

**CERTIFICATION
OF THE APRIL 9, 2008 AMENDMENT
TO THE MORRIS 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 January 29, 1981, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Morris 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 Morris County Board of Chosen Freeholders (County Freeholders) completed such a review and on April 9, 2008 adopted an amendment to its approved County Plan. The April 9, 2008 amendment proposes County Plan inclusion of:

- Waste Management of New Jersey, Inc. (WMNJI) as the operator of the two Morris County Municipal Utilities Authority (MCMUA) Transfer Stations/Material Recovery Facilities (TS/MRFs), located in the Townships of Parsippany-Troy Hills and Mount Olive, respectively, for a period of five years beginning on January 27, 2008, based on an open and non-discriminatory procurement;
- four solid waste transporters for the transportation of residual solid waste from the two MCMUA TS/MRFs to the ultimate disposal facilities for this material; and
- six out-of-state disposal facilities as the ultimate disposal facilities for the residual solid waste received at the two above noted MCMUA TS/MRFs.

The amendment was considered administratively complete for review by the Department on April 30, 2008 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 April 9, 2008 is approved as provided in N.J.S.A. 13:1E-24.

B. Findings and Conclusions with Respect to the Morris County District Solid Waste Management Plan Amendment

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the April 9, 2008 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 April 9, 2008 amendment which are included below.

Elements of the April 9, 2008 Amendment

Element: County Plan Inclusion of Regulatory Flow Control Over Solid Waste Types 10, 13, 13C, 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)], the Morris County Board of Chosen Freeholders have adopted a solid waste disposal strategy of implementing regulatory flow control of solid waste based upon nondiscriminatory procurement processes.

On December 9, 1997, the MCMUA submitted a request for administrative action to the County Plan which petitioned the Department to reaffirm the solid waste disposal system in place in the County. That system included the MCMUA's November 7, 1997 contract with Morris County Transfer Station, Inc. for the operations of the two MCMUA TS/MRFs and transportation of the resulting solid waste at out of state landfill facilities and a January 6, 1993 contract by and between the MCMUA and Waste Management of Pennsylvania, Inc. for use of their out-of-state landfill facilities. The Department approved this request for administrative action on January 9, 1998 after determining that the County sufficiently demonstrated that the procurement processes for the above noted contracts were consistent with the criteria set forth in the Atlantic Coast decision.

On July 24, 2002, the County Board of Chosen Freeholders adopted an amendment to the County Plan, which proposed County Plan inclusion of, amongst other things, the terms and conditions of the Waste Management of New Jersey, Inc. bid dated April 9, 2002, which provided for the operation of the two MCMUA TS/MRFs and transportation and disposal of the residual solid waste to out-of-state disposal facilities. This amendment was certified as approved by the Department on December 20, 2002.

The April 9, 2008 amendment to the County Plan proposed County Plan inclusion of:

- WMNJI as the operator of the two MCMUA TS/MRFs, located in the Townships of Parsippany-Troy Hills and Mount Olive, respectively, for a period of five years beginning on January 27, 2008, based on an open and non-discriminatory procurement (As part of Morris County's aggressive approach to increasing the recycling of solid waste generated within the County, the MCMUA will pay WMNJI one and one half times the "Per Ton Operation Price" bid for each ton of recovered material separated and marketed as part of the subject contract by and between the MCMUA and WMNJI. In addition, WMNJI will be allowed to retain all revenues generated from the sale of recovered materials separated and marketed as part of this incentive.);
- Gary W. Gray, Inc., Kephart Trucking Company, WB Services, LLC, and Vision Transport, Inc. for the transportation of residual solid waste from the two MCMUA TS/MRFs to the ultimate disposal facilities for this material; and
- the GROWS North Landfill, Tullytown Resource Recovery Facility Landfill, Alliance Sanitary Landfill, Grand Central Landfill, Keystone Landfill, and the Wheelabrator Falls, Inc. Resource Recovery Facility as the ultimate disposal facilities for the residual solid waste received at the two above noted MCMUA TS/MRFs.

Element: Non-Discriminatory Procurement Process

On October 15, 2007, the MCMUA issued bid specifications calling for receipt of bids on December 18, 2007 for the provision of operation of the two MCMUA TS/MRFs, including provision of transportation and disposal of all solid waste received at said facilities. The request for bids was advertised locally through the Daily Record, throughout New Jersey through The Star-Ledger, and nationally through Waste News. Therefore, this procurement process was open to all bidders, regardless of geographical location. The MCMUA received three bids. WMNJI was the low bidder, bidding \$71.34, \$73.07, \$76.85, \$78.70, and \$80.62 per ton for the total cost of operation of the two MCMUA TS/MRFs and transportation and disposal of all solid waste received at said facilities for a five-year span.

C. Certification of the Morris 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 April 9, 2008 amendment to the approved County Plan and certify to the County Freeholders that the April 9, 2008 amendment is approved as further specified below.

The April 9, 2008 amendment proposing County Plan inclusion of:

- WMNJI as the operator of the two MCMUA TS/MRFs, located in the Townships of Parsippany-Troy Hills and Mount Olive, respectively, for a period of five years beginning on January 27, 2008, based on an open and non-discriminatory procurement;
- four solid waste transporters for the transportation of residual solid waste from the two MCMUA TS/MRFs to the ultimate disposal facilities for this material; and
- six out-of-state disposal facilities as the ultimate disposal facilities for the residual solid waste

received at the two above noted MCMUA TS/MRFs 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 Morris County District Solid Waste Management Plan which was adopted by the Morris County Board of Chosen Freeholders on April 9, 2008.

August 5, 2008

Date

Lisa P. Jackson, Commissioner
Department of Environmental Protection