

Solid and Hazardous Waste Program
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Elmer J. Herrmann, Jr., Acting Executive Director
Essex County Utilities Authority
155 Passaic Avenue – 4th floor
Newark, NJ 07004

Dear Mr. Herrmann:

The Department of Environmental Protection's (Department) Solid and Hazardous Waste Program is in receipt of a request for administrative action dated June 8, 2006. This request for administrative action to the Essex County District Solid Waste Management Plan (County Plan) proposes County Plan inclusion of a contract for the transfer, transport, and disposal of solid waste types 13, 13C, 23 (non-recycled portion), and 27 (non-processible portion) generated within Essex County entered into between the Essex County Utilities Authority (ECUA) and the Delaware & Hudson Railway Company, Inc. d/b/a Canadian Pacific Railway (CP). For the reasons set forth below, the Department approves this request for administrative action.

The recent history of solid waste management in Essex County can be summarized as follows. 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)], the Essex County Freeholders adopted a County Plan amendment on August 19, 1998, which included the County's revised solid waste disposal strategy. The Department's December 2, 1998 certification of this amendment approved County Plan inclusion of the imposition of regulatory flow control over non-processible (types 13, 13C, the non-recycled portion of type 23, and the non-processible portion of type 27) solid waste following the non-discriminatory procurement of transfer, transportation, and/or disposal services, which was open to all bidders regardless of geographic location. As a result of this process, the ECUA determined that Waste Management of New Jersey, Inc. (Waste Management) was the lowest responsible bidder and awarded Waste Management a contract for the transfer, transportation, and/or disposal of all non-processible waste generated within Essex County on July 9, 1998.

On July 7, 2003, the ECUA issued bid specifications for transfer, transportation, and disposal of solid waste types 13, 13C, 23 (non-recycled portion), and 27 (non-processible portion) generated within Essex County. The request for bids was open to all bidders regardless of geographical location. The ECUA determined that the New Jersey Meadowlands Commission (NJMC) was the

low bidder at \$69.00 per ton, for a two-year period. The agreement between the ECUA and the NJMC commenced on January 1, 2004 and expired on December 31, 2005. Inclusion of regulatory flow control of solid waste types 13, 13C, 23 (non-recycled portion), and 27 (non-processible portion), based upon the completion of a nondiscriminatory bid contract was accomplished through a December 3, 2003 County Plan amendment, certified as approved by the Department on May 19, 2004.

The genesis of the June 8, 2006 request for administrative action is as follows. The ECUA issued bid specifications on February 28, 2005 seeking the provision of transfer, transportation, and disposal for approximately 200,000 tons annually of solid waste types 13, 13C, 23 (non-recycled portion), and 27 (non-processible portion) generated within Essex County. The request for bids was advertised locally in The Record, throughout New Jersey in The Star Ledger, and nationally in Waste News. The procurement process was open to all bidders regardless of geographical location. The ECUA received four bids for the transfer, transportation, and disposal of non-processible waste. The ECUA determined that CP was the low bidder, bidding \$58.21, \$58.21, \$59.92, \$61.72, and \$63.52, respectively over a 5-year period commencing on or about January 1, 2006.

In the Department's May 24, 2006 certification of the County Plan amendment including the CP Transload Facility on Block 5088, Lots 60 and 70 at the Oak Island Rail Yard in the City of Newark that was adopted by the Essex County Board of Chosen Freeholders on December 14, 2005, the Department observed:

Although the December 14, 2005 amendment proposes County Plan inclusion of the CP Transload Facility for the receipt of a maximum of 2,000 tons per day of solid waste types 13, 13C, 23 (non-recycled portion), and 27 (non-processible portion), it does not address or seek to include the disposal contract between CP and the ECUA for this waste.

However, it must be noted that the Notices of Public Hearing for the subject County Plan amendment read, that the CP Transload Facility was intended to become the County's "designated facility to which all ID Waste Type 13, 23 (non-recycled portion), and 27 (non-processible portion) generated within the County will be directed for transfer and transportation and disposal", thus ensuring that all relevant parties were adequately informed of the intent of the County in this matter. Additionally, it must be noted that the Ordinance (#0-05-0024) adopted by the County Board of Chosen Freeholders in support of the December 14, 2005 County Plan amendment mirrored this intent.

Therefore, in the same certification cited above, the County was directed on page 3 of 6 to “include the disposal contract in the County Plan...pursuant to N.J.A.C. 7:26-6.11” and to “include documentation demonstrating that the subject contract was reached in a non-discriminatory manner”. The County supplied the Department documentation related to the bidding process on June 9, 2006.

Finally, the New Jersey Department of Community Affairs’ Division of Local Government Services commented that the “response of the Essex County Utilities Authority (acting on behalf of the Essex County Solid waste management District) to the May 24, 2006 certification of the December 14, 2005 amendment to the Essex County District Solid waste Plan has been reviewed by Division staff. This county plan amendment is consistent with the plans and programs administered by this agency.” It must be noted, however, that DCA is reviewing documents submitted to it after close of the contract award process, and was neither a party to the bid process nor aware of communications, if any, between the ECUA and potential vendors. As such, DCA is only noting that the documentation, as submitted, appears to conform to the plans and programs it administers.

If you have any questions relative to this matter, please contact Ross M. Hull of my staff at (609) 984-5936.

Sincerely,

Guy Watson, Chief
Bureau of Recycling and Planning