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**CERTIFICATION  
OF THE AUGUST 19, 2009 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 or NJMC) develop comprehensive plans for waste management in their respective districts. On August 13, 1980, the Department of Environmental Protection (Department or DEP) approved the Essex County District Solid Waste Management Plan (County Plan).

The Act further provides that a district may review its district plan at any time and, if found inadequate, a new district plan must be adopted. The Essex County Board of Chosen Freeholders (County Freeholders) completed such a review and on August 12, 2009 adopted an amendment to its approved County Plan. Said amendment was approved by the Essex County Executive on August 19, 2009.

The August 19, 2009 amendment proposes County Plan inclusion of the TLA-Newark, LLC Transfer Station/Material Recovery Facility (TS/MRF), to be located on Block 5088, Lot 60 and Block 5042, Lot 70 at 91 Bay Avenue in the City of Newark. The August 19, 2009 County Plan amendment proposes for the subject facility to be included in the County Plan for the receipt and processing of a maximum of 2,500 tons per day (tpd) of solid waste types 13, 13C, 23, and 27.

The amendment was considered administratively complete for review by the Department on September 9, 2009 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 August 12, 2009 and approved by the Essex County Executive on August 19, 2009 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 August 19, 2009 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 of the August 19, 2009 amendment which are included below.

**Elements of the August 19, 2009 Amendment**

**Element: Facility Location and Operations**

The subject facility, which had previously claimed rail carrier status, has been the source of litigation and dispute. The parties resolved their disputes on or about September 12, 2008, when the Delaware and Hudson Railway Company, Inc., a Delaware corporation, d/b/a Canadian Pacific Railway (CP), TLA-Newark, LLC (TLA), and the Department entered into an Administrative Consent Order (ACO). In relevant part, the ACO set forth a timetable for TLA to become the operator of the subject facility, and towards that end, to submit the necessary applications to obtain a Solid Waste Facility (SWF) Permit under the Solid Waste Management Act. CP and TLA agreed that once a SWF Permit is obtained, the subject facility will be subject to the full panoply of State law as a solid waste facility and TLA agreed to operate the subject facility in accordance with the SWF Permit and law.

In accordance with the ACO, TLA applied for inclusion in the Essex County District Solid Waste Management Plan and also submitted applications for a SWF Permit and A-901 licensure. The August 19, 2009 County Plan amendment now proposes for the subject facility to be included in the County Plan for the acceptance and processing of a maximum of 2,500 tpd of solid waste types 13, 13C, 23, and 27 and identifies the facility's operating hours as 24 hours per day, Monday through Saturday.

The August 19, 2009 amendment to the County Plan is proposing County Plan inclusion of the TLA-Newark, LLC TS/MRF, to be located on Block 5088, Lot 60 and Block 5042, Lot 70 at 91 Bay Avenue in the City of Newark; however, the Department's Bureau of Transfer Stations and Recycling Facilities submitted comments based on their review of the subject County Plan amendment which read that the site plan and Application for a SWF Permit submitted to their Bureau by TLA identify the block and lot designation of the site as Block 5088, Lots 60 and 70, and Block 5042, Lots 62 and 70. If their assessment is correct, the County will have to modify the County Plan to reflect the correct block and lot address of the subject facility. This can be accomplished as an administrative action pursuant to N.J.A.C. 7:26-6.11.

**Element: Regulatory Requirements**

Transfer stations/material recovery facilities are subject to the provisions of N.J.A.C. 7:27-5, "Prohibition of Air Pollution." This regulation prohibits the release of odors and other air contaminants which interfere with the enjoyment of life and property. Further, transfer stations/material recovery facilities are also subject to N.J.A.C. 7:27-8.2(a)16 which requires air pollution control permits for any equipment which vents a solid waste facility directly or indirectly into the outdoor atmosphere. Such vents may require devices to control odors and other air contaminants. Finally, if the proposed operation will discharge pollutants as defined in N.J.A.C. 7:14-1.9, said operation must secure a New Jersey Pollutant Discharge Elimination System Permit and/or a Treatment Works Approval for pollutant discharges prior to operation.

**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 August 19, 2009 amendment to the approved County Plan and certify to the County Freeholders that the August 19, 2009 amendment is approved as further specified below.

The County Plan inclusion of the TLA-Newark, LLC TS/MRF, to be located on Block 5088, Lot 60 and Block 5042, Lot 70 at 91 Bay Avenue in the City of Newark for the acceptance and processing of a maximum of 2,500 tpd of solid waste type 13, 13C, 23, and 27 is approved.

This certification shall not be construed as an expression of the DEP's intent to issue a SWF Permit for any proposed facility or operation. The issuance of operating permits pursuant to the Solid Waste Management Act is limited to those applicants found by the DEP and the Attorney General of the State of New Jersey to be deserving of licensing under the provisions of N.J.S.A. 13:1E-126.

**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 County Freeholders on August 12, 2009 and approved by the County Executive on August 19, 2009.

November 23, 2009

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Date

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Mark N. Mauriello, Acting Commissioner  
Department of Environmental Protection