

**CERTIFICATION
OF THE APRIL 23, 2008 AMENDMENT
TO THE NJMC DISTRICT
SOLID WASTE MANAGEMENT PLAN**

BY ORDER OF THE COMMISSIONER:

A. Introduction

The New Jersey Solid Waste Management Act (SWMA; 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 or NJMC) develop comprehensive plans for waste management in their respective districts. On July 31, 1980 the Department of Environmental Protection (Department or DEP) approved the NJMC District Solid Waste Management Plan (District Plan).

The Act further provides that a district may review its District Plan at any time and, if found inadequate, a new District Plan must be adopted. The NJMC Commissioners completed such a review and on April 23, 2008 adopted an amendment to its approved District Plan. The April 23, 2008 amendment proposes District Plan inclusion of the Westside Transload, LLC Transfer Station/Material Recovery Facility (TS/MRF), located on Block 453A, Lots 5A1, 5B, 5C, and a portion of Lot 7C and Block 481, Lot 1 at 5600 – 5800 Westside Avenue in the Township of North Bergen with an initial capacity of up to 1,200 tpd of solid waste types 13, 13C, 23, and 27 and a maximum capacity of 1,500 tpd of the same solid waste types.

The amendment was considered administratively complete for review by the Department on May 20, 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 NJMC Commissioners on April 23, 2008 is approved as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the April 23, 2008 amendment to the District 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 NJMC is notified of the elements relative to the April 23, 2008 amendment which are included below.

Elements of the April 23, 2008 Amendment

Element: Facility Operations

The April 23, 2008 amendment to the District Plan is proposing District Plan inclusion of the Westside Transload, LLC TS/MRF, located on Block 453A, Lots 5A1, 5B, 5C, and a portion of Lot 7C and Block 481, Lot 1 at 5600 – 5800 Westside Avenue in the Township of North Bergen.

The property on which the facility is located is owned by the New York, Susquehanna and Western Railway Corporation (NYS&W), an interstate rail carrier. NYS&W leases the property to Westside Transload, LLC (Westside), a New Jersey limited liability company with offices at 5600 Westside Avenue, North Bergen for operation by Westside of the facility as a solid waste transfer facility. The lease agreement was entered into pursuant to a Judicial Consent Order (JCO) into which NYS&W, Westside, the Department, and NJMC entered to resolve litigation in the Superior Court, Chancery Division, of Hudson County (“litigation”), and will take effect if and when Westside obtains a Solid Waste Facility (SWF) Permit pursuant to the SWMA. That litigation was commenced when on July 21, 2006, the NJMC filed a complaint against NYS&W to enforce a Stipulation of Settlement between NYS&W and the NJMC. The complaint was subsequently amended to, among other things, add the Department as a plaintiff and Westside as a defendant, and to seek appropriate relief for alleged violations of the SWMA (“complaint”). A court order was issued temporarily restraining construction at the facility and granting other relief. That order was continued through January 4, 2007, when after the NJMC had the opportunity to review, comment upon and effect changes to engineering and design plans for the proposed facility, the order was dissolved and a new order entered, dated January 22, 2007, which provided that:

- (a) “Construction of the Facility shall be subject to the March 2001 Stipulation of Settlement entered into between the NYS&W and the NJMC (“Stipulation”),” and
- (b) “The Facility shall not be operated unless it is in compliance with the Stipulation, including all fire, health, plumbing, safety and construction regulations, as applicable”.

The JCO sets forth, among other things, a schedule for applications to be submitted by Westside and acted upon by the Department and the NJMC for the facility to be included in the District Plan, Westside to obtain a SWF Permit, and Westside to obtain approval under the A-901 program to operate the facility. Pursuant to the JCO, the parties agreed to stay the litigation pending such submission and action. Westside has acknowledged in the JCO that no Permit may be issued unless and until (a) the Facility is included in the NJMC District Solid Waste Management Plan and (b) Westside has received A-901 approval to operate the proposed facility. Moreover, Westside has acknowledged that Westside may commence operation only if Westside and the proposed facility obtain the necessary SWF Permit, District Plan inclusion, and A-901 authorization, as well as a post-permit certification of construction, at which point the complaint will be dismissed with prejudice upon application of any party. Westside further agreed to comply with N.J.S.A. 13:1E-28.1 et seq., including but not limited to negotiating, and then paying, a host community benefit to the Township of North Bergen.

Under the JCO, Westside agreed that the facility operations shall be conducted in accordance with the SWF Permit, the provisions of the SWMA, and its implementing regulations including but not limited to N.J.A.C. 7:26-2.1 et seq., other applicable environmental law including but not limited to the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. (APCA), and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. (WPCA), and shall be subject to all of DEP's statutory and regulatory powers, including but not limited to the power to order compliance and assess penalties for violations of environmental statute(s) or regulation(s). Westside also expressly agreed that upon inclusion of the proposed facility in the District Plan, receipt by Westside of A-901 approval, and issuance by the DEP of a SWF Permit to Westside to operate the facility, DEP's regulatory powers with respect to Westside and its operation of the facility are not, and shall not be deemed to be, preempted by the Interstate Commerce Commission Termination Act ("ICCTA"), 49 U.S.C. §§ 10101 et seq. Pursuant to the JCO, if Westside fails to obtain District Plan inclusion, a SWF Permit, and A-901 authorization to operate the facility, NYS&W has the right, after providing due notice, to proceed with construction and operation of the facility in accordance with the Court's January 22, 2007 Order. In such an event, Westside agrees it will not be the operator of the Facility unless authorized by the Court, and the parties reserve all rights and defenses with respect to the litigation.

The April 23, 2008 District Plan amendment proposes District Plan inclusion of the Westside Transload, LLC TS/MRF with an initial capacity of up to 1,200 tpd of solid waste types 13, 13C, 23, and 27 and a maximum capacity of 1,500 tpd of the same solid waste types. Specifically, the April 23, 2008 District Plan amendment proposes to allow the subject facility to increase its loading to 1,500 tpd of solid waste after a six-month period during which loading exceeds 1,000 tpd, if there are no site issues related to traffic, litter, etc. This proposal of escalation included in the April 23, 2008 District Plan amendment is consistent with the terms of the above referenced JCO, in which Westside agreed that it would seek authorization to commence operation at 1,000 tpd, scaling up to 1,500 tpd provided that the facility submits evidence, and the NJMC and DEP agree, that the facility is in material compliance with all applicable laws and regulations.

The April 23, 2008 District Plan amendment identifies the subject facility's operating hours as 9:00 am – 7:00 pm and 9:00 pm – 7:00 am, Monday through Friday, with the exception of select major holidays when 24 hour operations are proposed; however, correspondence from the NJMC, dated September 19, 2008, amended the hours to be included in the District Plan to reflect the operating hours referenced in the public hearing, identified as: 9:00 am – 7:00 pm and 9:00 pm – 7:00 am, Monday through Saturday, with the exception of select major holidays when 24 hour operations are proposed.

Issue: Regulatory Requirements

Transfer stations/material recovery facilities are subject to the provisions of N.J.A.C. 7:27-5, "Prohibition of Air Pollution." This regulation prohibits the release of odors and other air contaminants which interfere with the enjoyment of life and property. Further, transfer stations/material recovery facilities are also subject to N.J.A.C. 7:27-8.2(a)16 which requires air pollution control permits for any equipment which vents a solid waste facility directly or indirectly into the outdoor atmosphere. Such vents may require devices to control odors and other air contaminants. Finally, if the proposed operation will discharge pollutants as defined in N.J.A.C. 7:14-1.9, said operation must secure a New Jersey Pollutant Discharge Elimination System Permit and/or a Treatment Works Approval for pollutant discharges prior to operation.

C. Certification of the NJMC 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 23, 2008 amendment to the approved District Plan and certify to the NJMC Commissioners that the April 23, 2008 amendment is approved as further specified below.

The District Plan inclusion of the Westside Transload, LLC TS/MRF, located on Block 453A, Lots 5A1, 5B, 5C, and a portion of Lot 7C and Block 481, Lot 1 at 5600 – 5800 Westside Avenue in the Township of North Bergen, with an initial capacity of up to 1,200 tpd of solid waste types 13, 13C, 23, and 27 and a maximum capacity of 1,500 tpd of the same waste types is approved.

This certification shall not be construed as an expression of the DEP's intent to issue a SWF Permit or Permit Modification for any proposed facility or operation. The issuance of operating permits pursuant to the Solid Waste Management Act is limited to those applicants found by the DEP and the Attorney General of the State of New Jersey to be deserving of licensing under the provisions of N.J.S.A. 13:1E-126.

D. Other Provisions Affecting the Plan Amendment**1. Compliance**

All solid waste facility operators and transporters registered with the Department and operating within the District and affected by the amendment contained herein shall operate in compliance with this amendment and all other approved provisions of the District 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 NJMC Commissioners and pursuant to N.J.S.A. 13:1E-24c. and f., the NJMC Commissioners 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 District 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 District 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 NJMC District Solid Waste Management Plan which was adopted by the NJMC Commissioners on April 23, 2008.

October 2, 2008

Date

Lisa P. Jackson, Commissioner
Department of Environmental Protection