

**CERTIFICATION
OF THE DECEMBER 22, 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) 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 9, 2009 adopted an amendment to its approved County Plan. Said amendment was approved by the Essex County Executive (County Executive) on December 22, 2009.

The December 22, 2009 amendment proposes County Plan inclusion of:

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

The amendment was considered administratively complete for review by the Department on February 2, 2010 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 9, 2009 and approved by the County Executive on December 22, 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 December 22, 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 relative to the December 22, 2009 amendment which are included below.

Elements of the December 22, 2009 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 solid 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 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 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 for the delivery to and processing of processible 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. This solid waste is referred to throughout this certification as "contract waste". The voluntary contracts were for a ten-year period, which ended in December 2009. The County's management strategy for the disposal of contract waste will be the subject of a future amendment to the County Plan.

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. This waste is referred to throughout this certification as "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, 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 waste was reaffirmed by the County through a December 5, 2007 amendment to the County Plan, which again directed said waste to the WMNJI TS/MRF located on Julia Street in the City of Elizabeth, Union County, based on a non-discriminatory procured contract by and between the ECUA and WMNJI. This amendment to the County Plan was certified as approved by the Department on May 14, 2008.

On December 9, 2009, the County Freeholders adopted an amendment to the County Plan, which proposes County Plan inclusion of:

- the contract by and between the ECUA and WMNJI for transfer, transportation, and disposal of non-contract solid waste types 10, 23, 25, and 27 generated within the County;
- the WMNJI TS/MRF located on Julia Street in the City of Elizabeth, Union County, as the designated disposal facility for all non-contract solid waste types 10, 23, 25, and 27 generated within the County; and
- the direction of all non-contract solid waste types 10, 23, 25, and 27 generated within the County to the above noted WMNJI TS/MRF.

This amendment to the County Plan was approved by the County Executive on December 22, 2009.

Element: Non-Discriminatory Procurement Process

On July 14, 2009, the ECUA advertised the issuance of bid specifications calling for receipt of bids on August 13, 2009 for the provision of transfer, transportation, and disposal of approximately 150,000 tons of non-contract waste in The Record and the Star-Ledger. On July 6, 2009, the ECUA advertised the issuance of bid specifications calling for receipt of bids on August 13, 2009 for the provision of transfer, transportation, and disposal of approximately 150,000 tons of non-contract waste in Waste & Recycling News. Therefore, this procurement process was open to all bidders, regardless of geographical location. The ECUA received three bids. WMNJI was determined by the ECUA to be the lowest bidder in compliance with the bid specifications, bidding \$63.99 per ton for the first year, \$65.46 per ton for the second year, and \$66.96 per ton for the third year of the disposal contract, scheduled to end on December 31, 2012.

Element: Contract Review by the Department

The Department's Division of County Environmental and Waste Enforcement (DCEWE) submitted comments regarding the December 22, 2009 County Plan amendment. The DCEWE's comments specifically read that the County must submitted the subject contract to the Department's Bureau of Solid Waste & Hazardous Waste Regulation for their review and approval as provided for in the Solid Waste Utility Control Act (N.J.S.A. 48:3-1 et seq., N.J.S.A. 48:13A-1 et seq.).

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 22, 2009 amendment to the approved County Plan and certify to the County Freeholders that the December 22, 2009 amendment is approved as further specified below.

The December 22, 2009 amendment proposing County Plan inclusion of:

- the contract by and between the ECUA and WMNJI for transfer, transportation, and disposal of non-contract solid waste types 10, 23, 25, and 27 generated within the County;
- the WMNJI TS/MRF located on Julia Street in the City of Elizabeth, Union County, as the designated disposal facility for all non-contract solid waste types 10, 23, 25, and 27 generated within the County; and
- the direction of all non-contract solid waste types 10, 23, 25, and 27 generated within the County to the above noted WMNJI TS/MRF 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 9, 2009 and approved by the Essex County Executive on December 22, 2009.

May 19, 2010

Date

Bob Martin, Commissioner
Department of Environmental Protection