



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
SITE REMEDIATION & WASTE MANAGEMENT PROGRAM

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CERTIFICATION OF THE NOVEMBER 3, 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 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 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 November 3, 2021 adopted an amendment to its approved County Plan. Said amendment was approved by the Essex County Executive (“County Executive”) on November 9, 2021.

The November 3, 2021 Amendment (“Amendment”) proposes County Plan inclusion of the third supplemental agreement of the existing government to government Waste Disposal Agreement (“WDA”) by and between the Essex County Utilities Authority (“ECUA”) and the Port Authority of New York and New Jersey (“Port Authority”) for the disposal of approximately 370,000 tons of processible municipal and commercial waste types 10, 25, and 27 generated within Essex County per year at the Essex County Resource Recovery Facility (“ECRRF”) for the entire extended term of the WDA being February 1, 2022 to December 31, 2025 pursuant to regulatory waste flow control.

The Amendment was considered complete for review by the Department on December 21, 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 November 3, 2021 and approved by the Essex County Executive on November 9, 2021 is approved in part and rejected in part (as detailed in Section C below) , without prejudice, 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 and inconsistent 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 November 3, 2021 Amendment

Element: Facility History

On July 1, 1981, the Essex County Board of Commissioners adopted an amendment to the County Plan to include within it the designated site in the City of Newark for the ECRRF. This County Plan amendment was certified as approved by the Department on December 31, 1981.

On October 1, 2008, the ECUA submitted a request for administrative action to the Department proposing County Plan inclusion of, amongst other things, the ECRRF, located on Block 5000/5001, Lots 28, 30, 20, 29, 18, 32, 34, 36, 40, 50, 52, 35A, 60, 60A, 80, 80A, 90, and 92 at 183 Raymond Boulevard in the City of Newark. The October 1, 2008 request for administrative action to the County Plan proposed to include this facility in the County Plan for the acceptance of 985,500 tons per year of solid waste types 10, 23, and the processible portion of type 27 and identified the operating hours for the acceptance of solid waste as 24 hours per day, Monday through Saturday and for the processing of solid waste as 24 hours per day, Monday through Sunday. This request for administrative action was approved by the Department on October 15, 2008.

Lastly, on January 14, 2015, the ECUA submitted a request for administrative action to the Department proposing County Plan inclusion of the acceptance and processing of waste type 25 at the ECRRF. This request for administrative action was approved by the Department on February 27, 2015.

Element: County Plan Inclusion of Regulatory Flow Control for Processible Solid Waste Types 10, 23, 25 & 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 ECUA entered into a WDA with the Port Authority for the disposal of processible waste generated within the County at the ECRRF in the City of Newark. As a result of the terms of the Waste Disposal Agreement, which expired on January 31, 2010, regarding guaranteed delivery of specific quantities of processible waste, the ECUA entered into voluntary contracts with each of the County's municipalities to provide for the disposal of processible waste at the ECRRF.

Secondly, on June 20, 2001, the County Board of Commissioners 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. 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 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, 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 non-contract 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, October 14, 2015, and February 24, 2021 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, December 22, 2015, and May 25, 2021 respectively.

With regards to disposal of processible municipal waste, as a result of the WDA expiration on January 31, 2010, on February 25, 2010, the County Commissioners adopted an amendment to the County Plan which proposed County Plan inclusion of:

- The five-year extension of the Waste Disposal Agreement 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 generated within Essex County; and,
- The direction of all municipal processible solid waste types 10, 23, 25, and 27 to the ECRRF in the City of Newark for the term of the above noted extension.

This amendment to the County Plan was remanded, without prejudice, by the Department on August 26, 2010 because the Bureau of Recycling and Planning's comments noted that the amendment to the County Plan failed to demonstrate that the direction of all municipal processible waste types 10, 23, 25, and 27 to the ECRRF provides a clear public benefit to the generators of solid waste within the County as compared to going out to bid and awarding a disposal contract to the lowest bidder.

Lastly, on November 6, 2014, the County Commissioners adopted an amendment to the County Plan which proposed the County Plan inclusion of:

- The seven-year extension of the existing government to government WDA by and between the ECUA and the Port Authority for the transfer, transportation, and disposal of all municipal processible waste types 10, 23 and 27 generated within Essex County to the ECRRF, and;
- The direction of all municipal processible solid waste types 10, 23 and 27 to the ECRRF in the City of Newark for the term of the extension of contract pursuant to regulatory waste flow control.
- The payment of \$3.00 per ton recycling tax on all municipal processible waste by the ECRRF pursuant to the Recycling Enhancement Act, N.J.S.A. 13:1E-96.2 et seq.

This amendment to the County Plan was certified as approved by the Department on January 8, 2015.

Element: Solid Waste Flow Control of Commercial Processible Waste

A February 24, 2021 amendment to the Essex County Plan approved the publicly bid contract by and between the ECUA and WMNJI for the transfer, transportation, and disposal of all processible commercial solid waste generated in Essex County and 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.

Therefore, the proposed solid waste flow of commercial processible waste types 10, 25, and 27 in this Amendment is hereby rejected, as the Department has already certified the February 24, 2021 amendment on May 25, 2021, which directs processible commercial solid waste types 10, 23, 25, and 27 to the WMNJI TS/MRF in the City of Elizabeth until December 31, 2025, pursuant to a non-discriminatory procurement process.

Element: Four Year Government-to-Government Waste Disposal Agreement

All Essex County municipal processible waste has been delivered to the ECRRF continuously since 1986. The current WDA between the ECUA and Port Authority expired on January 31, 2021. The new four-year extension of the WDA will provide all Essex County municipalities with a continuation of long-term disposal capacity of municipal processible waste at a stable cost. The new tipping fees for Essex County municipalities are as follows:

Essex County Municipal Processible Waste	
Year	Tipping Fee
2022	\$69.00
2023	\$69.50
2024	\$70.00
2025	\$70.00

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 in part and rejected in part, without prejudice, as further specified below.

The County Plan inclusion of the third supplemental agreement of the existing government to government WDA by and between the ECUA and the Port Authority for the disposal of approximately 370,000 tons of processible municipal and commercial waste types 10, 25, and 27 generated within Essex County per year at the ECRRF for the entire extended term of the WDA being February 1, 2022 to December 31, 2025 pursuant to regulatory waste flow control is approved in part and rejected in part, without prejudice.

The direction of commercial processible waste types 10, 25, and 27 to the ECRRF is rejected as the Department has already certified the direction of this waste to WMNJI TS/MRF in a plan amendment dated February 24, 2021 and certified on May 25, 2021, which directs processible commercial solid waste types 10, 23, 25, and 27 to the WMNJI TS/MRF in the City of Elizabeth until December 31, 2025, pursuant to a non-discriminatory procurement process.

D. Other Provisions Affecting 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 in part and reject in part the Amendment, without prejudice, 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 November 3, 2021 and approved by the Essex County Executive on November 9, 2021.

May 18, 2022
Date



Mark J. Pedersen
Assistant Commissioner