

### State of New Hersey

Christine Todd Whitman Governor

Department of Environmental Protection

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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 DECEMBER 29, 1997
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 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 December 29, 1997,

adopted an amendment to its approved County Plan.

The amendment represents the County's supplemental response to the May 1, 1997 decision of the United States Court of Appeals for the Third Circuit which declared unconstitutional New Jersey's historic system of solid waste flow control. [See Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County et al. 112 F.3d 652 (3d Cir. 1997, cert. den., November 10, 1997.] Specifically, each solid waste management district must reevaluate its solid waste disposal strategy in light of this recent court decision and, if necessary, initiate appropriate amendments thereto.

In general, the Department refers the County to the solid waste regulations at N.J.A.C. 7:26-1 et seq. to the extent they relate to specific procedural and substantive issues addressed in this and subsequent plan amendments. In addition, this certification is in no way intended by the DEP to represent a legal determination regarding the effect of the <u>Atlantic Coast</u> decision on any specific contract between public and/or private parties.

The December 29, 1997 amendment is the County's response to the Department's November 14, 1997 certification of the County's initial <u>Atlantic Coast</u> strategy amendment dated September 18, 1997.

The December 29, 1997 amendment has five components:

- \*Deletion of Reference to Interim Flow Control
- \*Intention to Procure Disposal Services Through a Nondiscriminatory Process
- \*Intention to Regulate Movement of Waste Generated Within the County Upon Completion of Procurement Process
- \*Demand that the State Provide Pollution Control Financing Authority of Camden County (PCFACC) Bondholders with State Financed Guarantees to Assure Payment of Indebtedness
- \*Deletion of Reference to Imposition of Environmental Investment Charge (EIC)

The amendment was received by the Department on January 22, 1998, and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed this amendment and determined that the amendment adopted by the County Freeholders on December 29, 1997 is approved as provided in N.J.S.A. 13:1E-24.

### B. <u>Findings and Conclusions with Respect to the Camden County District</u> Solid Waste Management Plan Amendment

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the December 29, 1997 amendment to the County Plan according to the objectives, criteria, and standards developed in the Statewide Solid Waste Management Plan and I find and conclude that this plan

amendment is consistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the issues of concern relative to the December 29, 1997 amendment which are included in Section B.2. below.

In conjunction with the review of the amendment, the Department circulated copies to sixteen 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 Compliance and Enforcement, DEP Division of Solid and Hazardous Waste, 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 Department of Treasury U.S. Environmental Protection Agency

## 1. Agency Participation in the Review of the December 29, 1997 Amendment

The following agencies did not object to the proposed amendment:

Division of Parks and Forestry, DEP
Division of Compliance and Enforcement, DEP
Office of Air Quality Management, DEP
Green Acres Program, DEP
New Jersey Turnpike Authority
Department of Agriculture
Department of Transportation

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

Division of Fish, Game and Wildlife, DEP
Division of Water Quality, DEP
Land Use Regulation Element, DEP
New Jersey Advisory Council on Solid Waste Management
Department of Health
Department of Community Affairs
Department of Treasury
U.S. Environmental Protection Agency

The following agency provided substantive comments as shown in Section B. of the certification document.

Division of Solid and Hazardous Waste, DEP

### 2. Issues of Concern Regarding the December 29, 1997 Amendment

### Issue: Deletion of Reference to Interim Flow Control

In its November 14, 1997 certification of the County's September 18, 1997 amendment, the Department rejected the County's proposed interim flow control strategy citing the U.S. Supreme Court's lifting of the stay on the Federal Court's injunction against the enforcement of waste flow. In response, within the December 29, 1997 amendment, the County deletes any reference to an interim flow control strategy. Within Section C. of the certification, the Department approves the deletion of the reference to interim flow control.

# Issue: County's Intention to Procure Disposal Services Through a Nondiscriminatory Process and Regulate the Movement of Waste

Within the December 29, 1997 amendment the County states its intention to complete a nondiscriminatory procurement process for securing waste disposal services, and indicates that it will submit to the Department the required documentation in a subsequent amendment once this process is completed. The County further states its intention to regulate the movement of all waste generated within its boundaries, the details of which will be forwarded to the Department in a subsequent plan amendment.

Within Section C. of this certification, the Department approves the County's strategy to complete a nondiscriminatory procurement process for securing waste disposal services. It is stressed that the Department is approving the County's intention to conduct the procurement process and is not approving any results which are not yet available. Therefore, within Section C., the county is directed to submit in a subsequent plan amendment documentation of the procurement process once it is completed in order for the Department to determine if the disposal services were procured in a nondiscriminatory manner. Upon submission of this documentation, the Department will consider and act upon the County's request for authority to control as a market regulator the movement of waste generated within the County.

# Issue: County Demand that the State Provide PCFACC Bondholders with State Financed Guarantees to Assure Payment of Indebtedness

Within the December 29, 1997 amendment the County seeks to make provisions for the outstanding debt of the PCFACC by demanding 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 this PCFACC demand is beyond the purview of the County planning process or the Department's authority to grant, within Section C. of the certification the Department can take no position on this issue.

#### Issue: Deletion of Reference to an EIC

In its November 14, 1997 certification of the County's September 18, 1997 amendment, the Department remanded for further evaluation and reconsideration the County's proposal for recovering environmental investment costs through the imposition of an EIC because a specific dollar amount had not been identified. In the December 29, 1997 amendment the county seeks to delete all references to the possible imposition of an EIC. Within Section C., the Department approves this component of the amendment.

## C. <u>Certification of the Camden County District Solid Waste Management</u> Plan Amendment

In accordance with <u>N.J.S.A.</u> 13:1E-1 et seq., specifically <u>N.J.S.A.</u> 13:1E-21, which establishes specific requirements regarding the contents of the district solid waste management plans, I have reviewed the December 29, 1997 amendment to the approved County Plan and certify to the County Freeholders that the December 29, 1997 amendment is approved as further specified below.

#### Deletion of Reference to Interim Flow Control

The deletion of any reference as contained within the September 18, 1997 amendment to interim flow control is approved.

## <u>County's Intention to Procure Disposal Services Through a Nondiscriminatory Process and Regulate the Movement of Waste</u>

The County Plan inclusion of a strategy to complete a nondiscriminatory procurement process for securing waste disposal services is approved. Also approved for County Plan inclusion is the County's strategy to regulate the flow of waste as a market regulator. The County is hereby advised that in both cases the Department is only approving the proposed strategy and not the results which have yet to be determined.

#### Deletion of Reference to Environmental Investment Charge

The deletion of any reference as contained within the September 18, 1997 amendment to the imposition of an EIC is approved.

### D. Other Provisions Affecting the Plan Amendment

#### 1. Contracts

Any contract renewal or new contract for solid waste collection or disposal which is inconsistent with this amendment to the County Plan and which was executed prior to the approval of this amendment and subsequent to the effective date of the Solid Waste Management Act (July 29, 1977), and which shall further be for a term in excess of one year, shall immediately be renegotiated in order to bring same into conformance with the terms and provisions herein set forth. Any solid waste collection operation or disposal facility registered by the Department and operating pursuant to a contract as herein described, shall be deemed to be in violation of this amendment and of the County Plan if such renegotiation is not completed within ninety (90) days of the effective date of this amendment provided, however, that any such registrant may, upon application to the Department, and for good cause shown, obtain an extension of time to complete such renegotiation.

#### 2. Compliance

All solid waste facility operators and transporters registered with the Department and operating within the County and affected by the amendment contained herein shall operate in compliance with this amendment and all other approved provisions of the County Plan. Any facility operator or transporter who fails to comply with the provisions contained herein shall be deemed to be in violation of N.J.S.A. 13:1E-1 et seq., in violation of N.J.A.C. 7:26-1 et seq., and in violation of their registration to operate a solid waste facility or a collection system issued thereunder by the Department and shall be subject to the provisions and penalties of N.J.S.A. 13:1E-9 and 12 and all other applicable laws.

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

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

# 4. <u>Certification to Proceed with the Implementation of the Plan</u> Amendment

This document shall serve as the certification of the Commissioner of the Department to the County Freeholders and pursuant to  $\underline{\text{N.J.S.A.}}$  13:1E-24c. and f., the County shall proceed with the implementation of the approved amendment certified herein.

#### Definitions 5.

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 <u>N.J.A.C.</u> 7:26A-1.3.

#### 6. Effective Date of the Amendment

The approved 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 The County Plan, including any amendment made under the law. 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 amendments as they are approved.

#### Ε. Certification of Approval of the Amendment by the Commissioner of the Department of Environmental Protection

In accordance with the requirements of N.J.S.A. 13:1E-1 et seq., I hereby approve the amendment, as outlined in Section C. of this certification, to the Camden County District Solid Waste Management Plan which was adopted by the Camden County Board of Chosen Freeholders on December 29, 1997.

Shinn, Jr., Commissioner Department of Environmental Protection