



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
PASSAIC COUNTY SOLID WASTE
MANAGEMENT DISTRICT

CERTIFICATION
OF THE OCTOBER 1, 1997
AMENDMENT TO THE PASSAIC 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 13, 1980, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Passaic 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 Passaic County Board of Chosen Freeholders (County

Freeholders) completed such a review and on October 1, 1997, adopted an amendment to its approved County Plan.

The amendment represents the County's 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 112F.3d 652 (3d Cir. 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 emergency 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 amendments. In addition, this certification is in no way intended by the Department to represent a legal determination regarding the effect of the Atlantic Coast decision on any specific contract between public and/or private parties.

The October 1, 1997 amendment has three components:

- *Alliance Landfill License Agreement
- *Procurement of Solid Waste Transportation and Transfer Services
- *Recovering Environmental Investment Costs

The amendment was received by the Department on October 7, 1997, and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed this amendment on an expedited basis and has determined that the amendment adopted by the County Freeholders on October 1, 1997 is approved in part, modified in part, and remanded in part, as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the October 1, 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, as modified, is consistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the issues of concern relative to the October 1, 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 October 1, 1997 Amendment

The following agencies did not object to the proposed amendment:

Division of Parks and Forestry, DEP
Green Acres Program, DEP
Department of Agriculture
New Jersey Turnpike Authority
Department of Transportation

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

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

The following agencies provided substantive comments:

Division of Solid and Hazardous Waste, DEP
Department of Community Affairs

2. Issues of Concern Regarding the October 1, 1997 Amendment

Issue: Alliance Landfill License Agreement

On December 7, 1992 the Passaic County Utilities Authority (PCUA)

executed a License Agreement with Empire Sanitary Landfill for easement and license rights and landfill disposal services for fifteen years through 2008. (U.S.A. Waste Services subsequently purchased the stock of Empire Landfill and the landfill was renamed Alliance Landfill). The December 7, 1992 agreement was approved by the Department on October 7, 1993, and was subsequently modified on December 29, 1995 and May 29, 1997. The contract was not publicly bid due to PCUA's position that the contract was the subject of an exception to the Local Public Contracts Law. However, PCUA maintains that the competitive process utilized was nondiscriminatory as to interstate commerce. As part of this process, the PCUA contacted five out-of-state landfill owners and operators and ultimately determined that the Alliance Landfill offered the most cost effective proposal.

Since the County has adequately demonstrated that it secured a disposal contract with an out-of-state landfill in a nondiscriminatory manner, the Department, within Section C. of the certification, approves this component of the amendment. Therefore, the County may continue to direct its solid waste to the Alliance Landfill.

Issue: Procurement of Solid Waste Transfer and Transportation Services

Solid waste generated within Passaic County is currently brought to one of three transfer stations owned and operated by Pen Pac, Inc. Transportation service to haul waste from the transfer stations to the Alliance Landfill is provided under an existing contract with Grinnell Solid Waste Haulers, Inc. and Spectraserve, Inc. The PCUA has concluded that neither the contract for transfer services nor those for transportation of solid waste were nondiscriminatorily bid.

The PCUA, therefore, issued nondiscriminatory bid specifications on July 28, 1997 to procure long-haul transportation services for the transportation of solid waste generated within the County from the transfer stations serving the County system to the Alliance Landfill. The PCUA solicited bids nationally through placement of legal notices in the Star Ledger and the New York Times, for a series of alternate terms including one, three and five year terms. Bids were submitted on September 10, 1997 and the County anticipates that a contract will be awarded within 60 days of that date. On September 19, 1997 the PCUA issued nondiscriminatory bid specifications soliciting bids for the provision of solid waste transfer station services. The bid specifications asked for alternate terms for transfer station services, including one, two, three and five year terms. The County expects bids to be submitted by October 10, 1997, with the contract being awarded within 60 days from that date. These bid specifications were also advertised through the placement of legal notices in the Star Ledger and the New York Times, as well as being transmitted to forty-five

companies in the solid waste field located in various states throughout the country.

Since these procurement processes have not yet been completed, within Section C. of the certification this component of the amendment is approved with modification contingent upon receipt by the DEP of documents awarding a nondiscriminatory bid contract(s) to provide transfer and transportation services. Therefore, if the stay of the injunction against enforcement of waste flow is lifted prior to completion of the procurement process, the County may not continue to direct waste to the Pen Pac Inc. transfer stations until a subsequent plan amendment or administrative action adopting the results of the nondiscriminatory procurement process is submitted to and approved by the Department.

Issue: Recovering Environmental Investment Costs

The PCUA has incurred debt in developing the County solid waste system including the purchase of disposal rights at Alliance Landfill and development costs associated with the resource recovery facility. The plan amendment states that the PCUA will charge and collect amounts sufficient to pay off this debt and for certain operating expenses. The PCUA believes that it has the ability to collect these charges from the users of the solid waste system by developing a constitutionally permissible system which re-establishes waste flow control. The PCUA will assess the users of the solid waste system with their proportionate share of the costs based on actual usage as a component of the overall tipping fee for the system. Further, the PCUA intends to "unbundle" its solid waste disposal rates to create a separate user charge, or Environmental Investment Charge (EIC), which will be assessed on a per-ton basis to generators upon the occurrence of one of the following circumstances: (i) on all solid waste generators upon a final determination by the United States Supreme Court that New Jersey solid waste management districts do not have the authority to regulate the flow of waste to the County system, or (ii) assuming the continuation of a waste flow system, only against those waste flow generators that fail to deliver solid waste to the County system.

The County has calculated the EIC based on the total costs of the system components divided by the PCUA's 1993 tonnage data, plus an incremental standby capacity charge relating to the PCUA's obligation to provide transfer station services for all waste generated within the County. The PCUA has utilized 1993 generation figures because it believes that they most accurately reflect the tonnage that is expected to be delivered to the county system, and provides the historic basis for allocating the PCUA's costs of developing and implementing the County system.

The PCUA proposes to allocate the EIC between waste generators whose waste is collected by or on behalf of municipalities and

large scale commercial and industrial waste generators that typically contract for their own collection services. The PCUA suggests that the portion of the EIC relating to waste generated by the commercial sector be billed directly by the PCUA. The PCUA further proposes that the portion relating to municipal waste be assessed by the Local Finance Board against the municipality and billed to the municipality by the PCUA. According to the proposed amendment, the municipality in turn can collect this charge through general taxation or through a solid waste utility charge. However, the Department of Community Affairs, following its review of the proposed amendment, asserted that the Local Finance Board does not have the authority to assess this fee on municipalities in the manner proposed by the PCUA.

The amendment asserts that the PCUA intends to reevaluate the EIC from time to time taking into consideration changes to the components that factor into the calculation of the EIC, such as tonnage actually being processed through the county system, contract rates for transportation, transfer and disposal services, operating costs and debt service.

A summary of PCUA's calculation of the initial EIC is as follows:

Debt Service		\$28.22
Other Financial Bond Covenants		\$ 3.44
Operations		\$ 6.06
Transfer Station Capacity, Charges		<u>\$10.22</u>
Total	\$/ton	\$47.94

The PCUA anticipates that a tipping fee for disposal within the County system will not exceed \$103.06 per ton. This rate cannot be firmly established until such time as the procurement of solid waste transportation and transfer services has been completed. The rate elements for the proposed County system tipping fee is as follows:

Host Benefit		\$ 3.000
Transfer Station Operations		\$ 17.000
Transportation		\$ 18.320
Disposal		\$ 27.000
Operations, Maintenance & Enforcement		\$ 6.062
Debt Service		\$ 28.225
Other Financial Covenants		<u>\$ 3.446</u>
Total	\$/ton	\$103.053

While the Department does not object to the County's contingency strategy to create a separate EIC, any proposed EIC should be developed after the County has secured new contracts for transfer and transportation services under its current procurement process. Completion of these processes will enable the County to assess the

lowest user charge possible to ensure that ratepayers are charged competitive rates while outstanding debt payments are covered. Therefore, within Section C. of the certification, the Department remands for further evaluation and reconsideration the County's proposal for recovering environmental investment costs. As noted in Section C., the County's proposal for recovering environmental investment costs from waste generators that do not utilize the County system is remanded for further consideration and evaluation by the County.

Any future amendment adopted by the County Freeholders which addresses an EIC should include a detailed methodology as to the calculation of the EIC, including but not limited to the following:

- i. Analysis of current tip fee to determine various EIC components;
- ii. Analysis of how costs of various EIC components could be reduced;
- iii. Determination of means of calculating an EIC;
- iv. Determination of billing agency and mechanism for collecting an EIC;
- v. Analysis to demonstrate justness and reasonableness of the final EIC and the ability to meet debt obligations.

C. Certification of the Passaic 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 1, 1997 amendment to the approved County Plan and certify to the County Freeholders that the October 1, 1997 amendment is approved in part, modified in part, and remanded in part as further specified below.

Alliance Landfill License Agreement

The County Plan inclusion of the Alliance Landfill License Agreement is approved. Specifically, since the County has adequately demonstrated that it secured a disposal contract in a nondiscriminatory manner with an out-of-state landfill, the Department approves this component of the amendment. Therefore, the County may continue to direct its solid waste to the Alliance Landfill.

Procurement of Solid Waste Transfer and Transportation Services

The County Plan inclusion of a nondiscriminatory procurement

process to solicit bids for the provision of transportation and transfer services for the delivery of solid waste to the Alliance Landfill is approved with modification contingent upon receipt by the DEP of documents awarding nondiscriminatory bid contracts to provide said services. Specifically, as noted within Section B. of the certification, this process has not yet been completed. Therefore, if the stay of the injunction against enforcement of waste flow is lifted prior to completion of this procurement process, the County may not continue to direct waste to the Pen Pac Inc. transfer stations until a subsequent plan amendment or administrative action adopting the results of the nondiscriminatory procurement process is submitted to and approved by the Department.

Recovering Environmental Investment Costs

The County Plan inclusion of the proposal for recovering environmental investment costs from waste generators that do not utilize the County system is remanded for further consideration and evaluation by the County. As noted in Section B., while the Department does not object to the County's contingency strategy to create a separate EIC, any proposed EIC should be developed after the County has secured new contracts for transfer and transportation services under its current procurement process. Completion of these processes will enable the County to assess the lowest user charge possible to ensure that ratepayers are charged competitive rates while outstanding debt payments are covered. Also, the County's plan to "unbundle" its solid waste disposal rates to create a separate EIC which will be assessed on a per-ton basis upon generators, following completion of the current transfer and transportation procurement process, is remanded to the County for further analysis. Further, the Department notes that the proposed \$47.94/ton EIC requires greater scrutiny and, accordingly, the County is hereby directed to reevaluate the calculation of the EIC to ensure that the fee is appropriate. Additionally, the County Plan also proposes an initial tipping fee for system users which shall not exceed \$103.06/ton. This rate cannot be firmly established until such time as the procurement of solid waste transportation and transfer services has been completed. A subsequent amendment should be submitted which considers changes to the components that factored into the calculation of the proposed EIC and tipping fee for system users. Finally, the Local Finance Board does not possess the authority to assess the EIC on municipalities in the manner proposed by the PCUA.

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 and shall not apply to liquid waste, sewage sludge, septage, and hazardous waste. 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 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 portion 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 the Amendment

The approved portion of the amendment to the County Plan shall take effect as of the date of final disposition of Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County.

7. Reservation of Authority

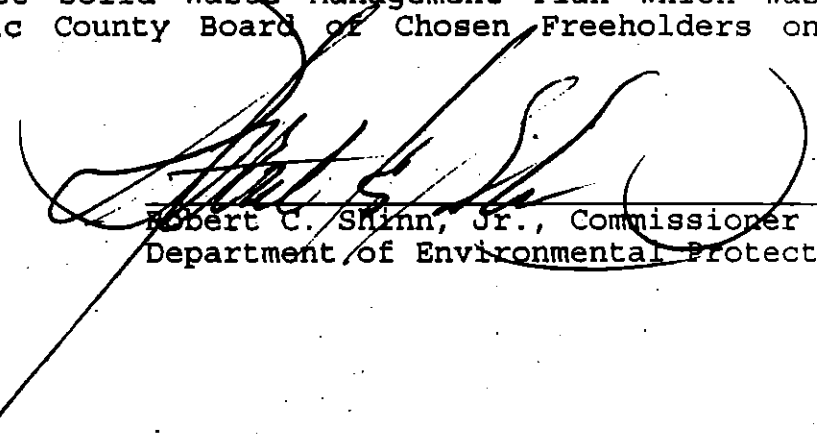
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's 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, Modification, and Remand 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, modify in part, and remand in part, the amendment as outlined in Section C. of this certification, to the Passaic County District Solid Waste Management Plan which was adopted by the Passaic County Board of Chosen Freeholders on October 1, 1997.

Date

11/10/97


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