



# State of New Jersey

## DEPARTMENT OF ENVIRONMENTAL PROTECTION SITE REMEDIATION AND WASTE MANAGEMENT PROGRAM

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*Lt. Governor*

**SHAWN M. LATOURETTE**

*Acting Commissioner*

### **CERTIFICATION OF THE FEBRUARY 24, 2021 AMENDMENT TO THE ESSEX COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN**

#### **BY ORDER OF THE DEPARTMENT:**

#### **A. Introduction**

The New Jersey Solid Waste Management Act (“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 County Commissioners (“County Commissioners”) and the Hackensack Meadowlands Development Commission (previously known as the New Jersey Meadowlands Commission, and now known as New Jersey Sports & Exposition Authority or NJSEA) develop comprehensive plans for waste management in their respective districts. On August 13, 1980, the Department of Environmental Protection (“Department” or “DEP”) approved, with modifications, the Essex County District Solid Waste Management Plan (“County Plan”).

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 Essex County Board of County Commissioners completed such a review and on February 24, 2021 adopted an amendment to its approved County Plan. Said Amendment was approved by the Essex County Executive (“County Executive”) on March 8, 2021.

The February 24, 2021 Amendment (“Amendment”) proposes County Plan inclusion of:

- The publicly bid contract by and between the Essex County Utilities Authority (“ECUA”) and Advanced Enterprises Recycling, Inc. (“AERI”) for the transfer, transportation, and disposal of all solid waste type 13, 13C, 23 (non-processible portion), and 27 (non-hazardous industrial waste portion) generated in Essex County and the direction of all solid waste types 13, 13C, 23 (non-processible portion), and 27 (non-hazardous industrial waste portion) to the AERI Transfer Station/Materials Recovery Facility (“TS/MRF”) in

the City of Newark pursuant to regulatory flow control for the period commencing on January 1, 2021 and terminating on December 31, 2025.

- The publicly bid contract by and between ECUA and Waste Management of New Jersey, Inc. (“WMNJI”) for the transfer, transportation, and disposal of all processible commercial solid waste generated in Essex County and the direction of all Essex County processible commercial solid waste types 10, 23, 25, and 27 to the WMNJI TS/MRF in the City of Elizabeth pursuant to regulatory flow control for the period commencing on January 1, 2021 and terminating on December 31, 2025.

The Amendment was considered complete for review by the Department on March 18, 2021 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 Commissioners on February 24, 2021 and approved by the County Executive on March 8, 2021 is approved as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the 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 the Amendment is consistent with the Statewide Solid Waste Management Plan. In this regard, the County Commissioners are notified of the elements of the Amendment which are included below.

**Elements of the February 24, 2021 Amendment**

**Element: Facility History of Advanced Enterprises Recycling, Inc. TS/MRF**

On October 2, 2002, the Essex County Board of County Commissioners adopted an amendment to their County Plan proposing County Plan inclusion of the AERI TS/MRF to be located on Block 5070, Lots 25 (part), 41, and 43 in the City of Newark, for the acceptance of a maximum of 2,000 tons per day (“tpd”) of solid waste types 10, 13, 13C, 23, and 27. This amendment was certified as approved by the Department on March 18, 2004.

On April 28, 2009, the ECUA submitted a request for administrative action to the Department proposing County Plan inclusion of daily averaging at the AERI TS/MRF. Specifically, the April 28, 2009 request for administrative action to the County Plan proposed to include in the County Plan the receipt of a daily maximum of 2,650 tons of solid waste types 10, 13, 13C, 23, and 27 at the AERI TS/MRF, while maintaining the solid waste capacity of the subject facility on a weekly basis at 14,000 tons. This request for administrative action to the County Plan was approved by the Department on May 7, 2009.



On March 21, 2013, the ECUA submitted a request for administrative action to the Department proposing County Plan inclusion to accept solid waste type 25 as an additional waste type. This request for administrative action to the County Plan was approved by the Department on April 2, 2013.

Lastly, on May 3, 2016 the Department approved an April 27, 2016 request for administrative action to the County Plan, which proposed County Plan inclusion of designated traffic routes for solid waste vehicles accessing the AERI TS/MRF.

**Element: Facility History of Waste Management of NJ, Inc. TS/MRF**

A May 18, 1994 Department certification of an amendment to the Union County District Solid Waste Management Plan ("Union County Plan") adopted by the Union County Board of County Commissioners on December 8, 1993 approved the acceptance of solid waste types 10, 13, 13C, 23, 25, and 27 at the Ellesor, Inc. TS/MRF. The facility was included in the Union County Plan as being located at 864 Julia Street in the City of Elizabeth. A number of subsequent amendments to the Union County Plan have: increased the daily capacity of the facility; noted a change in ownership; included minor changes in facility operations; incorporated weekly averaging into the operational structure; and changed permitted truck routes to the facility.

**Element: County Plan Inclusion of Regulatory Flow Control over Solid Waste Types 13, 13C, 23 (non-processible portion), and 27 (non-hazardous industrial waste portion)**

In 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)], the Essex County Board of Chosen Freeholders adopted a County Plan Amendment on August 19, 1998, which included the County's revised solid waste disposal strategy for non-processible solid waste. The August 19, 1998 Amendment to the County Plan proposed County Plan inclusion of the strategy of implementing regulatory flow control of non-processible solid waste based upon a non-discriminatory procurement process. The result of this non-discriminatory procurement process was the County's proposed direction of all non-processible solid waste to the Waste Management of New Jersey, Inc. TS/MRF, located on Front Street in the City of Elizabeth.

In a December 3, 2003 amendment to the County Plan, the County again proposed County Plan inclusion of a strategy of implementing regulatory flow control over non-processible solid waste based upon the completion of a non-discriminatory procurement process. This Amendment to the County Plan, through which the County proposed the flow of all non-processible solid waste generated within Essex County to the NJMC Erie Landfill, was certified as approved by the Department on May 19, 2004.

In an administrative action to the County Plan dated June 8, 2006, the County proposed County Plan inclusion of a contract for the transfer, transportation, and disposal of solid



waste types 13, 13C, 23 (non-recycled portion), and 27 (non-processible portion) generated within Essex County entered into between the ECUA and the Delaware & Hudson Railway Company, Inc. d/b/a Canadian Pacific Railway (CP) and the direction of all of the subject waste types to the CP Transload Facility for processing and disposal. This request for administrative action to the County Plan was approved by the Department on July 20, 2006.

In a March 10, 2011 amendment to the County Plan, the County proposed County Plan inclusion of a strategy for implementing regulatory flow control over solid waste types 13, 13C, 23 (non-recycled portion), and 27 (non-processible portion) based upon the completion of a non-discriminatory procurement process. This amendment to the County Plan, through which the County proposed the flow of all solid waste types 13, 13C, 23 (non-recycled portion), and 27 (non-processible portion) generated within Essex County to the NJMC Keegan Landfill in the Town of Kearny until December 31, 2015, was certified by the Department on September 13, 2011.

Lastly, on January 13, 2016, the County Freeholders adopted an Amendment to the County Plan, which proposes County Plan inclusion of:

- The five-year publicly bid contract by and between the ECUA and Waste Management of NJ, Inc. for the transfer, transportation, and disposal of all solid waste types 13, 13C, 23 (non-processible portion) and 27 (non-hazardous industrial waste portion) generated in Essex County for the period January 1, 2016 until December 31, 2020; and,
- The direction (waste flow) of all solid waste types 13, 13C, 23 (non-processible portion) and 27 (non-hazardous industrial waste portion) generated within Essex County to the Waste Management TS/MRF in the City of Elizabeth for the term of the above noted Contract.

This Amendment to the County Plan was approved by the County Executive on January 15, 2016.

**Element: County Plan Inclusion of Regulatory Flow Control over Solid Waste Types 10, 23, 25, and 27**

In 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)], Essex County has employed a bifurcated system of solid waste disposal for processible (waste types 10, 23, 25, and the processible portion of waste type 27) waste.

Firstly, the County entered in to an agreement (“Waste Disposal Agreement”) with the Port Authority of New York and New Jersey (Port Authority) for the delivery to and processing of municipal processible solid waste generated within the County at the Essex County Resource Recovery Facility (“ECRRF”), now owned and operated by Covanta Essex Co., in the City of Newark. As a result of the terms of the Waste Disposal Agreement regarding guaranteed delivery of specific quantities of processible waste, the ECUA entered into



voluntary contracts with each of the County's municipalities and other generators located within the County to provide for the disposal of processible waste at the ECRRF. The voluntary contracts were for a ten-year period, which ended in December 2009. On February 25, 2010, the Essex County Board of Chosen Freeholders adopted an amendment to the County Plan which proposed County Plan inclusion of a 5-year extension of the Waste Disposal Agreement ("WDA") by and between the ECUA and the Port Authority for the transfer, transportation, and disposal of municipal processible solid waste types 10, 23, 25, and 27. This amendment was remanded to the County on August 26, 2010 due to concerns with the submission. These concerns were addressed by the County through a September 9, 2010 request for administrative action to the County Plan, which was approved by the Department on October 28, 2010. Finally, on November 6, 2014, the Essex County Board of Chosen Freeholders adopted an amendment to the County Plan which proposed a 7-year extension of the WDA. This amendment to the County Plan was certified as approved by the Department on January 8, 2015.

Secondly, on June 20, 2001, the Essex County Board of Chosen Freeholders adopted an amendment to the County Plan which proposed County Plan inclusion of regulatory flow control over the portion of processible waste generated at commercial establishments within the County not delivered to the ECRRF pursuant to a voluntary contract. The June 20, 2001 amendment to the County Plan, directed the subject waste to the Waste Management of NJ, Inc. ("WMNJI") TS/MRF, located at 864 Julia Street in the City of Elizabeth, Union County, based on a non-discriminatory procurement process. This amendment to the County Plan was certified as approved by the Department on December 22, 2001.

This strategy of waste flow control over processible commercial solid waste types 10, 23, 25, and 27 was reaffirmed by the County through December 5, 2007, December 22, 2009, December 12, 2012, and October 14, 2015 amendments to the County Plan, which again directed said waste to the WMNJI TS/MRF, located on Julia Street in the City of Elizabeth, based on a non-discriminatory procured contract by and between the ECUA and WMNJI. These amendments to the County Plan were certified as approved by the Department on May 14, 2008, May 19, 2010, June 3, 2013, and December 22, 2015 respectively.

**Element: Non-Discriminatory Procurement Process for solid waste types 13, 13C, 23 (non-processible portion), and 27 (non-hazardous industrial waste portion)**

On July 14, 2020, the ECUA advertised the issuance of bid specifications calling for receipt of bids for the provision of transfer, transportation, and disposal of solid waste types 13, 13C, 23 (non-processible portion), and 27 (non-hazardous industrial waste portion) locally in the Bergen Record and regionally in the Star Ledger. On July 13, 2020 through July 31, 2020, the ECUA advertised the issuance of bid specifications calling for receipt of bids for the provision of transfer, transportation, and disposal of solid waste types 13, 13C, 23 (non-processible portion) and 27 (non-hazardous industrial waste portion) nationally on Waste 360, a national online publication for the waste industry. Therefore, this procurement process was open to all bidders, regardless of geographical location. The ECUA received two bids on August 14, 2020. Advanced Enterprises Recycling, Inc. was determined by the ECUA to be the lowest bidder in full compliance with the bid specifications, bidding



\$71.88, \$73.25, \$74.50, \$76.25, and \$78.00 per ton for each year of the five-years of the disposal contract, scheduled to end on December 31, 2025.

**Element: Non-Discriminatory Procurement Process for all processible commercial solid waste types 10, 23, 25, and 27**

On July 14, 2020, the ECUA advertised the issuance of bid specifications calling for receipt of bids for the provision of transfer, transportation, and disposal of all processible commercial solid waste types 10, 23, 25, and 27 locally in the Bergen Record. On July 10, 2020, the ECUA advertised the issuance of bid specifications calling for the receipt of bids for the provision of transfer, transportation, and disposal of processible commercial solid waste types 10, 23, 25, and 27 regionally utilizing the Star Ledger. The ECUA further advertised on July 13, 2020 through July 31, 2020 on Waste 360, a national online publication for the waste industry announcing the issuance of bid specifications for the provision of transfer, transportation, and disposal of all processible commercial solid waste types 10, 23, 25, and 27 generated within Essex County. Therefore, this procurement process was open to all bidders, regardless of geographical location. The ECUA received two bids on August 14, 2020. Waste Management of New Jersey, Inc. was determined by the ECUA to be the lowest responsible bidder in full compliance with the bid specifications, bidding \$73.39, \$76.33, \$79.38, \$82.55, and \$85.86 per ton for each year of the five-years of the disposal contract, scheduled to end on December 31, 2025.

**C. Certification of the Essex 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 Amendment to the approved County Plan and certify to the County Commissioners that the Amendment is approved as further specified below.

The County Plan inclusion of:

- The publicly bid contract by and between the ECUA and AERI for the transfer, transportation, and disposal of all solid waste type 13, 13C, 23 (non-processible portion), and 27 (non-hazardous industrial waste portion) generated in Essex County and the direction of all solid waste types 13, 13C, 23 (non-processible portion), and 27 (non-hazardous industrial waste portion) to the AERI TS/MRF in the City of Newark pursuant to regulatory flow control for the period commencing on January 1, 2021 and terminating on December 31, 2025.
- The publicly bid contract by and between ECUA and WMNJI for the transfer, transportation, and disposal of all processible commercial solid waste generated in Essex County and the direction of all Essex County processible commercial solid waste types 10, 23, 25, and 27 to the WMNJI TS/MRF in the City of Elizabeth pursuant to regulatory flow control for the period commencing on January 1, 2021 and terminating on December 31, 2025.



**D. Implementation of the Plan Amendment**

**1. Certification to Proceed with Implementation of Amendment**

This document shall serve as the Certification by the Department to the County Commissioners and pursuant to N.J.S.A. 13:1E-24c and f., the County Commissioners shall proceed with the implementation of the approved components of the Amendment certified herein.

**2. 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.

**3. Effective Date of Amendment**

The approved components of this Amendment shall take effect immediately.

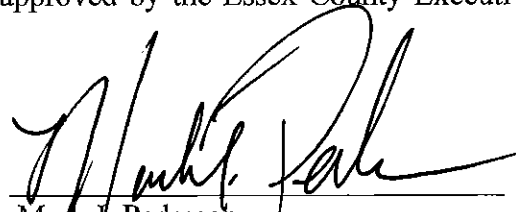
**4. Reservation of Authority**

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 to the Statewide Solid Waste Management Plan, with appendices, which includes the Department's planning guidelines, rules, regulations, orders of the Department, and includes the compilation of individual county plans and amendments as they are approved.

**E. Certification of Approval of the Amendment by 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 Essex County District Solid Waste Management Plan which was adopted by the Essex County Board of County Commissioners on February 24, 2021 and approved by the Essex County Executive on March 8, 2021.

5/25/21  
Date

  
Mark J. Pedersen  
Assistant Commissioner



