

State of New Jersey

Christine Todd Whitman

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
SALEM COUNTY SOLID WASTE
D
MANAGEMENT DISTRICT

CERTIFICATION
OF THE MARCH 4, 1998
AMENDMENT TO THE SALEM COUNTY
DISTRICT SOLID WASTE MANAGEMENT PLAN

BY ORDER OF THE COMMISSIONER:

A. <u>Introduction</u>

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 February 11, 1981, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Salem 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 Salem County Board of Chosen Freeholders (County Freeholders) completed such a review and on March 4, 1998, adopted

an amendment to its approved County Plan.

The amendment represents the County's initial 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 Atlantic Coast decision on any specific contract between public and/or private parties.

The March 4, 1998 amendment proposes the following:

- *A market participant strategy for solid waste generated within the County;
- *The assessment of an Environmental Investment Charge (EIC) as a contingency plan; and
- *The weighing of all solid waste at the Salem County Utilities Authority (SCUA) Solid Waste Facility (SWF) or other designated weigh station for the collection of the contingency EIC if deemed necessary.

The amendment was received by the Department on April 30, 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 has determined that the amendment adopted by the County Freeholders on March 4, 1998 is approved in part, remanded in part, and modified in part as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the March 4, 1998 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 March 4, 1998 amendment which are included 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 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
U.S. Environmental Protection Agency

1. Agency Participation in the Review of the March 4, 1998 Amendment

The following agencies did not object to the proposed amendment:

Division of Parks and Forestry, DEP
Division of Compliance and Enforcement, DEP
Division of Water Quality, DEP
Green Acres Program, DEP
New Jersey Turnpike Authority
Department of Agriculture
Department of Transportation
Department of Community Affairs

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

Division of Fish, Game and Wildlife, DEP Office of Air Quality Management, DEP Land Use Regulation Element, DEP New Jersey Advisory Council on Solid Waste Management Department of Health 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 March 4, 1998 Amendment

Issue: Market Participant Strategy

The March 4, 1998 amendment proposes that continued access to the SCUA SWF will be made available on a voluntary participation basis through the execution of contracts with the County's municipalities and nonmunicipal waste haulers, waste generators and/or waste collectors. The amendment also proposes that any excess capacity at the SCUA SWF will be made available to any generator or hauler regardless of the origin of the waste. Within Section C. of this certification, the Department approves the County's market participant strategy.

Issue: Environmental Investment Charge

The amendment proposes the assessment of an EIC upon all waste generated within the boundaries of Salem County, regardless of the ultimate disposal site of the waste, as a contingency plan should declining waste flow to the SCUA SWF warrant. The current tipping fee at the SCUA SWF is \$63.88 per ton of which \$16.21 is allocated for debt service. If the County determines to assess an EIC, waste generators who dispose of waste at the SCUA SWF shall be deemed to have paid the EIC. The amendment identifies a specific \$16.21 per ton EIC amount to address the 1997 debt service based on the projected annual tonnage receipt at the SCUA SWF of 66,345 tons. Exclusive of debt, the amendment identifies several other potential components of the EIC which may include:

- *landfill taxes as may be required to be collected on solid waste generated in New Jersey;
- *prorated costs to provide funding of closure and post-closure mandates for the SCUA SWF;
- *administrative costs attributable to the separate weighing, record keeping and billing of the EIC;
- *administrative costs attributable to providing for, accounting for, recordkeeping for, and billing for the potential use of the SCUA facility for disposal of tires, white goods, vegetative waste and composting, household hazardous waste, and use of the SCUA convenience center;
- *and other costs as are permitted to be collected as an EIC in accordance with applicable laws.

Since the amendment only specifies an EIC amount for debt service, approval of the EIC within Section C. of this certification is limited to that of \$16.21 per ton for debt service. Within Section C., the Department also informs the County that activation of the EIC contingency plan must be preceded by the submission and approval by the DEP of a subsequent administrative action pursuant to N.J.A.C. 7:26-6.11(b)10. Lacking a specific per ton assessment, the other potential components of the EIC are remanded for further consideration and evaluation by the County.

Any future amendment adopted by the County Freeholders which addresses additional components of the EIC should include 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.

Issue: Weighing Requirements

The EIC contingency plan component of the amendment proposes that all solid waste generated within the County, regardless of the ultimate disposal site, shall be weighed at the scales of the SCUA SWF for recordkeeping and billing purposes of an EIC should the County determine to assess said EIC. The County further proposes that arrangements may be made with SCUA to weigh solid waste at an alternate facility providing the timing and accuracy of the reporting complies with SCUA requirements.

Pursuant to Department regulations at N.J.A.C. 7:26-6.10(b)2, indistrict weighing requirements are restricted to a 6 month period and require a submission of a subsequent plan amendment which identifies a long-term strategy for collection of the outstanding debt that examines all reasonable available alternatives including but not limited to direct billing or tax assessments. Following submission of this plan amendment, the County may continue to collect any fees and charges through in-district weighing pending the Department's review of the alternative method of collection. Therefore, within Section C. of this certification, this component of the amendment is approved with modification contingent upon the submission of a subsequent plan amendment which identifies an alternative method of collection of outstanding debt.

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

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 March 4, 1998 amendment to the approved County Plan and certify to the County Freeholders that the March 4, 1998

amendment is approved in part, remanded in part, and modified in part as further specified below.

Market Participant Strategy

The County Plan inclusion of a market participant strategy which provides for voluntary delivery of solid waste to the Salem County Solid Waste Facility is approved.

Environmental Investment Charge

The County Plan inclusion of the assessment of an EIC as a contingency measure upon all waste generated within the boundaries of Salem County is limited to an approval of a \$16.21 per ton for debt service. As noted within Section B., the County will only assess an EIC if declining waste flow warrants. The activation of the EIC contingency plan must be preceded by the submission and approval by the Department of an administrative action. Also, since specific per ton assessments for the other potential components of the EIC are not provided, this portion of the amendment is remanded for further consideration and evaluation by the County.

Weighing Requirements

The County Plan inclusion of the requirement that all solid waste generated within the County, regardless of the ultimate disposal site, be weighed at the scales of the SCUA Solid Waste Facility or at an alternate facility approved by the County for collection of the contingency EIC is approved with modification. As noted within Section B., such weighing is contingent upon the assessment of an EIC, is restricted to a 6 month period pursuant to Department regulations, and requires the submission of a subsequent plan amendment which identifies a long-term strategy for collection of the outstanding debt that examines all reasonable available alternatives. Following submission of this amendment, the County may continue to collect any fees and charges through in-district weighing pending the Department's review of the alternative method of collection.

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 in part, remand in part, and modification in part, 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. <u>Compliance</u>

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 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 $\underline{N.J.S.A.}$ 13:1E-24c. and f., the County shall proceed with the implementation of the amendment, as modified, 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, as modified, 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 amendments as they are approved.

Certification of Approval, Remand, and Modification of the Ε. 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, remand in part, and modify in part the amendment, as outlined in Section C. of this certification, to the Salem County District Solid Waste Management Plan which was adopted by the Salem County Board of Chosen Freeholders on March 4, 1998.

Minn, Jrl, Commissioner

Department of Environmental Protection