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Scott A. Welner
Commissioner

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 DECEMBER 2, 1992
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 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, 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 Passaic County Board of Chosen Freeholders (County Freeholders) completed such a review and on December 2, 1992, adopted an amendment to its approved County Plan. The amendment proposed inclusion of certain tracts of land in Totowa Borough and Wayne Township for the siting of a County materials recovery facility/transfer station.

The amendment was received by the Department of Environmental Protection and Energy (Department or DEPE) on December 23, 1992, 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 December 2, 1992 is modified 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 December 2, 1992 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 inconsistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the issues of concern relative to the December 2, 1992 amendment which are included in Section B.2. 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. These agencies are the following:

Office of Energy, DEPE
Land Use Regulation Element, DEPE
Groundwater Quality Management Element, DEPE
Wastewater Facilities Regulation Element, DEPE
Division of Parks and Forestry, DEPE
Division of Fish, Game and Wildlife, DEPE
Division of Solid Waste Management, DEPE
Green Acres Program, DEPE
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 the Public Advocate
U.S. Environmental Protection Agency

1. Agency Participation in the Review of the December 2, 1992 Amendment

The following agencies did not object to the proposed plan amendment:

Division of Parks and Forestry, DEPE
Green Acres Program, DEPE
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
Department of Agriculture
Department of Health

The following agencies did not respond to the Department's requests for comments:

Groundwater Quality Management Element, DEPE
Department of Community Affairs
Department of the Public Advocate
U.S. Environmental Protection Agency

The following agencies submitted substantive comments which are further addressed below:

Land Use Regulation Element, DEPE
Office of Energy, DEPE
Wastewater Facilities Regulation Element, DEPE
Division of Fish, Game and Wildlife, DEPE
Division of Solid Waste Management, DEPE
Department of Transportation

2. Issues of Concern Regarding the December 2, 1992 Amendment

Issue: Planning Concerns

The proposed site for the County's materials recovery facility/transfer station is located on Maltese Drive in the vicinity of the Pen Pac, Inc. transfer station which is located in Totowa, and currently operating with an approved capacity of 480 tons per day (TPD). The Department has received an application to expand the capacity of this Pen Pac, Inc. transfer station from 480 TPD to 750 TPD. In its review of the application, the DEPE noted that the intersection of West End Road and Riverview Drive utilized by solid waste vehicles accessing the existing Totowa transfer station is the same intersection to be utilized by solid waste vehicles exiting from the proposed facility and is currently subjected to heavy traffic flow. Therefore, siting of a new materials recovery facility/transfer station on Maltese Drive in Totowa without viable access routes for truck traffic is a specific cause for concern to the DEPE. Specifically, new truck routes to access the proposed facility should be explored and identified as part of the plan amendment. Another specific concern of the Department is that the County may not need additional materials recovery capacity given the exploration by Passaic County of utilizing other materials recovery/transfer station capacity in the region. Accordingly, the plan amendment should provide the proposed facility capacity for this new site, its implementation schedule, and the need for this facility in relation to other regional opportunities.

Issue: Permit Requirements

There are mapped Freshwater Wetlands in the area of the proposed site location for the County's materials recovery facility/transfer station. If Freshwater Wetlands or transition areas from adjacent properties are present at the proposed site, a Freshwater Wetlands Letter of Interpretation and due compliance with the Freshwater Wetlands Regulations will be required. Also, Signac Brook is on the property identified as Block 403, Lot 1 in Wayne Township and a Stream Encroachment Permit may be required. The Department also notes that Naachtpunkt Brook appears to flow through/near the proposed site and, accordingly, buffers should be proposed per the requirements of Floodplain Management Regulations.

Further, recycling centers and transfer stations are subject to the provisions of N.J.A.C. 7:27-5, "Prohibition of Air Pollution." This regulation prohibits odors and other air contaminants which interfere with the enjoyment of life or property. These facilities are also subject to N.J.A.C. 7:27-8.2(a)16 which requires air pollution control permits for any equipment which vents a solid waste facility directly or indirectly into the outdoor atmosphere. Such vents may require devices to control odors and other air contaminants.

If the proposed materials recovery facility/transfer station operation will discharge pollutants as defined in N.J.A.C. 7:14A-1.9, it may be required to secure a New Jersey Pollutant Discharge Elimination System (NJPDES) permit and/or a Treatment Works Approval for pollutant discharges prior to its construction or operation.

If the proposed facility needs to construct an access or egress road to the State Highway, it is required to obtain a permit from the Department of Transportation prior to construction.

Finally, the materials recovery facility/transfer station is a solid waste facility and, therefore, is required to obtain a DEPE solid waste facility permit per N.J.A.C. 7:26 et seq. prior to construction and operation of the proposed facility.

Issue: December 7, 1992 Department Order

On December 7, 1992 an Order, Docket No. SR92101003J, was issued by the Department which addressed, among other things, a proposed long-term out-of-state disposal plan and a transportation agreement. The Order states that on November 10, 1992, only a month before the expiration of its contract with Chambers Development Co., the County submitted to the Department an October 14, 1992 plan amendment proposing the substitution of a newly negotiated Memorandum of Understanding (MOU) with Empire Landfill as its long-term disposal facility. Further, on November 24, two weeks before the expiration of its contract with PenPac, the Passaic County Utilities Authority (PCUA) submitted to the Department a proposed five (5) year transportation agreement between it and A.J.R. Enterprises

for the provision of the transportation services currently provided by PenPac. At that time, the Department had not taken action on the long-term out-of-state disposal plan amendment or the transportation agreement pending submission and review of necessary verifying information. Consistent with the Department's December 7, 1992 Order, existing arrangements for transfer services and out-of-state disposal of the County's solid waste have been maintained up to June 12, 1994 and December 7, 1993, respectively.

In response to the Order, the County submitted the MOU and contract with the Empire Landfill on December 17, 1992. However, the County has not submitted the required long-term in-state disposal plan, as specified in the DEPE's September 11, 1992 certification, which was to provide for regional agreements for shared use of existing or planned in-state capacity outside of Passaic County as well as the potential and timeframes associated with developing new in-county disposal capacity. Therefore, the DEPE's April 8, 1993 certification of the October 14, 1992 amendments modified the Empire Landfill amendment contingent upon the submission to the DEPE for certification of a long-term in-state disposal strategy in plan amendment form by July 8, 1993. Accordingly, in the absence of such a submission, the Department has no alternative but to modify the County's amendment which designates the materials recovery facility/transfer station in the County Plan so that its submission to and consideration by the Department for certification is contingent upon the County also submitting its long-term in-state disposal plan. The proposal to site and develop a material recovery facility/transfer station must be considered within the context of the County's overall long-term solid waste management system which has yet to be defined and submitted for DEPE review. However, it should also be noted as a matter of general policy, that the department supports the expanded use of materials recovery facilities toward capturing the additional increment of recyclable materials that are not removed through source separation programs. This supportive policy position has been specifically included within the January 1993 Solid Waste Management State Plan Update: 1993 - 2002.

Issue: Self-Sufficiency and Regionalization

In the DEPE's April 8, 1993 certification of the October 14, 1992 amendments to the County Plan, the Department approved the County's general strategy regarding source reduction and recycling as recommended by the Governor's Emergency Solid Waste Assessment Task Force (Task Force) Final Report. However, the certification noted that the County had not adequately addressed regionalization as specified in the Task Force Final Report. Therefore, since the County is a 100% exporter of solid waste, which is contrary to the statewide policy of in-state self-sufficiency, it is imperative that the County commence discussions to provide regional agreements for the shared use of existing or planned in-state capacity outside of Passaic County. Such discussions are particularly warranted since significant long-term capacity exists within the immediate regional area including capacity at the Bergen County transfer station, the Essex

County incinerator, and the Union County incinerator. Indeed, the Department understands that the County has already commenced this activity and is actively developing regional plans. As indicated in the April 8, 1993 certification, this regionalization analysis is to be conducted as part of a long-term disposal strategy and submitted to the DEPE within 90 days in a subsequent plan amendment submission.

Since the County has not yet submitted to the DEPE its long-term in-state disposal plan, the Department is unable to evaluate the need for the proposed County materials recovery facility/transfer station in the context of a long-term plan. In particular, the Department has no means to evaluate the necessity of this facility or of its proposed capacity at this time since it has no information from the County on its overall in-state plan, including the in-county and/or out-of-county facilities it may rely on for the recovery, transfer or disposal of solid waste. Accordingly, Section C. of the certification notes that the amendment designating a materials recovery facility/transfer station in the County Plan is modified so that its submission to and consideration by the Department for certification is contingent upon the County also submitting a long-term in-state disposal plan.

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 December 2, 1992 amendment to the approved County Plan and certify to the County Freeholders that the December 2, 1992 amendment is modified as further specified below.

The December 2, 1992 amendment proposing the County Plan inclusion of certain tracts of land located within Totowa Borough and Wayne Township for the siting of a County materials recovery facility/transfer station is modified so that its submission to the DEPE for certification is contingent upon the County also submitting a long-term in-state disposal plan.

As noted in Section B., the County has not yet submitted to the Department its long-term in-state disposal plan. The Department is therefore unable to evaluate the need for the proposed County materials recovery facility/transfer station. In particular, the Department has no means to evaluate the necessity of this facility or of its proposed capacity at this time since the County is in the process of developing its overall in-state plan, including the in-county and/or out-of-county facilities it may rely on for the recovery, transfer or disposal of solid waste. The County must undertake an analysis of this issue and submit the results to the Department. Accordingly, the County's plan amendment which designates

the County's materials recovery facility/transfer station is modified so that its submission to and consideration by the Department for certification is contingent upon the County also submitting a long-term in-state disposal plan.

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 modification 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 wastes, sewage sludge, septage, and hazardous wastes. 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. 7:26-6, but are subject to regulation in accordance with N.J.A.C. 7:26A-1 et seq.

4. 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 and -2.13, and N.J.A.C. 7:26A-1.3.

5. 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. The Department has published a 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 Modification of the Amendment by the Commissioner of the Department of Environmental Protection and Energy

In accordance with the requirements of N.J.S.A. 13:1E-1 et seq., I hereby modify 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 December 2, 1992. This certification memorializes the determination made by me on or before May 21, 1993.

5/21/97

DATE



SCOTT A. WEINER

COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND ENERGY