclude the siting of transfer stations by private operators.

Response:

In the case of Carrino Contracting and Trucking Co., Inc. v. Township of Little Falls (A-4242-77) the defendant (Little Falls Township) argued that municipalities have zoning jurisdiction over solid waste facilities by reason of the provisions of the State Land Use Act. The judge ruled in that case that the New Jersey Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.) and the Solid Waste Utility Control Act (N.J.S.A. 48:13A-1 et seq.) preempt local regulation in the field of solid waste disposal and this applies equally well with respect to zoning. This case was appealed to the Superior Court of New Jersey, Appellate Division, which affirmed the lower court's judgment (Little Falls Township v. Bardin, Bardin, 173 N.J. Super 397,414 A.2d 559 A.D. 1979).

2. Landfill Capacity

Comment:

If an economic inducement is needed to entice a municipality in Union County to host a landfill, Union County should be advocating the host community benefits available under A-1778 as preferable to increased costs associated with out-of-district disposal.

Response:

The DEP concurs with this comment. It is the responsibility of Union County to make candidate municipalities aware of the financial advantages of siting a landfill (or resource recovery facility). Under "An Act Concerning Solid Waste Disposal and Resource Recovery" (commonly known as A-1778) the owner or operator of a landfill pays an economic benefit of not less than \$1.00 per ton of solid waste to the municipality which hosts the facility. This amount is paid in lieu of taxes, free disposal, lump sum, or any combination thereof. With approval of the Board of Public Utilities, the negotiated amount may exceed \$1.00 per ton.

Comment:

DEP and Union County should endeavor to open a new short term landfill in northeastern New Jersey.

Response:

DEP has long adopted the policy that under the N.J. Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.) the responsibility of siting new solid waste disposal facilities rests with the districts

(counties). Union County has maintained that insufficient landfill sites exist within the county but is currently in the process of reevaluating potential incounty landfill sites pursuant to a directive from the Department. In the interim, to relieve the disposal pressure on the Edgeboro Landfill, the DEP is proposing the transfer station strategy plan amendment for Union County. The Department has no plans to select and develop landfill sites for counties who refuse to fulfill their statutory responsibilities.

Comment:

Adequate landfill capacity exists in New Jersey that should be used.

Response:

This comment is factually incorrect. There is a severe lack of disposal capacity in the state and this disposal shortage is nearing the crisis stage. In northern New Jersey, the counties of Bergen, Essex, Hudson and Passaic are using landfills in the HMDC which are expected to reach capacity by the end of 1987. The counties of Morris, Somerset, Union and Middlesex are using the Edgeboro Landfill which is expected to reach capacity in 1988. The counties of Sussex, Warren, Hunterdon, Mercer and Camden are all using out-of-state landfills. This lack of landfill capacity and reliance on out-of-county and out-of-state landfills with limited capacity is an unacceptable situation that could eventually lead to a disposal crisis for many of these counties. Other counties, Monmouth, Ocean and Cape May, in particular, have designated landfill space and have planned on this capacity to service the respective counties until alternate disposal facilities come on line. It would be detrimental to the statewide solid waste planning process for the state to permit counties who have not designated landfill sites to use up capacity that counties, in good faith, set aside for future uses.

Comment:

Union County, due to a population density of 4,875 people per square mile, has no vacant areas for major landfill development.

Response:

In August and October of 1984, the Union County Freeholders adopted resolutions which purported that there existed a lack of sufficient available sites within the county for the development of landfill facilities. The county submitted a landfill siting study upon which it had based its findings in late October, 1984. After review of the county's study, which represented a certification of absence or failure in accordance with the New Jersey Solid Waste Management

Act, the DEP found an insufficient basis for the county's determination. The Department's rejection of the county's certification was primarily based on the criteria and data used and assumptions made by the county in the formulation of its landfill siting study. As a result, the Department ordered the county, among other things, to reevaluate the availability of suitable landfill sites within its borders. Since the Department's order in May, 1985, Union County has undertaken a reanalysis of potential sites, but has not, as of this date, submitted any results to the DEP on this issue.

Comment:

In districts where landfill sites are unavailable and they are unable to negotiate interdistrict agreements, the Act clearly directs the state to provide that the necessary capacity is put in place. A direct state role in providing regional capacity is absolutely needed.

Response:

The provisions of N.J.S.A. 13:1E-21 address the powers of the Commissioner of the DEP in cases where a board of chosen freeholders or the Hackensack Commission have certified, following a good faith and documented effort to find sites, the absence of sufficient existing or available suitable sites within the district for solid waste disposal. Union County did attempt to certify such a failure in October, 1984 after completing a landfill siting study. After review of the county's study, the DEP found an insufficient basis for the county's determination. The Department's rejection of the county's certification was primarily based on the criteria and data used and assumptions made by the county in the formulation of its landfill siting study. As a result, the county was ordered to reevaluate the availability of suitable landfill sites within Union County. This reevaluation is still ongoing in the county. Therefore, Union County has not adequately demonstrated a lack of suitable sites and has failed to reach interdistrict agreements for the use of capacity in other counties. The Department is not bound to providing needed capacity in other districts. However, the Department has proposed the transfer station strategy as a contingency measure to assure the provision of short-term capacity pending the development of resource recovery in Union County. The Department has also developed the transfer station strategy for three other north-central counties as a regional approach to interim disposal.

Recycling

Comment:

The mandatory recycling aspect of the plan amendment proposed by the state should be postponed for a year to allow the municipalities to properly calculate the municipal budgets and tax rate consequences of mandatory recycling.

Response:

Union County must, as soon as possible, reduce the amount of solid waste it generates and find an alternate disposal site (other than the Edgeboro Landfill) which is the reasoning behind the DEP's proposed transfer station plan amendment. The Department is also sensitive to the financial ramifications for municipalities if Union County was forced to immediately implement mandatory recycling. To mitigate this financial hardship, DEP is proposing to phase—in mandatory recycling according to a schedule which requires full program implementation within the first two months following the completion of the upcoming municipal budget cycle.

4. Air Emissions

Comment:

The DEP will produce more air pollution by shipping Union County's waste to out-of-state landfills then if it were to open a landfill nearby in New Jersey and direct the waste to that facility.

Response:

Since Union County has not developed a landfill site, the Department is proposing the transfer station strategy plan amendment as a short term disposal policy. The implementation of this strategy will reduce the number of truck trips and, accordingly, the amount of air pollution compared with collection vehicles making the trip to out-of-state landfills. However, any potential impacts from the development of a transfer station will also be addressed in the preparation of an environmental impact statement.

5. Out-of-State Disposal

Comment:

If the State of Pennsylvania denies New Jersey counties landfilling privileges, then DEP's plan for landfilling New Jersey's solid waste out-of-state will become a costly fiasco.

Response:

The intent of DEP in proposing the transfer station strategy plan amendment is to relieve the disposal pressure on the Edgeboro Landfill. If a transfer station is developed in Union County, a proposer will be selected who has an out-of-district disposal agreement. In addition, the proposed amendment's reference to the use of "out-of-state" disposal capacity does not foresee only consideration of the use of Pennsylvania facilities. The transfer station strategy would be equally feasible through the use of facilities in additional states.

6. District Designations

Comment:

The boundaries established by the state to manage solid waste are arbitrary and unrealistic.

Response:

The Solid Waste Management Act N.J.S.A. 13:1E-2b.(2) designates each county in the state and the Hackensack Meadowlands District as solid waste management districts and provides each county and the Hackensack Meadowlands Development Commission with the power, singularly or jointly with one or more other districts, to develop and implement a comprehensive solid waste management plan which meets the needs of every municipality within each county and within the Hackensack Meadowlands District. Therefore, it was by the preference of the New Jersey Legislature that county government be the chosen level of government to be responsible for developing and implementing solid waste management plans and provisions for joint or regional solutions which were incorporated into the Act.

7. Cost Considerations

Comment:

The extra cost of out-of-state disposal should be shared by all the citizens of the state.

Response:

It is the Department's position that counties that have acted in a responsible manner and have sited and implemented the necessary solid waste disposal facilities to meet the needs of their citizens should not be penalized due to the inaction of other counties. The extra cost for out-of-district disposal due to the lack of in-county disposal facilities and the lack of agreements with counties with excess capacity must be the responsibility of the counties lacking the disposal capacity.

Comment:

The DEP has been dragging its feet in approving transfer stations; it lacks the proper monitoring of those few it did approve; and never did address cost factors in its approval process.

Response:

The D.E.P. acts as expeditiously as possible given the procedural requirements embodied in the laws under which it operates. The Solid Waste Management Act N.J.S.A. 13:1E-1 et seq. and the Nonhazardous Waste Regulations N.J.A.C. 7:26-1 et seq. mandate specific requirements prior to the development of any solid waste facility. First, every proposed solid waste facility must be included in the solid waste management plan of the district in which it is to be located. This action must be performed by an amendment to the district plan undertaken by the county board of chosen freeholders and approved by the Commissioner of the Department of Environmental Protection. After the proposed facility is included in the district plan, the owner/operator of the proposed facility must submit an environmental impact statement, engineering designs and a solid waste facility permit application for the proposed facility, all of which must be approved by the Department. According to law, the Department has six (6) months from the submission of a complete application to approve or reject the applications. Delays in this process result from failure of a facility to be included in the district plan and the submission of incomplete applications requiring the applications to be returned to the applicant for corrective action causing delays beyond the control of the Department.

The monitoring of solid waste facilities to ensure they comply with all the relevant regulations is the responsibility of the enforcement element of the Division of Waste Management. Every facility is inspected periodically by Division staff. Under provisions of the Environmental Health Act N.J.S.A. 26:3A-2-21 et seq., a county can receive funds to perform monitoring and enforcement functions for solid waste facilities to augment the Division's enforcement capabilities. Union County is currently in the process of complying with the provisions of the Environmental Health Act that will allow the county to begin an enforcement initiative.

The economic aspect of solid waste management is the responsibility of the Board of Public Utilities. Every solid waste management plan amendment submitted to the Department, including those for the inclusion of transfer stations are forwarded to the Board of Public Utilities for their review and comment. The Board of Public Utilities also becomes involved with the economic

aspect of a transfer station should the transfer station be required to apply to the Board for a tariff, which regulates what a facility may charge for solid waste streams.

Comment:

The Union County Freeholder Board believes that the DEP transfer station initiative is unnecessarily expensive and is bad solid waste planning.

Response:

As noted in the proposed amendment, the DEP has determined that the solid waste management situation in north-central New Jersey has reached a critical stage, and that contingency planning measures are needed to provide interim disposal capacity for a number of counties, including Union. This capacity must be provided to avert a public health and environmental crises which would result from the continued exhaustion of limited remaining disposal capacity of landfills serving large regional areas, such as the Edgeboro Landfill in Middlesex County. Under these circumstances the transfer station strategy does represent sound solid waste planning. The Department does not question the assertion that, if implemented, the transfer station strategy would result in higher solid waste transportation and disposal cost. However, it must be noted that cost considerations are only relevant when suitable alternatives exist to enable comparative analysis, which currently is not the case in Union County. In the implementation of the strategy, the Department would seek bids that represent the most advantageous economic arrangements for the residents of Union County.

8. Use of H.M.D.C. Facilities

Comment:

P.L. 1969, Chapter 404, granted life rights to use the Hackensack Meadowlands District for solid waste disposal to the city of Rahway and any redirection should lawfully go to the HMDC.

Response:

The Hackensack Meadowlands District was required under statutory mandate, specifically N.J.S.A. 13:17-1 et seq., to receive waste from certain origins including Union and Morris Counties. Due to diminishing landfill capacity within the district, the Department adopted on December 31, 1979 "Rules Concerning Interdistrict Flow of Solid Waste Between and Among Solid Waste Management Planning Districts in Northeastern New Jersey" N.J.A.C. 7:26-1.11 to N.J.A.C. 7:26-1.15, in accordance with which the Union County Solid Waste Management District

and the Morris County Solid Waste Management District were directed to modify their plans to redirect their wastes to disposal facilities located outside the Meadowlands District. Moreover, on March 20, 1980, the Department adopted modifications to the Union County Solid Waste Management Plan which redirected all of Union County's municipalities except Union and Springfield out of the Meadowlands District. These redirections, authorized by provisions of the Solid Waste Management Act N.J.S.A. 13:1E-1 et seq., supersede the Hackensack Meadowlands Reclamation and Development Act N.J.S.A. 13:17-1 et seq. which allowed all of Union County, including the city of Rahway to use the Meadowlands District.

9. Resource Recovery

Comment:

The proposed plan amendment does not mention the many significant steps taken by the county to solve the disposal problem.

Response:

Section B.2. of the Department's proposed plan amendment outlines in detail the historical development of the Union County Solid Waste Management Plan and the failure of the county to provide disposal capacity since the original plan some seven years ago. This historical outline accurately reflects the activities that have transpired. Further, the positive elements of Union County's efforts toward the development of resource recovery have been outlined in paragraphs 2, 5 and 7 of the above noted background summary.

Comment:

The steps taken in resource recovery development were at a significant cost to the county and reflect the freeholder board's resolve to provide a long term solution. We consider this our top priority in county government and petition the state to make it theirs.

Response:

The provisions of the New Jersey Solid Waste Management Act mandate a process for both county and statewide planning which shall encourage the maximum practicable use of resource recovery. The state has consistently reinforced this mandate through the district planning process for nearly a decade. As a result of this mandate and state and county action to develop and implement energy recovery projects, fourteen (14) of the twenty-one (21) counties have selected specific sites

for the construction of resource recovery facilities. Clearly, the historical record shows that the Department's top priority in solid waste management is the development and implementation of resource recovery.

10. Transfer Station Strategy

Comment:

The transfer station would be a white elephant after two or three years of use requiring the future capitalization to be compressed into a short term of use by taxpayers.

Response:

Concerning the interrelationship of the proposed transfer station strategy and the planned resource recovery project, the Department realizes that the useful life of certain transfer station equipment may be relatively short depending upon the operational date of the resource recovery facility. However, other buildings and equipment that would be necessary at a transfer station will have a substantial value which could be applied to alternative uses. Alternative uses of buildings and equipment, such as the establishment of a county recycling station or warehouse, will be addressed in the development of the transfer station Request for Proposal document. In addition, depending on the siting of the transfer station, the facility may continue to have economic advantages for use as a solid waste facility when compared to direct haul once the proposed resource facility becomes operational.