

**CERTIFICATION  
OF THE DECEMBER 5, 2007  
AMENDMENT TO THE ESSEX 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 (now known as the New Jersey Meadowlands Commission) 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 Chosen Freeholders (County Freeholders) completed such a review and on December 5, 2007 adopted an amendment to its approved County Plan. The December 5, 2007 amendment proposes County Plan inclusion of:

- the Waste Management of New Jersey, Inc. (WMNJI) Transfer Station/Material Recovery Facility (TS/MRF), located at 864 Julia Street in the City of Elizabeth, Union County, as Essex County's designated facility to which non-contract solid waste (see Section B. of this certification for definition) types 10, 23, 25, and 27 are directed;
- the disposal services agreement by and between the Essex County Utilities Authority (ECUA) and WMNJI for the disposal of non-contract solid waste types 10, 23, 25, and 27; and
- the direction of all non-contract solid waste types 10, 23, 25, and 27 to the above noted WMNJI TS/MRF for disposal.

The amendment was considered administratively complete for review by the Department on December 26, 2007 and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed this amendment, and has determined that the amendment adopted by the County Freeholders on December 5, 2007 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 December 5, 2007 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 Freeholders are notified of the elements relative to the December 5, 2007 amendment which are included below.

**Elements of the December 5, 2007 Amendment**

**Element: Facility History**

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 Chosen Freeholders on December 8, 1993, approved the acceptance of waste types 10, 13, 23, 25, and 27 at the Ellesor, Inc. TS/MRF. The facility was included in the Union County Plan as being located on Block 8, Lots 1401, 818, 819, 820, 1441, 1042 (a, b, c, and d), 1042, and 542 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, 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 into an agreement (Waste Disposal Agreement) with the Port Authority of New York and New Jersey for the delivery to and processing of processible waste generated within the County at the Essex County Resource Recovery Facility (ECRRF) 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 ends in December, 2009.

Secondly, on June 20, 2001, the 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 within the County not delivered to the ECRRF pursuant to a voluntary contract. This waste is referred to throughout this certification as the non-contract waste. The June 20, 2001 amendment to the County Plan, directed the subject waste to the WMNJI TS/MRF, located at 864 Julia Street in the City of Elizabeth, based on a non-discriminatory procurement process. The subject County Plan amendment also included the WMNJI TS/MRF, located at 77 Brookside Place in the Borough of Hillsdale, Bergen County, in the County Plan as the designated backup facility for this waste. This amendment to the County Plan was certified as approved by the Department on December 22, 2001.

On December 5, 2007, the County Board of Chosen Freeholders adopted an amendment to the County Plan, which proposes County Plan inclusion of:

- the WMNJI TS/MRF, located at 864 Julia Street in the City of Elizabeth, Union County, as Essex County's designated facility to which non-contract solid waste types 10, 23, 25, and 27 are directed;
- the disposal services agreement by and between the ECUA and WMNJI for the disposal of non-contract solid waste types 10, 23, 25, and 27; and
- the direction of all non-contract solid waste types 10, 23, 25, and 27 to the above noted WMNJI TS/MRF for disposal.

**Element: Non-Discriminatory Procurement Process**

On December 20, 2006, the ECUA advertised the issuance of bid specifications calling for receipt of bids on January 23, 2007 for the provision of transfer, transportation, and disposal of non-contract solid waste in The Record and The Star-Ledger. On January 8, 2007, the ECUA advertised the issuance of bid specifications calling for receipt of bids on January 23, 2007 for the provision of transfer, transportation, and disposal of non-contract solid waste in Waste News. Therefore, this procurement process was open to all bidders, regardless of geographical location. The ECUA received five bids. WMNJI was the lowest bidder in compliance with the bid specifications, bidding \$71.50 per ton for the first year and \$74.00 per ton for the remainder of the disposal contract ending on December 31, 2009.

**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 county solid waste management plans, I have reviewed the December 5, 2007 amendment to the approved County Plan and certify to the County Freeholders that the December 5, 2007 amendment is approved as further specified below.

The December 5, 2007 amendment proposing County Plan inclusion of:

- the WMNJI TS/MRF, located at 864 Julia Street in the City of Elizabeth, Union County, as Essex County's designated facility to which non-contract solid waste types 10, 23, 25, and 27 are directed;
- the disposal services agreement by and between the ECUA and WMNJI for the disposal of non-contract solid waste types 10, 23, 25, and 27; and
- the direction of all non-contract solid waste types 10, 23, 25, and 27 to the above noted WMNJI TS/MRF for disposal is approved.

**D. Other Provisions Affecting the Plan Amendment**

**1. Compliance**

All solid waste facility operators and transporters registered with the Department and operating within the County and affected by the amendment contained herein shall operate in compliance with this amendment and all other approved provisions of the County Plan. Any facility operator or transporter who fails to comply with the provisions contained herein shall be deemed to be in violation of N.J.S.A. 13:1E-1 et seq., in violation of N.J.A.C. 7:26-1 et seq., and in violation of their registration to operate a solid waste facility or a collection system issued thereunder by the Department and shall be subject to the provisions and penalties of N.J.S.A. 13:1E-9 and 12 and all other applicable laws.

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

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

**3. Definitions**

For the purpose of this amendment and unless the context clearly requires a different meaning, the definitions of terms shall be the same as those found at N.J.S.A. 13:1E-3 and -99.12, N.J.A.C. 7:26-1.4, -2.13, and N.J.A.C. 7:26A-1.3.

**4. Effective Date of Amendment**

The approved components of the amendment to the County Plan contained herein shall take effect immediately.

**5. Reservation of Authority**

Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's planning guidelines, rules, regulations, orders of the Department, 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 Essex County District Solid Waste Management Plan which was adopted by the Essex County Board of Chosen Freeholders on December 5, 2007.

May 14, 2008

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Date

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Lisa P. Jackson, Commissioner  
Department of Environmental Protection