



State of New Jersey

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

**CERTIFICATION
OF THE APRIL 18, 2002
AMENDMENT TO THE CAMDEN 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 (HMDC) develop comprehensive plans for waste management in their respective districts. On July 17, 1980 the Department of Environmental Protection (Department or DEP) approved, with modifications, the Camden 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.

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 Camden County Board of Chosen Freeholders (County Freeholders) completed such a review and on April 18, 2002, adopted an amendment to its approved County Plan.

The April 18, 2002 amendment proposes County Plan inclusion of:

- (1) A new service agreement between the Pollution Control Finance Authority of Camden County (PCFACC), and Camden County Energy Recovery Associates (CCERA);
- (2) The directing of PCFACC to apply for a restructuring of its debt service from the State; and,
- (3) The reestablishment of waste flow regulation within Camden County.

The amendment was considered administratively complete for review by the Department on May 2, 2002 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 April 18, 2002 is approved in part and remanded in part as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the April 18, 2002 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 the amendment is consistent in part and inconsistent in part with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the issues of concern relative to the April 18, 2002 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 included various bureaus, divisions, and agencies within the Department. All agencies contacted are as follows:

Division of Water Quality, DEP
Division of Parks and Forestry, DEP
Division of Fish and Wildlife, DEP
Division of Compliance and Enforcement, DEP
Division of Solid and Hazardous Waste, 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 and Senior Services
Department of Transportation
Department of Community Affairs
U.S. Environmental Protection Agency
New Jersey Pinelands Commission

Elements of the April 18, 2002 Amendment

New Service Agreement between PCFACC and CCERA; and History of County's Intention to Procure Disposal Services Through a Non-discriminatory Process and Regulate the Movement of Waste

On September 8, 1997 the Camden County Board of Chosen Freeholders adopted an amendment to the County Plan for the inclusion of a non-discriminatory procurement process to solicit bids for the disposal of the County's solid waste. This amendment was certified by the Commissioner on November 14, 1997 and was approved with modification contingent upon receipt and approval by the DEP of a subsequent plan amendment or administrative action adopting the results of the non-discriminatory procurement process.

In the same September 8, 1997 amendment, the Camden County Board of Chosen Freeholders approved the County Plan inclusion of an interim flow control strategy covering the time between the judicial abrogation of the current disposal contracts and implementation of the new disposal strategy. The Department had determined that such an interim flow control requirement could not be enforced due to the November 10, 1997 denial of petition by the U.S. Supreme Court and subsequent lifting of the stay of the Federal Court's injunction against the enforcement of waste flow. Therefore, the Department rejected that portion of the September 8, 1997 amendment.

In a December 29, 1997 amendment, the County stated its intention to complete a non-discriminatory procurement process for securing waste disposal services, and indicated that it would submit to the Department the required documentation in a subsequent amendment once the process was completed. The County further stated its intention to regulate the movement of all waste generated within its boundaries, the details of which would be forwarded to the Department in a subsequent plan amendment. The amendment was certified by the Department on June 29, 1998 and the County's strategy to complete a non-discriminatory procurement process for securing waste disposal services was approved, provided that the County would submit in a subsequent plan amendment, documentation of the procurement process once it was completed in order for the Department to determine if the disposal services were procured in a non-discriminatory manner. Upon submission of this documentation, the Department would consider and act upon the County's request for authority to control as a market regulator the movement of waste generated within the County.

The April 18, 2002 amendment proposed County Plan inclusion of a new service agreement, dated July 30, 2001, between the PCFACC and the CCERA. The County stated in the amendment that the PCFACC had engaged in a new non-discriminatory procurement process to obtain resource recovery services pursuant to the McEnroe Act, N.J.S.A. 13:1E-136, et seq. As a result of this process, the CCERA, the current operator of the Camden Resource Recovery Facility (CRRF), was selected as the successful vendor. With this new service agreement, which will run for a period of thirty years from the work commencement date, Camden County would be able to regulate waste flow within the county and direct all processible waste generated within the County to the CRRF and all non-processible waste to a disposal facility chosen by the

PCFACC, to include, but not be limited to, the Pennsauken Sanitary Landfill, contingent upon restructuring the debt of the PCFACC.

In the June 29, 1998 certification of the December 29, 1997 amendment, the Department stated that the approval of the non-discriminatory procurement process was contingent upon the submission of documentation of the procurement process in a subsequent plan amendment. Although the April 18, 2002 amendment states that the new service agreement, dated July 30, 2001, between PCFACC and CCERA was procured pursuant to the McEnroe Act and was approved by both the Department of Environmental Protection and the Department of Community Affairs by a Solid Waste Order of Approval, dated February 8, 2002, there was no documentation verifying that it was reached in a non-discriminatory fashion, which is required for the reestablishment of waste flow within the county. The Department contacted the PCFACC and requested additional supportive documentation concerning the specifics of the non-discriminatory procurement process. The PCFACC submitted additional information; however, the additional information was insufficient to allow for the determination of the validity of the non-discriminatory bid process for both processible and non-processible waste.

Therefore, within Section C. of this certification, the portion of this amendment pertaining to the County Plan inclusion of the service agreement between PCFACC and CCERA is approved and the portion of the amendment pertaining to the County Plan inclusion of the reestablishment of waste flow in the County is remanded pending submission of documentation demonstrating that the agreement was reached in a non-discriminatory manner for both processible and non-processible waste.

Restructuring of Debt Services

In the December 29, 1997 amendment the County sought to make provisions for the outstanding debt of the PCFACC by requesting that "the State provide to the bondholders the appropriate State financed guarantees, State financed payments, or other State financed security to assure payment of the full indebtedness to the bondholders related to the PCFACC [bonds]...to the extent that sufficient funds are not generated by the system operations of the PCFACC." Since the PCFACC request was beyond the purview of the County planning process or the Department's authority to grant, the Department was unable to take a position on this issue.

The April 18, 2002 amendment to the County Plan directed the PCFACC to apply for restructuring of its debt service from the New Jersey Economic Development Authority pursuant to P.L. 2002, c. 401, and to apply for and obtain such other contributions from the State as are necessary for PCFACC to perform under the new service agreement. The County has applied to the State for the restructuring of its debt pursuant to P.L. 2002, c. 401. The application is currently under review.

C. Certification of the Camden 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 county solid waste management plans, I have reviewed the April 18, 2002 amendment to the approved County Plan and certify to the County

Freeholders that the April 18, 2002 amendment is approved in part and remanded in part as further specified below.

The County Plan inclusion of a new service agreement between the Pollution Control Finance Authority of Camden County and Camden County Energy Recovery Associates is approved and the County Plan inclusion of the reestablishment of waste flow regulation within Camden County is remanded pending submission of the documentation demonstrating that the agreement was reached in a non-discriminatory manner for both processible and non-processible waste. This submission may be undertaken pursuant to regulations set forth at N.J.A.C. 7:26-11, using the administrative action procedure. The County has applied to the State for the restructuring of its debt pursuant to P.L. 2002, c. 401. The application is currently under review.

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 County 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 including waste types 10, 13, 23, 25, and 27 and all applicable subcategories and shall not apply to liquid and hazardous wastes. All nonhazardous materials separated at the point of generation for sale or reuse are subject to regulation in accordance with N.J.A.C. 7:26A-1 et seq.

4. Certification to Proceed with Implementation of 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 Freeholders shall proceed with the implementation of the approved components of the 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 Amendment

The approved components of 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 Department's planning guidelines, rules, regulations, orders of the Department, and also includes the compilation of individual district plans and amendments as they are approved.

E. Certification of Approval in Part and Remand in Part 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 in part and remand in part the amendment, as outlined in Section C. of this certification, to the Camden County District Solid Waste Management Plan which was adopted by the Camden County Board of Chosen Freeholders on April 18, 2002.

Apr 13 2002
Date

Bradley M. Campbell
Bradley M. Campbell, Commissioner
Department of Environmental Protection