

SENATE CONCURRENT RESOLUTION No. 29

STATE OF NEW JERSEY

INTRODUCED JANUARY 22, 1996

By Senator SCOTT

1 **A CONCURRENT RESOLUTION** concerning legislative review of Department
2 of Environmental Protection and Energy regulations pursuant to Article V,
3 Section IV, paragraph 6 of the Constitution of the State of New Jersey.
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5 **BE IT RESOLVED** by the Senate of the State of New Jersey (the General
6 Assembly concurring):
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8 1. Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the
9 State of New Jersey, the Legislature may review any rule or regulation of an
10 Executive Branch agency to determine if the rule or regulation is consistent
11 with the intent of the Legislature as expressed in the language of the statute
12 which the rule or regulation is intended to implement.
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14 2. a. The Legislature enacted the "Solid Waste Management Act,"
15 P.L.1970, c.39 (C.13:1E-1 et seq.), as amended and supplemented by
16 P.L.1975, c.326, to provide a regulatory scheme for the environmentally
17 sound management of solid waste and to provide directives concerning county
18 control of solid waste flow through the development and implementation of
19 district solid waste management plans. Section 11 of P.L.1975, c.326
20 (C.13:1E-20) requires every county and the Hackensack Meadowlands
21 District to develop a 10-year plan for self-sufficiency in solid waste disposal
22 capacity.

23 b. Section 6 of P.L.1970, c.39 (C.13:1E-6) requires the Department of
24 Environmental Protection and Energy (hereinafter referred to as "the
25 department") to "develop, formulate, promulgate and review for the purpose
26 of revising or updating not less than once every 2 years, a Statewide solid
27 waste management plan which shall encourage the maximum practicable use
28 of resource recovery procedures and which shall provide the objectives,
29 criteria and standards for the evaluation of [district] solid waste management
30 plans...". The department has adopted the Solid Waste Management State
31 Plan Update 1993 - 2002, Section I: Municipal and Industrial Solid Waste
32 (hereinafter referred to as "the State Plan Update") pursuant to a notice of

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 adoption published in the New Jersey Register on January 18, 1994.

2 c. The State Plan Update is the second update of the statutorily mandated
3 plan by the department since the enactment of P.L.1975, c.326. The State
4 Plan Update incorporates the various policy recommendations of the Final
5 Report of the Emergency Solid Waste Assessment Task Force, which were
6 accepted by the Governor on November 16, 1990, as well as the policy
7 directives contained in the "Solid Waste Policy Guidelines" document issued
8 by the department on June 25, 1991, which further defines the basic planning
9 approach to implementing the State's revised solid waste management policies.

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11 3. a. The Legislature finds that the State Plan Update contains policy
12 directives and solid waste management implementation strategies, enumerated
13 in subsections b. and c. of this section, that are inconsistent with the intent of
14 the Legislature as expressed in the language of P.L.1970, c.39, P.L.1975,
15 c.326 and P.L.1987, c.102.

16 b. (1) The State Plan Update adopts a hierarchy of solid waste
17 management practices which favors, in a descending order of preference,
18 source reduction, source separation and recycling, composting of leaves, grass
19 and food waste, household hazardous waste collection, materials recovery,
20 solid waste composting, in-state landfilling and incineration, and out-of-state
21 landfilling.

22 (2) The Legislature finds that the hierarchy adopted in the State Plan
23 Update is inconsistent with the intent of the Legislature as expressed in the
24 language of the "Solid Waste Management Act," because the hierarchy as set
25 forth in the State Plan Update neither encourages resource recovery nor
26 provides for the maximum practicable use of "resource recovery" as defined
27 in the "Solid Waste Management Act." Section 2 of P.L.1970, c.39
28 (C.13:1E-2) declares that it is the policy of the State to encourage resource
29 recovery. Section 12 of P.L.1975, c.326 (C.13:1E-21) requires every county
30 and the Hackensack Meadowlands District to apply a solid waste disposal
31 strategy which includes the maximum practicable use of resource recovery
32 procedures. Section 3 of P.L.1970, c.39 (C.13:1E-3) defines "resource
33 recovery" as "the collection, separation, recycling and recovery of metals,
34 glass, paper and other materials for reuse; or the incineration of solid waste for
35 energy production and the recovery of metals and other materials for reuse."

36 c. (1) The State Plan Update fails to include the district solid waste
37 management planning and implementation responsibilities of the HMDC with
38 its summaries of the district solid waste management plans.

1 (2) The Legislature finds that this omission is inconsistent with the intent of
2 the Legislature because section 10 of P.L.1975, c.326 (C.13:1E-19)
3 designates the Hackensack Meadowlands District as a solid waste
4 management district subject to the provisions of the "Solid Waste Management
5 Act." The failure to include a district solid waste management plan for the
6 Hackensack Meadowlands District is inconsistent with the provisions of the
7 "Solid Waste Management Act."

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9 4. The Secretary of the Senate and the Clerk of the General Assembly
10 shall transmit a duly authenticated copy of this concurrent resolution to the
11 Governor and the Commissioner of the Department of Environmental
12 Protection and Energy.

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14 5. a. The Commissioner of the Department of Environmental Protection
15 and Energy shall, pursuant to Article V, Section IV, paragraph 6 of the
16 Constitution of the State of New Jersey, have 30 days following transmittal of
17 this resolution to amend or withdraw the State Plan Update.

18 b. Because the provisions of the State Plan Update which the Legislature,
19 in section 3 of this concurrent resolution, has determined to be inconsistent
20 with the intent of the Legislature are incompatible with the district planning and
21 implementation responsibilities prescribed in the language of P.L.1970, c.39
22 and P.L.1975, c.326, the Legislature recommends that the Commissioner of
23 the Department of Environmental Protection and Energy amend the State Plan
24 Update.

25 c. If the Commissioner does not withdraw or amend the State Plan
26 Update, the Legislature may, by passage of another concurrent resolution,
27 exercise its authority under the Constitution to invalidate the State Plan
28 Update, in whole or in part, or to prohibit the State Plan Update, in whole or
29 in part, from taking effect.

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32 STATEMENT

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34 This concurrent resolution sets forth the Legislature's finding, authorized
35 pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State
36 of New Jersey, that provisions of the Solid Waste Management State Plan
37 Update 1993 - 2002 (the "State Plan Update"), adopted by the Department
38 of Environmental Protection and Energy on January 18, 1994, are not
39 consistent with the intent of the Legislature as expressed in the statutes the
40 State Plan Update is intended to implement.

41 Specifically, this concurrent resolution finds that the State Plan Update
42 contains policy directives and solid waste management implementation

1 strategies that are inconsistent with the intent of the Legislature as expressed
2 in the language of the "Solid Waste Management Act," P.L.1970, c.39
3 (C.13:1E-1 et seq.), as amended and supplemented by P.L.1975, c.326.

4 The inconsistencies with the intent of the Legislature set forth in this
5 concurrent resolution are as follows:

6 (1) The State Plan Update adopts a hierarchy of solid waste management
7 practices which emphasizes source reduction, composting, source separation
8 and recycling techniques. Section 12 of P.L.1975, c.326 (C.13:1E-21)
9 expressly provides that every district solid waste management plan must apply
10 a solid waste disposal strategy which includes the maximum practicable use of
11 resource recovery procedures. This section neither establishes nor authorizes
12 the DEPE to establish a hierarchy of preferred solid waste management
13 practices for the counties to follow, nor does it contain any expressed or
14 implied preference for source reduction techniques.

15 Current legislation, Assembly Bill No. 565 of 1994, would amend this
16 section of law to establish a hierarchy of preferred solid waste management
17 practices similar to that embodied in the State Plan Update.

18 (2) The State Plan Update fails to include the district planning and
19 implementation responsibilities of the HMDC with its summaries of the district
20 solid waste management plans. Section 10 of P.L.1975, c.326 (C.13:1E-19)
21 designates the Hackensack Meadowlands District as a solid waste
22 management district subject to the provisions of the "Solid Waste Management
23 Act." The failure of the State Plan Update to include a district solid waste
24 management plan for the Hackensack Meadowlands District is inconsistent
25 with the provisions of the "Solid Waste Management Act."

26 Under the provisions of Article V, Section IV, paragraph 6 of the
27 Constitution of the State of New Jersey, the department would have 30 days
28 following transmittal of this concurrent resolution to the Governor and the
29 Commissioner of DEPE to amend or withdraw the State Plan Update or the
30 Legislature may, by passage of another concurrent resolution, exercise its
31 authority under the Constitution to invalidate the State Plan Update, or any
32 portion thereof, or to prohibit the State Plan Update, or any portion thereof,
33 from taking effect.

34 Because the provisions of the State Plan Update which the Legislature has
35 determined to be inconsistent with the intent of the Legislature are
36 incompatible with the district planning and implementation responsibilities
37 prescribed in the language of P.L.1970, c.39 and P.L.1975, c.326, this
38 concurrent resolution recommends that the Commissioner of the Department
39 of Environmental Protection and Energy amend the State Plan Update.

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3 Determines that Solid Waste Management State Plan Update 1993 - 2002 is

4 not consistent with legislative intent.