



## State of New Jersey

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### CERTIFICATION OF THE NOVEMBER 6, 2014 AMENDMENT TO THE ESSEX COUNTY 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 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 November 6, 2014 adopted an amendment to its approved County Plan. Said amendment was approved by the Essex County Executive (County Executive) on November 12, 2014.

The November 6, 2014 amendment proposes County Plan inclusion of:

- The seven year extension 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 transfer, transportation, and disposal of all municipal processible waste types 10, 23 and 27 generated within Essex County to the Essex County Resource Recovery Facility (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 agreement 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.

The County Plan amendment was considered administratively complete for review by the Department on December 11, 2014 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 November 6, 2014 and approved by the Essex County Executive on November 12, 2014 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 November 6, 2014 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 November 6, 2014 amendment which are included below.

**Elements of the November 6, 2014 Amendment**

**Element: Facility History**

On July 1, 1981, the Essex County Board of Chosen Freeholders 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.

**Element: County Plan Inclusion of Regulatory Flow Control for 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 an agreement (Waste Disposal Agreement) 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 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. 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 over non-contract waste was reaffirmed in December 5, 2007 and December 22, 2009 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 non-discriminatory procured contracts by and between the ECUA and WMNJI. These amendments to the County Plan were certified as approved by the Department on May 14, 2008 and May 19, 2010 respectively.

On February 25, 2010, the County Freeholders 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 ECRRF is not currently permitted to accept solid waste Type 25, which is defined as animal and food processing wastes at N.J.A.C. 7:26-2.13(g). Therefore, solid waste Type 25 generated within Essex County will remain free market (that is, allowed to be taken to any disposal facility authorized to accept such waste) until the County proposes County Plan inclusion of waste flow direction to a disposal facility for this waste type.

On December 12, 2012, the County Freeholders adopted an amendment to the County Plan which proposed the County Plan inclusion of:

- The Agreement by and between the ECUA and the WMNJI for the transfer, transportation, and disposal of processible commercial solid waste types 10, 23, 25, and 27 generated within Essex County, and;
- The direction of all processible commercial solid waste types 10, 23, 25, and 27 to the WNJI TS/MRF on Julia Street in the City of Elizabeth.

This amendment to the County Plan was certified as approved by the Department on June 20, 2013.

The November 6, 2014 amendment proposes 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.

**Element: Seven Year Government to Government Waste Disposal Agreement**

All Essex County municipal processible waste has been delivered to the ECRRF continuously since 1986. Initially, there was a Waste Disposal Agreement between the ECUA and all 22 Essex County municipalities, and thereafter as a result of a five year government to government agreement between the ECUA and the Port Authority which expires on January 31, 2015.

The new seven year extension of the government to government agreement will result in even more substantial savings for Essex County municipalities than the previous agreement. The projected savings for all 22 municipalities in year 2015 will be \$1,899,983.79, and these significant savings will continue each year during the term of this agreement. The new tipping fees for Essex County municipalities are as follows:

Essex County Municipal Type 10 Waste	
Year	Tipping Fee
2014	\$89.94
2015	\$82.99
2016	\$84.66
2017	\$86.37
2018	\$88.13
2019	\$88.50
2020	\$89.06
2021	\$89.55

**Element: County Solid Waste Financial Responsibility**

The first five year extension of the government to government agreement together along with regulatory flow control have allowed the ECUA to substantially reduce its outstanding bonded indebtedness from \$100 million to the current debt amount of just over \$51 million. The new seven year extension of the government to government agreement is projected to completely retire Essex County's solid waste debt by the end of its term.

**Element: Assessment and Collection of the Recycling Enhancement Act Tax on Essex County Solid Waste sent to the ECRRF per the Waste Disposal Agreement**

During the entire term of the seven year extension agreement, the November 6, 2014 plan amendment requires and includes the payment of the \$3.00 per ton recycling tax by the ECRRF, which will be included within its service charges throughout the term of the agreement, pursuant to the Recycling Enhancement Act (N.J.S.A. 13:1E-96.2 et seq.) on all municipal processible solid waste types 10, 23, and 27 disposed of at the ECRRF.

**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 November 6, 2014 amendment to the approved County Plan and certify to the County Freeholders that the November 6, 2014 amendment is approved as further specified below.

The November 6, 2014 amendment proposing 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 is approved.
- 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.

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

**1. Contracts**

Any contract renewal or new contract for solid waste collection or disposal which is inconsistent with this amendment to the District Plan and which was executed prior to the approval of this amendment and subsequent to the effective date of the Solid Waste Management Act (July 29, 1977), and which shall further be for a term in excess of one year, shall immediately be renegotiated in order to bring same into conformance with the terms and provisions herein set forth. Any solid waste collection operation or disposal facility registered by the Department and operating pursuant to a contract as herein described, shall be deemed to be in violation of this amendment and of the District Plan if such renegotiation is not completed within ninety (90) days of the effective date of this amendment provided, however, that any such registrant may, upon application to the Department, and for good cause shown, obtain an extension of time to complete such renegotiation.

**2. 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.

**3. 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.

**4. 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.

**5. Effective Date of Amendment**

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

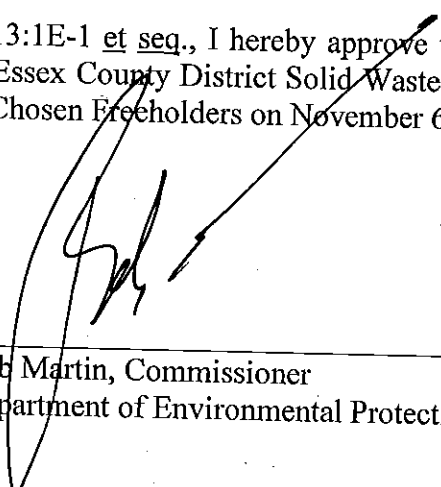
**6. Reservation of Authority**

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 also includes the compilation of individual County 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 November 6, 2014.

1/8/2015  
Date

  
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Bob Martin, Commissioner  
Department of Environmental Protection