



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER
CN 402
TRENTON, N.J. 08625
609-292-2885

May 13, 1986

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Honorable Alex DeCroce, Director
Morris County Board of Chosen Freeholders
Administration Building
Morristown, New Jersey 07960

Dear Director DeCroce:

As you know, the Department of Environmental Protection proposed an amendment to the Morris County District Solid Waste Management Plan on January 17, 1986. This amendment proposed requirements which addressed the incorporation of a short-term disposal strategy to provide for the development of a transfer station(s) to prepare the county's waste for transport to out-of-district disposal facilities, the acquisition of the proposed 6-1B landfill site, the submission of a permit application for the landfill and the implementation of county-wide mandatory recycling.

Within the proposed plan amendment, Morris County was afforded the opportunity to participate in the transfer station program. At this time, the Department has not received any specific proposals for county participation. As a result, the Department has decided to move forward and certify the amendment. The certification approves the proposed interim transfer station strategy and those requirements dealing with landfill development and modifies the mandatory recycling provisions in recognition of the county's existing program.

Finally, as noted in the attached certification, Morris County is once again encouraged to become actively engaged in the implementation of the transfer station program. I look forward to the receipt of a formal proposal from the county in this regard in the near future.

Sincerely,



Richard T. Dewling

Enclosure



State of New Jersey
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 OFFICE OF THE COMMISSIONER
 CN 402
 TRENTON, N.J. 08625
 609-292-2885

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

CERTIFICATION OF APPROVAL
 OF THE JANUARY 17, 1986
 AMENDMENT TO THE MORRIS 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 January 29, 1980, the Department approved, with modifications, the Morris County District Solid Waste Management 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 the 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 the 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 plan at any time and, if found inadequate, a new plan must be adopted. Under the New Jersey Solid Waste Management Act, counties are given the primary role in solid waste management planning. Counties are required to develop comprehensive plans which, among other things, describe a strategy for handling waste generated in the county, which designate the sites for sufficient facilities to implement the strategy, and which describe the financial and institutional arrangements for implementation of the required facilities and activities.

It is the policy of the Department of Environmental Protection to affirm the primacy of the counties in this process. The Department has provided advice and support for the required decisions, but until now, hasn't found it necessary to directly intervene in the basic decisions regarding strategy and siting, except as required to ensure that county activities conform to the requirements of the Act. However, the Act does provide that the Commissioner may propose and adopt amendments to solid waste management plans to remedy any deficiencies.

On January 17, 1986, the Department proposed an amendment to the Morris County District Solid Waste Management Plan. Primarily, the amendment proposed the incorporation of a short-term disposal strategy to provide for the development of a transfer station(s) to prepare the county's waste for transport to out-of-district disposal facilities. In addition, the amendment addressed landfill site acquisition and facility permit application and the need for the expedited development of mandatory recycling. In order to receive public comment, the Department followed the public notice procedures outlined in the Solid Waste Management Act, specifically N.J.S.A. 13:1E-23.d. In doing so, each mayor in Morris County was sent a copy of the proposed plan amendment on January 17, 1986. In addition, each mayor was later sent a copy of the public hearing notice on January 22, 1986 prior to publication. The same notice was given to the Morris County Board of Chosen Freeholders and to the county's solid waste coordinator. Publication of the hearing notice appeared in The Daily Record and the Newark Star Ledger on January 24 and 31, 1986. The proposed amendment was also available for public inspection during this period at the municipal offices of each municipality in Morris County, at the county offices and at the Division of Waste Management Offices, 32 East Hanover Street, Trenton, New Jersey. The public hearing to receive testimony on the proposed amendment was held at the Morris County Vocational School in Denville on February 14, 1986. Copies of the proposed amendment were also distributed to various state level agencies for review and comment as required by law. The Department has reviewed all testimony received at the public hearing and during the comment period, as well as those comments generated by the state level review process, and has determined that the amendment proposed by the Department of Environmental Protection on January 17, 1986, as modified below, is approved as outlined in Section C. of this document.

B. Findings and Conclusions with Respect to the Department's Proposed Amendment to the Morris County Solid Waste Management Plan

1. The Division of Waste Management circulated the proposed Morris County plan amendment to sixteen review agencies and solicited their review and recommendations. Pursuant to N.J.S.A. 13:1E-24a(2) and (3), these agencies included various agencies, bureaus, and divisions within the Department of Environmental Protection as well as the Board of Public Utilities. Also among these agencies were the Department of Community Affairs, the Department of the Public Advocate, the Department of Health, the Office of Recycling, the Department of Agriculture, the Department of Transportation, and the New Jersey Turnpike Authority. Of these agencies, the following did not object to the proposed plan amendment: the N.J.D.E.P. Divisions of Environmental Quality and Fish, Game and Wildlife; the State Departments of Agriculture and Transportation; the Green Acres Program and the New Jersey Turnpike Authority. The following agencies failed to respond to our requests for comments: the N.J.D.E.P. Divisions of Water Resources, Parks and Forestry, and Coastal Resources; the State

Departments of Health, Community Affairs and the Public Advocate; the New Jersey Advisory Council on Solid Waste Management and the U.S. Environmental Protection Agency. The Board of Public Utilities and Office of Recycling submitted substantive comments which are further addressed below.

The Board of Public Utilities expressed concern that the proposed amendment appeared to exclude the Board from its jurisdiction of evaluating the economic consequences of the transfer station strategy. Briefly, the role of the Board with respect to solid waste management includes its authority under the law to provide economic regulation over the solid waste industry. This is accomplished through uniform licensing procedures and rate regulation as well as the power to grant franchises. Additionally, the Board of Public Utilities in conjunction with the Department designates waste flows to specific solid waste facilities which serve specific geographic areas. With respect to this concern it must be noted that the Department circulated the proposed amendment to sixteen state level review agencies, including the Board of Public Utilities, as part of its standard review process required by law. This process afforded the Board its appropriate opportunity to comment as with any other proposed plan amendment. The proposal of the amendment did not exclude the Board and, to the contrary, provided the proper means for the receipt of comments related to the Board's concerns. The approval of the proposed amendment is intended to provide a new short-term solid waste strategy as part of the approved Morris County Plan. Following issuance of the approval contained herein, a private consultant to the Department will complete a Request For Proposal to be released to the private sector for the siting, design, construction and operation of a transfer station(s) within Morris County. For each step in the process where additional site specific plan amendments will be required, the Board of Public Utilities will once again have the opportunity to evaluate economic consequences of the project as part of the state level review process.

The Office of Recycling recommended that the Department expand the provisions of the recycling component of the proposed amendment to require that each municipality separate, collect and market at least three recyclable materials. It was further recommended that if a county has already adopted a more stringent recycling plan than that required in the proposed plan amendment, the more comprehensive plan should supersede the DEP's requirement. In response, the Department agrees in concept with the above recommendations and has specifically addressed Morris County's existing mandatory recycling program, which is more comprehensive than the Department's requirement, in Section C.3. of this certification. Further, the requirements of the plan amendment should not be construed in any case as prohibiting or discouraging the development or continued operation of more aggressive programs covering more than one recyclable component.

2. As noted above, in accordance with the requirements of N.J.S.A. 13:1E-23, a public hearing on the proposed amendment was conducted by the Department on February 14, 1986 at the Morris County Vocational School in Denville. At the hearing, eleven individuals gave testimony. In addition, six individuals submitted written comments during the official comment period. The questions raised during these proceedings have been specifically

addressed in the Response to Public Hearing Document included within this certification as Appendix A.

While Appendix A. addresses specific comments, some of the issues raised are also briefly summarized herein. Objections centered on four issues: acquisition of the landfill site within a 45 day period, the legality of the Department's authority to amend the Morris County Solid Waste Management Plan, the absence of a specific site for the proposed transfer station, and the long term utilization of out-of-district disposal sites.

Those individuals commenting were strongly opposed to Section C. 2. of the proposed amendment which requires Morris County, within 45 days of the date of adoption of the proposed amendment, to acquire the landfill site, 6-1B in Rockaway Township and submit a permit application to the Department. The site acquisition was challenged on both environmental and legal grounds. A number of arguments emphasized the necessity for a complete Environmental Impact Statement suggesting resolution of all environmental issues prior to acquisition of the site. In response, the Department must reiterate the distinction between acquisition approval and construction and operating approval as they relate to different phases of project development. Section 26 of the Solid Waste Management Act provides that "prior to the construction, acquisition, or operation of any solid waste management facility. . . the person proposing such construction, acquisition, or operation, in addition to preparing an environmental impact statement on such facility. . . shall make or cause to be made such preliminary surveys, investigations, studies, borings, maps, plans, drawings, and estimates of costs and of revenues as the Commissioner may deem necessary relating to the type of such solid waste facility." The Act further provides that such information must be submitted to the Commissioner for review and approval and that construction, acquisition, or operation may not proceed in the absence of the Commissioner's approval. The purpose of this submission is for the Commissioner to determine if the proposed facility is consistent with the relevant Solid Waste Plan and will be constructed, or acquired, and operated pursuant to the standards of the Department. When such a determination is based solely on a preliminary design, only site acquisition approval is granted. Based on an evaluation of such preliminary designs, the Department can make a determination that the proposed facility can be designed to meet the applicable standards of the Department. This is in contrast to construction and operating approval which is based on the submission of a final design and detailed environmental impact statement. The Department determined that a series of three studies conducted on Site 6-1B satisfy the informational requirements of Section 26. and has given acquisition approval to Morris County. Following site acquisition and prior to construction of the proposed landfill, the county must provide a comprehensive environmental impact statement and engineering design which resolves outstanding environmental concerns. It is now the county's responsibility to complete the next steps in its consent agreement implementation schedule to acquire the proposed site and submit a permit application.

A variety of legal issues were raised challenging the Department's authority in promulgating the amendment and mandating site acquisition. The New Jersey Solid Waste Management Act provides alternative remedies, at the discretion of DEP, for the situation in which a board fails to adopt an

adequate solid waste management plan or portion thereof. In one provision, the Legislature has indicated that "the Department shall have the power to develop and formulate a solid waste management plan in its entirety for any such solid waste management district." N.J.S.A. 13:1E-23i. Similarly, should any board fail to adopt modifications or replacements to its plan as required by the Commissioner, "the Commissioner shall have the power to adopt and promulgate any modification or replacement he deems necessary." N.J.S.A. 13:1E-24f. Alternatively, the Act also provides the Commissioner with authority to issue orders requiring the correction of any violation of the Act and, if he so chooses, to enforce the statute directly through suits in the Superior Court. Therefore, the Department clearly has the authority to propose and adopt this amendment if the county's plan has been determined to be deficient in whole or in part.

Another area commonly addressed in the hearing testimony related to that portion of the amendment concerned with the strategy of utilizing an in-county transfer station(s) in conjunction with an out-of-district disposal site for solid waste. The strongest objection to the strategy was the concern that in the absence of any site designation, approval of the concept would commit the public to approval of unknown in-county sites. The Department notes that this proposed amendment incorporates only the strategy of developing an in-county transfer station to be used in conjunction with out-of-district disposal. The Department has retained an engineering firm to develop a request for proposal which will establish criteria for the development of proposals considering such specific factors as site suitability, environmental impact, cost and other issues. Before any specific transfer station site will be included in the district plan, the Department will propose another plan amendment, conduct another public hearing and seek the comments of the state level review agencies.

The state was also urged to consider the out-of-state disposal strategy defined in the amendment as a more permanent solution rather than as a proposed short-term, interim solution. It must be noted that the state has traditionally discouraged long-term reliance on out-of-state disposal due to the inability of the state to provide oversight and control. In addition, the inability of the county to enter into secure, long-term contracts with out-of-district facilities leaves the county in an extremely tenuous position with regard to its solid waste disposal.

C. Certification of the Department's Proposed Amendment to the Morris County District Solid Waste Management Plan

I, Richard T. Dewling, Commissioner of the Department of Environmental Protection, in accordance with N.J.S.A. 13:1E-1 et seq. and N.J.S.A. 13:1E-23(d), which established specific requirements regarding the contents of district solid waste management plans and the Department's powers regarding approval, rejection or modification of district plans, hereby declare that the portion of the Morris County Solid Waste Management Plan which pertains to interim disposal arrangements (hereinafter referred to as "interim plan") is deficient. The county's current "interim plan" relies upon continued utilization of the Edgeboro Landfill in Middlesex County in the absence of an interdistrict agreement. As noted in the Department's proposed amendment, this strategy is not feasible and is amended herein to provide for contingency

measures that may be necessary should landfilling privileges at the Edgeboro Landfill terminate.

Therefore, I hereby adopt as a replacement the following plan amendments based upon the January 17, 1986 proposed amendment to the Morris County District Solid Waste Management Plan and certify that the January 17, 1986 amendment is approved as further specified below:

1. The inclusion in the plan of the short-term disposal strategy outlined below, which proposes the development of an in-county transfer station(s) to be used in conjunction with out-of-district disposal is approved.

Short-Term Disposal Strategy

The Department of Environmental Protection (Department) will seek proposals from private entities for siting, design, construction and operation of an in-county transfer station(s) for the county for purposes of out-of-district disposal. The Department will select a proposal after evaluating the proposals according to site suitability, environmental impact, cost and other appropriate considerations. The Department will then propose to amend the county's plan to designate the facility and its operational plan and to direct all waste generated in the county to the transfer station(s) until such time as an alternative facility is available for the county's wastes and incorporated into the county plan. To carry out this strategy, the Department will undertake the activities listed below utilizing, as appropriate, the services of an environmental consulting firm.

The following steps will be undertaken in order to further amend the Morris County District Solid Waste Management Plan and issue a permit to the proposed facility:

1. The nature and quantity of the disposal needs of the county prior to implementation of in-county long-term facilities will be determined.
2. The availability of out-of-district facilities to receive wastes generated in the short-term will be studied.
3. The types of transfer facilities required to handle the waste flows will be specified along with performance criteria for operation.
4. The criteria for siting of transfer stations to provide for interim needs will be developed.
5. Alternative cost proposal systems and alternative uses for which the transfer station facility could be adapted in the future will be investigated.
6. A Request for Proposal of transfer stations and out-of-district disposal arrangements by private enterprise will be developed.
7. The Request for Proposal will be publicly advertised and applications received.

8. The Department of Environmental Protection will select a Proposal to meet the short-term disposal needs of the county by evaluating the proposals according to site suitability, appropriateness of the proposed technology, the nature and reliability of the proposed out-of-district disposal options, the qualifications of the proposer, the total cost of waste disposal and any other appropriate criteria.

9. The Department will propose an amendment to the county plan to include in the plan the selected facility site, its operational plan and redirection of all of the waste stream of Morris County to the transfer station for the purpose of out-of-district disposal according to the schedule furnished in the Request for Proposal.

10. The Department will review the transfer station facility design and, in accordance with applicable state law, issue a draft permit, receive comments at a public hearing on the draft permit, respond to comments and, if appropriate, issue a final permit which will authorize construction and operation of the facility in accordance with applicable permit conditions. Additionally, the applicant must apply to the Board of Public Utilities for a tariff rate, setting forth prices to be charged at the facility to assure a fair rate of return to the facility owner and to protect the public interest.

11. The Department will undertake steps one (1) through ten (10) above and prepare relevant plan amendments to supplement the results of these activities. However, the Department will consider a request by the county to undertake portions of these activities at the county level.

In order to implement this strategy, the Department has selected a vendor to develop a Request For Proposal to solicit proposals from private entities for siting, design, construction and operation of an in-county transfer station(s). However, as noted above, the Department will consider a request from Morris County to undertake portions of the transfer station planning and implementation process at the county level. Further, the Department would advocate and support the highest feasible level of county participation in this process.

2. The requirements set forth in Section C. 2. of the January 17, 1986 Proposed Amendment to the Morris County Plan related to landfill site acquisition and facility application are approved. Therefore, in order to ensure prompt development of the in-county landfill, Morris County shall, within 45 days of the date of this certification, institute legal proceedings to acquire the proposed 6-1B landfill site and submit a facility permit application to the Department.
3. Within the May, 1985 Morris County Solid Waste Plan Update, the county incorporated provisions for mandatory municipal recycling into the district plan. In accordance with these provisions, each municipality was required to pass a mandatory recycling ordinance by September 1, 1985 and have a multi-material (at least two recyclable components) program operational by the time the proposed in-county landfill became operational. Further, upon implementation each municipality would be required to submit quarterly

status reports to the county and a penalty system for non-compliance was established.

The Department recognizes Morris County's efforts to address mandatory recycling and has modified the requirements set forth in Section C.2. of the DEP's proposed amendment dated January 17, 1986 to include the following provisions. Within sixty (60) days of the adoption of this amendment, Morris County shall submit to the Department a report detailing the status of each existing or proposed municipal recycling program in the county. In addition, the county shall indicate what program development and enforcement techniques will be utilized to implement the county's mandatory municipal recycling program. Further, within ninety (90) days of the adoption of this amendment, every municipality shall have adopted such ordinance(s) as may be required to implement mandatory recycling in accordance with the county's program for full operation within the first two months following the completion of the upcoming municipal budget cycle. Administrative, legal and logistical support shall be provided, as necessary, by the county to each municipality in the development and implementation of its plans. Specifically, the county shall assist the municipalities to find markets for the recyclables to be collected in each municipality and, where feasible, to enter into agreements on behalf of the municipalities for recycling services.

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 the within amendment to the Morris County District Solid Waste Management 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 of Environmental Protection and operating pursuant to a contract as herein described, shall be deemed to be in violation of this amendment and of the Morris County District Solid Waste Management 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 of Environmental Protection, and for good cause shown, obtain an extension of time to complete such renegotiation.

2. Compliance

All solid waste facility operators and collector/haulers registered with the Department of Environmental Protection and operating within county and affected by the amendment contained herein shall operate in compliance with this amendment and all other approved provisions of the Morris County District Solid Waste Management Plan. Any facility operator or collector/hauler 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 of Environmental Protection and shall be subject to the provisions and penalties of N.J.S.A. 13:1E-9, 10, and 12 and all other applicable laws.

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

The provisions of the Morris County District Solid Waste Management 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. Also, all non-hazardous 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 (N.J.A.C. 7:26-6).

4. Certification to Proceed with the Implementation of Plan Amendment

This document shall serve as the certification of the Commissioner of the Department of Environmental Protection and pursuant to N.J.S.A. 13:1E-24C. and F., implementation of the approved amendment contained herein shall proceed in accordance with all specified timeframes.

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 N.J.A.C. 7:26-1.4 and -2.13.

6. Effective Date of Amendment

The amendment to the Morris County District Solid Waste Management Plan contained herein shall take effect immediately.

7. Reservation of Authority

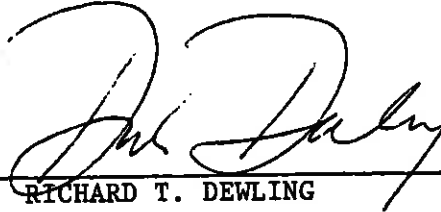
Nothing contained herein shall be construed as a limitation on any other action taken by the Department of Environmental Protection pursuant to its authority under the law. The Morris County District Solid Waste Management Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan. The Department has published a Statewide Solid Waste Management Plan with appendices which includes the Department's planning guidelines and rules, regulations, and orders of the Department, including the 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 Morris County District Solid Waste Management Plan which was proposed by the Department on January 17, 1986.

15 MAY 1986

DATE



RICHARD T. DEWLING
COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Appendix A
Morris County
Response to Public Hearing Document

1. Authority of DEP to Promulgate Amendment and Procedural Questions

COMMENT: Why did the New Jersey Department of Environmental Protection choose the Friday evening of a public holiday weekend to schedule a hearing?

RESPONSE: From the inception of the transfer station plan amendment concept, the Department proceeded rapidly in the formulation and implementation of the program. The aggressiveness of the Department's action was based on the existing critical state of solid waste disposal in north-central New Jersey and the clear prospect of severely limited, remaining solid waste disposal capacity in this region over the next several years. In response to this urgency, and the time that would be necessary to bring facilities "on line", the Department established a rigorous schedule for the development and processing of the proposed amendments for all four concerned districts. From this schedule it was determined that all four public hearings would be held during the week of February 10-14, 1986. The availability of contacted facilities and the occurrence of a state holiday on February 12, 1986, resulted in the decision to conduct the hearing on Friday, February 14, 1986. In addition, the hearing was amply attended by the public, and those who were unable to attend had the opportunity to submit written comments.

COMMENT: DEP has not complied with the requirement of Section 23b. of the Solid Waste Management Act to send a plan amendment, map or report to the mayor of each municipality in that county. Notification procedures were not adequate to allow for a thorough review of the proposed amendment. The actual receipt of the notice of the hearing was not received until about a week before the scheduled time, nor was it even a formal notice of the hearing.

RESPONSE: The Department followed the procedures outlined in the Solid Waste Management Act, specifically N.J.S.A. 13:1E-23d. In doing so, the mayor of each Morris County municipality was personally sent a copy of the referenced proposed plan amendment on January 17, 1986. In addition, each mayor was sent a copy of the newspaper notice sent to the Daily Record and the Newark Star Ledger on January 22, 1986. In addition to the mayors, notice was given to the Morris County Freeholder Board and the County Solid Waste Coordinator. Finally, notice of the hearing appeared in the Daily Record and the Newark Star Ledger on January 24 and 31, 1986.

COMMENT: This hearing appears to be premature pursuant to Section 23b. of the Solid Waste Management Act in that the DEP failed to consult with the Morris County Solid Waste Advisory Council prior to conducting this hearing. A comment was made that DEP had similarly failed to comply with Sections 20 b2(a,b,c) of the Act in that there had been no consultation with persons engaged in solid waste collection and disposal in the district, nor had there been consultation with agencies dealing with water pollution control, water policy, water supply or land use zoning. Furthermore, the objection was lodged that the proposed amendment, pursuant to the Solid Waste Management Act, Section 21, failed to contain an inventory, source, composition and quantity of solid waste to be generated in the ten-year period, or as required by Section 21b (4) (5) (6) contain a survey of proposed collection districts and transportation routes with projected costs.

RESPONSE: The sections referred to above and the category of information requested is called for when a new solid waste plan, with designated sites, is adopted in its entirety. In the case of this amendment, what is proposed is a conceptual strategy for disposal of solid waste. The strategy is not site specific at this time. In the absence of designated facility sites, the information requested would neither be reasonable nor necessary in evaluating the worthiness of the proposed amendment. After adoption, the amendment, will be followed by a consultant study concerning transfer station design parameters and siting criteria. Private proposers will be asked to make proposals based on a Request For Proposal developed by the state.

COMMENT: What section of the Solid Waste Management Act authorizes the Commissioner to promulgate these amendments?

RESPONSE: The New Jersey Solid Waste Management Act, N.J.S.A. 13:1E, provides alternative remedies, at the discretion of DEP, for the situation in which a board fails to adopt an adequate solid waste management plan or portion thereof. One provision, Section 23-1, declares that, "upon the failure of any board of chosen freeholders...to adopt a solid waste plan in its entirety...the Department shall have the power to develop and formulate a solid waste management plan in its entirety for any such solid waste management district." Similarly, should any board fail to adopt

modifications or replacements to its plan as required by the Commissioner, "the Commissioner shall have the power to adopt and promulgate any modification or replacement he deems necessary." N.J.S.A.13:1E-24f. Alternately, the Act also provides the Commissioner with authority to issue orders requiring the correction of any violation of the Act and, if he so chooses, to enforce the statute directly through suits in the Superior Court. Therefore, the Department clearly has the authority to propose and adopt this amendment if the county's plan has been determined to be deficient in whole or in part.

COMMENT: As proposed, is not the Department's "short-term solid waste management strategy" at odds with the original intent of the New Jersey Solid Waste Management Act?

RESPONSE: The proposed amendment reaffirms the intent of the NJSWMA to provide a thorough and cohesive framework in which solid waste collection, disposal and utilization activities may be coordinated in New Jersey. The necessity to provide such interim, additional capacity for waste disposal in order to avert public health and environmental crises dramatically emphasizes the need for implementation of long-term development plans. The strategy proposed for Morris County is not intended to depart from that plan. On the contrary, transfer stations will serve the county for the short-term during this crisis period, and will function to fill the gap caused by the delay in the development of Morris County's long-term facilities.

COMMENT: If the Department wishes to give county governments a secondary role, should the state legislature pass the appropriate amendments to existing statutes, rather than see the bureaucracy adopt and promulgate amendments without legislative input and approval?

RESPONSE: The Solid Waste Management Act granted each county the primary role in development of a solid waste management plan for its own district. It is the county which determines if it wishes to regionalize, selects its own solid waste management agency, designs its own development strategy, designates its own facility sites, and negotiates its own contracts. However, for a situation in which a board of chosen freeholders has failed to adopt an adequate solid waste management plan or portion thereof, the Act does empower the Department to step in and play a more active role in the solid

waste management process. These powers, which have been exercised in the case of the proposed amendment, currently exist and legislative amendments to the statute are unnecessary.

COMMENT: Have the state legislative delegations of the eight counties (Somerset, Morris, Union, Middlesex, Essex, Hudson, Passaic and Bergen) or the area's U.S. Congressional delegation been officially notified of your intentions?

RESPONSE: It is not standard procedure for the Department to notify either the State or Congressional area legislative leaders on proposed solid waste plan amendments. Of course, legislators have the opportunity to comment during the comment period. Copies of all plan amendments which are adopted and certified by the Department are forwarded to the appropriate legislators.

COMMENT: Why does the Department now rely on "a private sector entity for the development and operation of the transfer station(s)" rather than allow each county to choose the most viable entity?

RESPONSE: Nothing in the proposed plan amendment would preclude the county from developing a Request For Proposal (RFP) and securing its own vendor to develop a transfer station program. The amendment recognizes and encourages the possibility of the county assuming the responsibility for implementing any or all of the required activities contained in the plan amendment which would assure needed interim disposal capacity for Morris County's solid waste prior to development of their proposed facilities. Interestingly, Passaic County initiated its own transfer station RFP only a few days prior to the Department's RFP. If Passaic County selects a private vendor, those contracts entered into by Passaic County will not be affected by the Department's proposed plan amendment as long as the county's disposal strategy is consistent with the Department's strategy. The tactic of relying on the private sector to implement the Department's proposal parallels that of any county choosing a private sector contractor to implement county plans.

COMMENT: Does the NJDEP have the statutory authority to require that "every municipality" have an ordinance requiring "mandatory separation, collection and marketing of one major recyclable waste component?"

RESPONSE: The Solid Waste Management Act requires that each solid waste management plan include a strategy for the maximum practical use of resource recovery procedures. The Act defines resource recovery to include recycling. Since the requirement that municipalities establish mandatory recycling is a reasonable strategy for the maximum practical use of resource recovery, it is authorized by the Act.

2. Transfer Station Concept

COMMENTS: A number of individuals supported the concept of utilizing in-county transfer stations to collect solid waste for final disposal at out-of-state disposal sites. However, some of those who support transfer stations withhold their complete endorsement pending designation of the transfer station(s) sites(s), as well as selection of out-of-state disposal sites. Concern was expressed that approval of the concept would tie the individuals into approval of unknown in-county sites.

RESPONSE: This hearing was on a proposal to amend the Morris County Plan, by recommending a short-term disposal strategy to provide for transfer of waste out-of-district on a contingency basis. The Department has retained an engineering firm to develop a Request For Proposal to include such factors as site suitability, environmental impact, cost and other considerations. Proposal submissions from the private sector are to be evaluated according to criteria recommended by the consultant and approved by the state. Before any specific transfer station site is included in the plan, the Department must propose another plan amendment, which will be site specific, to be followed by a public hearing.

COMMENT: County representatives indicated that their possible concurrence with the transfer station concept was reflective of a past county strategy to employ transfer stations. The county reserves the right to proceed toward their own study for transfer station development and out-of-state disposal.

RESPONSE: In Section C-11 of the proposed amendment, the Department explicitly presents the option for the county to participate in the implementation strategy for transfer stations, either taking action in conjunction with the Department or implementing its own strategy. The amendment recognizes and encourages the possibility of the county assuming the responsibility for

implementing any or all of the required activities contained in the plan amendment which would assure needed disposal capacity for Morris County's solid waste, prior to development of their proposed facilities. The DEP would assist and encourage such activity on the part of the county.

3. Out-of-State Disposal

COMMENT: Some representatives continue to urge the state to consider out-of-state disposal as a more permanent solution for Morris county garbage, at least until the county successfully negotiates an interdistrict agreement.

RESPONSE: The state has traditionally discouraged long-term reliance on out-of-state disposal sites due to the inability of the state to provide state oversight and control. Out-of-state disposal is considered only as a short-term, interim solution for solid waste disposal for any New Jersey county. At this time, few counties using an out-of-state disposal site have any contractual relationship to ensure long-term disposal, nor do there exist any available in-state landfills which could accept Morris County waste for the long term. This inability to enter into long-term contracts leaves the county in a very tenuous position with regard to its solid waste disposal. The state is looking to Morris County to recognize that the solid waste management situation in north-central New Jersey has reached a critical state with remaining disposal capacity at existing landfills approaching exhaustion within two years or less, and to solve its own problem by developing in-county facilities.

4. Acquisition of Proposed Landfill Site 6-1B

COMMENT: Does N.J.S.A. 13:1E-26, which deals with control of site acquisition, supersede the implementation schedule imposed on the county by an Administrative Consent Order.

RESPONSE: N.J.S.A. 13:1E-26 defines what must occur prior to construction of a solid waste facility. Those proposing such construction or acquisition of a facility "...shall ...cause to be made such preliminary surveys, investigations, studies, borings, maps, plans, drawings and estimates of costs...as the Commissioner may deem necessary relating to the type of such solid waste facility." Such information is then submitted to the Commissioner for review and approval. No

construction, acquisition or operation may proceed in the absence of the Commissioner's approval. The purpose of this submission is for the Commissioner to determine if the proposed facility is consistent with the relevant solid waste plan and can be constructed, or acquired and operated pursuant to the standards of the Department. The Administrative Consent Order implementation schedule reflects, not supersedes, section 26. The first milestone referred to is the completion of such preliminary submissions which is required even before the county is scheduled to adopt a plan amendment designating a landfill site.

COMMENT: No property owners adjoining Site 6-1B were notified of the hearing, contrary to N.J.S.A. 13:1E-23, which requires the DEP to provide written notice ten days prior to the hearing to every property owner affected by the siting.

RESPONSE: The proposed amendment did not designate Site 6-1B, Rockaway Township, as the site for a landfill. That site selection was accomplished by the plan amendment adopted by the Morris County Freeholders on July 10, 1985 and which received certification of approval by the Department in August, 1985. The plan amendment now under consideration provides a short-term solid waste disposal strategy, advocates mandatory recycling and by calling for site acquisition, seeks compliance with the January, 1985, ACO schedule to acquire the previously selected site which was incorporated into the district plan.

COMMENT: Does litigation pending before the courts prevent condemnation of the referenced Site 6-1B, thereby nullifying the directive to the county to acquire the site?

RESPONSE: The existence of litigation in no way precludes filing for condemnation. While the possibility exists that the Court may alter or stay the proceedings, the county is expected to fulfill its obligation and file for condemnation.

COMMENT: If the county obeys the DEP directive of site acquisition, proceeds to take the property, and then finds that the sanitary landfill is precluded from that site, will the county be obligated to pay the reasonable value of the property for the time the property was not permitted to be developed?

RESPONSE: This request for legal advise is inappropriate in the current setting. The simple fact that the county might condemn a property that will ultimately not be developable as a disposal facility does not justify delaying condemnation until a permit is actually obtained. The Administrative Consent Order (ACO) signed by Morris County, plainly requires condemnation prior to receipt of a permit in order to ensure prompt facility development. Moreover, under both the ACO and the Solid Waste Management Act, the risk that the county will condemn a property not developable for a disposal facility is diminished by the requirement that the county receive the prior approval of the Department prior to land acquisition.

COMMENT: Does DEP have the authority, pursuant to N.J.S.A 13:1E-21b.(3)(b), to amend the plan without the precondition of certification of failure by the county?

RESPONSE: The statutory section noted in this comment requires the Department to conduct a search for suitable locations for disposal facilities following properly made certifications submitted by a county that demonstrate the county's lack of suitable sites and its inability to enter into an interdistrict agreement with another county for the provision of disposal facilities. This narrow circumstance in which the Department is required to act does not confine the discretionary authority possessed by the Department to remedy deficiencies in the planning process.

COMMENT: The Appellate Division's decision in reversing the siting decision in the South Harrison Township case should be reviewed with reference to the selection of Site 6-1B.

RESPONSE: In the South Harrison Landfill siting case the Appellate Division held that the freeholders violated the Open Public Meetings Act by holding private meetings to discuss the landfill site prior to the public meeting at which the South Harrison site was adopted. The commentor's suggestion that a similar violation occurred with regard to the selection of Site 6-1B is unsubstantiated.

COMMENTS: It was deceptive of the DEP to tie the concept of a transfer station together with acquisition of the landfill site in one amendment and public hearing.

RESPONSE: The proposed amendment plainly provides the Department's strategy for interim, out-of-district capacity, a procedure for implementation of necessary long-term facilities in the county and mandatory recycling. The development of such short-term measures to provide Morris County with a viable disposal option prior to the implementation of planned long-term facilities in no way minimizes the need for the development of the county landfill and resource recovery facility. In addition, the proposed amendment, as it pertains to the landfill, seeks compliance with the ACO designated milestone for site acquisition which was part of the original ACO signed by the Department and Morris County in January, 1985.

5. Environmental Impact Statement

COMMENT: A number of questions were raised about the necessity for an Environmental Impact Statement prior to acquisition of Site 6-1B to determine whether the plan was appropriate and suitable and would receive final DEP permit approval.

RESPONSE: The Department must reiterate the distinction between acquisition approval, and construction and operating approval as they relate to different phases of site development. Section 26 of the Solid Waste Management Act provides that "prior to the ... acquisition...of any solid waste management facility...the person proposing such construction, acquisition or operation, in addition to preparing an environmental impact statement on such facility...shall make or cause to be made such preliminary surveys, investigations, studies, borings, maps, plans, drawings and estimates of costs and of revenues as the Commissioner may deem necessary relating to the type of such solid waste facility." The Act further provides that such information must be submitted to the Commissioner for review and approval and that construction, acquisition or operation may not proceed in the absence of the Commissioner's approval. The purpose of this submission is for the Commissioner to determine if the proposed facility is consistent with the relevant solid waste plan and will be constructed, or acquired and operated pursuant to the standards of the Department. When such a determination is based solely on a preliminary design, only site acquisition approval is granted. Based on an evaluation of such preliminary designs, the Department can make a

determination that the proposed facility can be designed to meet the applicable standards of the Department. This is in contrast to construction and operating approval which is based on the submission of a final design and detailed environmental impact statement. Site acquisition approval has been granted to site 6-1B by the Department based on the findings of three reports from 1982 through 1985. The Department believes that these studies satisfy the requirements of Section 26. Based on all available evidence, there is no reason to believe that construction and operation of a sanitary landfill, in conformance with the rules and regulations of the Department, is not possible at the above named site.

COMMENT: How can the DEP force the county to acquire the land in 45 days without knowing the final outcome of the EIS? What is the target date for completion of the EIS?

RESPONSE: If the EIS referred to constitutes the series of preliminary investigations previously noted in N.J.S.A.13:1E-26, then as indicated, those studies have already been submitted, reviewed and approved. Such acquisition approval was granted to site 6-1B by the Department based on the findings of three reports conducted from 1982 through 1985. The Department believes that these studies satisfy the requirements of Section 26. The purpose of submitting this preliminary data is to enable the Commissioner to determine if the proposed facility is consistent with the relevant solid waste plan and will be constructed, or acquired and operated pursuant to the standards of the Department. This acquisition approval may facilitate site acquisition by providing credibility for a bond ordinance to acquire the necessary financing for a facility. Then, following site acquisition, and prior to construction of the proposed landfill, a comprehensive Environmental Impact Statement must be submitted. In July 1985, Morris County selected an engineering firm to conduct that EIS and develop the engineering designs necessary for the draft permit. At this point, neither the county or consultant have projected a completion date for the comprehensive EIS.

COMMENT: What is the hearing date for the completed EIS?

RESPONSE: When an EIS and engineering designs are submitted to the Division of Waste Management there is an introductory process during which time the documents are

checked for consistency with the district plan and for completeness of all necessary submissions. At the completion of this check period, the formal review process is initiated. This review process, by law, must take no longer than six months after the receipt of a complete application. Following submission and review of the Environmental and Health Impact Statement and the engineering designs, a draft permit may be issued, at which time a public hearing would be scheduled, It is difficult, without having a commitment from the county on scheduled milestones, to predict as to when such a hearing will be held.

COMMENT: Why did DEP accept the Woodward Clyde assessment as an EIS when it did not even comply with the typical Environmental Impact Statement ordinance requirements of Rockaway Township?

RESPONSE: Rockaway Township has no authority to define the scope of the EIS process that will be required of permit applicants by the Department. However, the sections cited in the Rockaway Township EIS ordinance concerning environmental impact, public costs, increase in noise, air pollution, displacement of people and businesses, etc., are all issues to be addressed in the final Environmental Impact Statement to be submitted prior to permitting and approval for the site.

COMMENT: The results of a "packer test" addressing permeability, noted in section 4-15 of the Woodward Clyde report, suggested that the control of leachate would be extremely difficult in a case of "infinite permeability" and that the consequences of such a possible scenario be pursued.

RESPONSE: The conclusion drawn within this comment is factually incorrect. The "packer test", which is used to test for permeability, is a first step in a variety of geologic and hydrologic tests, all of which must be conducted to derive meaningful data on a specific property. Conducting drilling tests in rock sectors presents a number of difficulties which often cause the test to be incomplete. Specifically, a "packer test" involves inserting a diaphragm-like device into a previously drilled boring in the rock and separating or "sealing" the ground water in the boring from the atmosphere above. Water or air is then introduced, under pressure, into a tube which goes through the diaphragm into the ground water. By monitoring the water or air pressure pumped into the ground water, it is possible to help

determine the permeability of the rock by calculating the velocity with which the water moves out below the seal, finding any possible fissures in the rocks. However, as in the case of the test noted in the Woodward Clyde report, section 4-15, the consultants believe that the sections or zones that "...took so much water..." did so primarily as a result of improperly sealed packers that allowed water to leak out of the test zone, and secondarily as a result of leaking joints that connected the pipe section of drill rods. The tests that did work completely indicated very low permeability in that sector. It must be understood that no single geologic test, by itself, is sufficient in providing a working knowledge of the area under study.

COMMENT: DEP has the notion that landfills can be placed anywhere as long as the right liners and monitors are placed on them. The Department continues to show complete disregard for the purity and pollution-free containment of the Upper Rockaway Watershed and the hundreds of thousands of individuals who are dependent upon the drinking water from that watershed.

RESPONSE: The Solid Waste Management Act delegates the responsibility of siting to the counties. Site 6-1B in Rockaway Township was selected by the Morris County Freeholders by adoption of a plan amendment in July, 1985. After review by sixteen state agencies, the designation of Site 6-1B received certification of approval from the Department in August, 1985. The engineering section of the Division of Waste Management requires state-of-the-art regulations for landfill design. Present New Jersey DEP requirements call for composite liner systems as well a leachate collection, gas venting and groundwater monitoring equipment. With construction of a state-of-the-art system, the Department has determined that a landfill could be developed at Site 6-1B with minimal environmental degradation and without jeopardizing the integrity of the aquifer.

6. Recycling

COMMENT: Several individuals emphasized the desirability of an aggressive recycling policy, but expressed uncertainty about the recycling portion of the proposed amendment in relationship to Morris County's recycling effort and the net impact on their municipality.

RESPONSE: Morris County has incorporated mandatory recycling as part of their July 10, 1985 plan amendment and each municipality should already be developing programs for at least two recyclables. There will be no dramatic change for those municipalities which already have existing and developing recycling programs. DEP wishes to see recycling practices instituted on a regular basis in each municipality and has imposed specific requirements related to program monitoring within the amendment certification.

COMMENT: What does the amendment mean when it calls for a mandatory collection and marketing system for recyclables within four months? Is there a distinction between source separation and collection?

RESPONSE: A typical mandatory recycling ordinance will require that certain reclaimable materials will not be disposed of within the mixed trash. How that material then is to be collected and marketed may be determined at the discretion of each municipality.

COMMENT: A request was made for support for bottle deposit legislation which would go a long way toward encouragement of recycling.

RESPONSE: The NJDEP officials were among the first in the nation to pursue recycling as an alternative to burying garbage in the ground. In 1980, the Legislature passed the 1980 Recycling Act, which seeks to go beyond the provisions of bottle deposit legislation to increase the recycling and reuse of a broad range of materials, including glass, paper and metals, and provides for a tax on landfill disposal to fund implementation. Although the "bottle bill" was recently defeated, the Department supported passage of the initial Clean Communities and Recycling Act, A-2003, which places a tax on litter generating products. The tax is to be used for enforcement and litter pick-up crews. The Mandatory Recycling Act, S-1478, currently pending in committee, also has the general support of the Department. Successful implementation of the act would work toward a reduction in the municipal waste stream and diminish the volume of waste disposed of at solid waste landfills.

7. General

COMMENT: Where is the proof that low income housing would be more polluting in the site on the sole source aquifer than a landfill?

RESPONSE: The Department has noted that housing development on Site 6-1B could cause an unavoidable degradation of the trout production streams on the northern portion of the site and would require the use of substantially more land than a landfill facility. The proposed landfill would utilize only about 200 of the 1630 acres of that property with an estimated nine to ten acres minimum needed to construct and operate a proposed resource recovery facility. The magnitude of the negative impacts attributed to the development and construction activities associated with the landfill--land clearing, road building, destruction of wetlands, sedimentation of streams, impact on fish and wildlife--would only be increased by an increase of land usage. Additionally, a landfill would be a clay-lined, self-contained unit, sealed off from the rest of the environment, requiring only the barest infrastructure of a leachate collection system and monitoring test wells to support it. In contrast, affordable housing would result in clearing a significant amount of land (approximately 500 acres). It would also result in a complex infrastructure of sewer and water systems intruding on the watershed, extensive urban runoff, a proliferation of impervious surfaces and additional impacts associated with large-scale housing construction.

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COMMENTS: Why were transfer stations not proposed for Essex, Hudson and Bergen counties which also have failed to implement long-term disposal facilities?

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RESPONSE: The DEP determined that the solid waste disposal situation in northern New Jersey had reached a critical stage due to the severe lack of disposal capacity. This lack of disposal capacity resulted from the failure of certain counties to site and develop needed solid waste disposal facilities. In Morris County's case, the county entered into an Administrative Consent Order (ACO) with the Department in January, 1985. Under the terms of this agreement, portions of the county were granted interim waste disposal privileges at the Edgeboro Landfill in Middlesex County until January, 1986. Additionally, Morris County agreed to develop an in-county landfill by that date and a resource recovery facility by November, 1990. Since entering into the ACO, the county has selected a site for the development of both the landfill and resource recovery plant. However, the county is not in compliance with meeting the landfill development milestones, mutually agreed upon within the ACO. At this time, nearly all

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