



State of New Jersey

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Robert C. Shinn, Jr.
Commissioner

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

CERTIFICATION
OF THE OCTOBER 24, 1995
AMENDMENT TO THE HUNTERDON 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 October 2, 1981, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Hunterdon 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 Hunterdon County Board of Chosen Freeholders (County Freeholders) completed such a review and on October 24, 1995, adopted an amendment to its approved County Plan.

The amendment proposes County Plan inclusion of: the designation of the Hunterdon County Utilities Authority as the implementing agency for the County Plan; the use of and disbursement schedule for the County's Resource Recovery Investment Tax (RRIT) Fund monies to offset the costs associated with utilizing the Warren County resource recovery facility; and requirements regarding implementation of the County's waste audit program.

The amendment was received by the Department on December 8, 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 October 24, 1995 is approved as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the October 24, 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 is consistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the issue of concern relative to the October 24, 1995 amendment which is identified 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 Enforcement, DEP
Division of Water Quality, DEP
Division of Parks and Forestry, DEP
Division of Fish, Game and Wildlife, DEP
Division of Solid and Hazardous Waste, DEP
Green Acres Program, DEP
Land Use Regulation Element, DEP
Office of Air Quality Management, 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 October 24, 1995 Amendment

The following agencies did not object to the proposed amendment:

Division of Parks and Forestry, DEP
Division of Enforcement, DEP
Division of Water Quality, DEP
New Jersey Turnpike Authority
Department of Agriculture
Department of Community Affairs

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

Division of Fish, Game and Wildlife, DEP
Green Acres Program, DEP
Land Use Regulation Element, DEP
Office of Air Quality Management, DEP
New Jersey Advisory Council on Solid Waste Management
Department of Health
Department of Transportation
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. Issue of Concern Regarding the October 24, 1995 Amendment

After adoption of the October 24, 1995 amendment, the Department received a copy of a February 21, 1996 letter from Frank Fuzo, Director of the Hunterdon County Board of Chosen Freeholders and Chair of the Hunterdon County Utilities Authority, to the Warren County Board of Chosen Freeholders and the Pollution Control Financing Authority of Warren County. The letter informed Warren County that due to changes in Federal law regarding solid waste flow control as illustrated in the C & A Carbone v. Town of Clarkstown, New York and Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County cases, the viability and legality of the Hunterdon County/Warren County Interdistrict Agreement has been dramatically altered. Specifically, according to the letter, the laws and regulations which required transporters to utilize the Hunterdon County transfer station have been declared in violation of the U. S. Constitution. Consequently, waste flow to the Hunterdon County facility has been dramatically reduced impairing Hunterdon's ability to meet the volume requirements of the interdistrict

agreement. Therefore, since the contract allows Hunterdon County to be excused for failure in performance by reason of an uncontrollable circumstance, this agreement shall be considered void and terminated.

In a March 7, 1996 letter from the Department to Hunterdon County, the DEP informed Frank Fuzo that the two noted cases have not declared the laws and regulations which require transporters to utilize the Hunterdon County transfer station in violation of the U. S. Constitution. The C & A Carbone decision only invalidated a particular ordinance in effect in that town while the Atlantic Coast decision only applies to the construction and demolition portion of the waste stream. Therefore, neither court case relieves Hunterdon County from its contractual requirements to deliver up to 100 tons per day of processible waste to the Warren County resource recovery facility. The letter also stated that the Department intends to fully enforce the provisions of waste flow control for materials other than construction and demolition waste. Consequently, as noted in Section C., the Department is approving the use of RRIT Fund moneys to offset costs associated with the use of the Warren County resource recovery facility since Hunterdon County is still contractually obligated to deliver processible waste to the Warren County facility.

C. Certification of the Hunterdon 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 October 24, 1995 amendment to the approved County Plan and certify to the County Freeholders that the October 24, 1995 amendment is approved as further specified below.

1. Implementation Agency

The County Plan inclusion of the designation of the Hunterdon County Utilities Authority as the agency to supervise the implementation of the County Plan is approved.

2. RRIT Fund

The County Plan inclusion of the use of and disbursement schedule for RRIT Fund monies accrued between Fiscal Years 1990 through 1995 is approved. Specifically, the County will use approximately \$96,000 to offset the costs associated with utilizing the Warren County resource recovery facility (pursuant to an interdistrict agreement) during calendar 1996 for disposing of Hunterdon's solid waste. It must be noted that the ultimate conformance of the RRIT Fund uses and disbursement schedule with the requirements of N.J.S.A. 13:1E-150 shall be the responsibility of the Hunterdon County Utilities Authority.

3. Waste Audit Program

The County Plan inclusion of the Hunterdon County waste audit program is approved. Specifically, the waste audit program directs commercial, industrial, institutional, and governmental employers with 100 or more employees located within the County to compile information to assist in the proper management of their solid waste. The Hunterdon County Utilities Authority will assist employers in developing the waste audit program through workshops and literature distribution. At a minimum, employers will compile the following information:

- * Analysis of the establishment's current solid waste disposal activities including disposal and recycling costs and volumes of solid waste generated.
- * Identification of materials in the establishment's solid waste stream that may be potentially reduced or recycled and development of a plan to reduce or recycle said materials.
- * Description of establishment's plan to segregate and manage medical and hazardous wastes.

The waste audit program will be implemented according to the following schedule:

- * More than 250 employees - within one year of the date of this certification document.
- * 100 to 250 employees - within two years of the date of this certification document.

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 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. 7:26A-1 et seq.

4. Certification to Proceed with the Implementation of the Plan Amendment

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

5. Definitions

For the purpose of this amendment and unless the context clearly requires a different meaning, the definitions of terms shall be the same as those found at N.J.S.A. 13:1E-3 and -99.12, N.J.A.C. 7:26-1.4, -2.13, and N.J.A.C. 7:26A-1.3.

6. Effective Date of the Amendment

The amendment to the County Plan contained herein shall take effect immediately.

7. Reservation of Authority

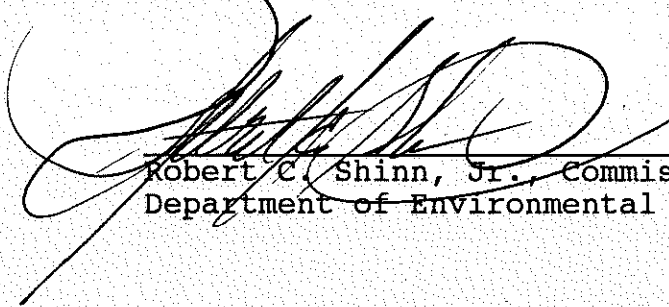
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management

Plan, with appendices, which includes the Department's planning guidelines, rules, regulations, orders of the Department, interdistrict and intradistrict waste flow rules, and also includes the compilation of individual district plans and amendments as they are approved.

E. Certification of Approval of the Amendment by the Commissioner of the Department of Environmental Protection

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 Hunterdon County District Solid Waste Management Plan which was adopted by the Hunterdon County Board of Chosen Freeholders on October 24, 1995.

Date 4/2/96



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