

**IN THE MATTER OF CERTAIN AMENDMENTS  
TO THE ADOPTED AND APPROVED SOLID  
WASTE MANAGEMENT PLAN OF THE  
UNION COUNTY SOLID WASTE  
MANAGEMENT DISTRICT**

**CERTIFICATION  
OF THE FEBRUARY 15, 2007  
AMENDMENT TO THE UNION 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 or NJMC) develop comprehensive plans for waste management in their respective districts. On August 13, 1980, the Department of Environmental Protection (Department or DEP) approved the Union County District Solid Waste Management Plan (County Plan).

The Act requires that all district plans be based on and accompanied by a report detailing the existing waste disposal situation in the district, and a plan which includes the strategy to be followed by the district in meeting the solid waste management needs of the district for a ten-year planning period. The report must detail the current and projected waste generation for the district, inventory and appraise all facilities in the district, and analyze the waste collection and transportation systems that serve the district. The disposal strategy must include the maximum practicable use of resource recovery techniques. In addition to this strategy, the plan must designate sufficient available suitable sites for the disposal of the district's waste for a ten-year period.

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 Union County Board of Chosen Freeholders (County Freeholders) completed such a review and on February 15, 2007 adopted an amendment to its approved County Plan. The February 15, 2007 amendment proposes County Plan inclusion of:

- 1) the Canadian Pacific Railway (CP) Transload Facility, located on Block 5088, Lot 60 at 91 Bay Avenue in the City of Newark as the County's designated facility to which solid waste types 13, 13C, 23, and 27 are directed;

- 2) the contract by and between the Union County Utilities Authority (UCUA) and CP for solid waste disposal services of solid waste types 13, 13C, 23, and 27; and
- 3) the direction, via regulatory flow control, of solid waste types 13, 13C, 23, and 27 generated within Union County to the CP Transload Facility in the City of Newark.

The amendment was considered administratively complete for review by the Department on March 15, 2007 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 February 15, 2007 is remanded, without prejudice, as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the February 15, 2007 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 inconsistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the elements of the February 15, 2007 amendment, which are included below.

In conjunction with the review of the amendment, the Department circulated copies to sixteen administrative review agencies and solicited their review and comment. Pursuant to N.J.S.A. 13:1E-24a(2) and (3), these agencies included various bureaus, divisions, and agencies within the Department. All agencies contacted are as follows:

Division of Water Quality, DEP  
 Division of Parks and Forestry, DEP  
 Division of Fish and Wildlife, DEP  
 Solid and Hazardous Waste Program, DEP  
 Green Acres Program, DEP  
 Land Use Regulation Program, DEP  
 Office of Local Environmental Management, DEP  
 Office of Air Quality Management, DEP  
 Bureau of Solid Waste Compliance and Enforcement, DEP  
 Department of Community Affairs  
 Department of Transportation  
 Department of Agriculture  
 Department of Health and Senior Services  
 New Jersey Turnpike Authority  
 New Jersey Advisory Council on Solid Waste Management  
 U.S. Environmental Protection Agency

**Elements of the February 15, 2007 Amendment****Element: County Plan Inclusion of Regulatory Flow Control Over Solid Waste Types 13, 13C, 23, and 27**

The February 15, 2007 amendment is proposing County Plan inclusion of:

- 1) the CP Transload Facility, located on Block 5088, Lot 60 at 91 Bay Avenue in the City of Newark as the County's designated facility to which solid waste types 13, 13C, 23, and 27 are directed;
- 2) the contract by and between the UCUA and CP for solid waste disposal services of solid waste types 13, 13C, 23, and 27; and
- 3) the direction, via regulatory flow control, of solid waste types 13, 13C, 23, and 27 generated within Union County to the CP Transload Facility in the City of Newark.

On September 25, 2006, the UCUA issued bid specifications calling for receipt of bids on October 20, 2006 for the provision of disposal services for solid waste types 13, 13C, 23, and 27 generated within Union County. The request for bids was advertised locally in The Home News & Tribune, throughout New Jersey utilizing The Star Ledger, regionally in The Philadelphia Enquirer, and nationally in Waste News. Therefore, this procurement process was open to all bidders, regardless of geographical location. The UCUA received six bids. The County determined that Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railway was the lowest complying and responsible bidder.

On May 25, 2007, New Jersey Superior Court Judge Honorable Marianne Espinosa ruled in Waste Management of New Jersey v. Union County Utilities Authority, Docket No. UNN-L-4449-06, that the UCUA, for several reasons, was permanently enjoined from implementing the subject contract with Delaware and Hudson Railway Company, Inc.

As a result of the above noted ruling, the County Freeholders adopted an amendment to the County Plan on June 21, 2007, which proposed County Plan inclusion of:

- 1) the New Jersey Meadowlands Commission (NJMC) 1-E Landfill, located on Block 149, Lot 10 in the Town of Kearny and Lot 1 of Blocks 175-178, 180-183, 185-189 in the Borough of North Arlington as the County's designated facility to which solid waste types 13, 13C, 23, and 27 are directed;
- 2) the interlocal solid waste services agreement by and between the UCUA and the NJMC for solid waste disposal services of solid waste types 13, 13C, 23, and 27 generated within the County for a period of, at maximum, 18 months; and
- 3) the direction, via regulatory flow control, of solid waste types 13, 13C, 23, and 27 generated within the County to the NJMC 1-E Landfill in the Town of Kearny and Borough of North Arlington.

This amendment was approved by the Department on June 29, 2007.

**C. Certification of the Union 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 February 15, 2007 amendment to the approved County Plan and certify to the County Freeholders that the February 15, 2007 amendment is remanded, without prejudice, to the County due to the New Jersey Superior Court's above noted ruling.

**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 County 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 County 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. Types of Solid Wastes Covered by the County Plan**

The provisions of the County Plan shall apply to all solid wastes defined in N.J.S.A. 13:1E-3 and N.J.A.C. 7:26-2.13 including waste types 10, 13, 23, 25, and 27 and all applicable subcategories and shall not apply to liquid and hazardous wastes. All nonhazardous materials separated at the point of generation for sale or reuse are subject to regulation in accordance with N.J.A.C. 7:26A-1 et seq.

**4. 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.

**5. 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.

**6. Effective Date of Amendment**

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

**7. 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 remand, without prejudice, the amendment as outlined in Section C. of this certification, to the Union County District Solid Waste Management Plan which was adopted by the Union County Board of Chosen Freeholders on February 15, 2007.

August 7, 2007

\_\_\_\_\_  
Date

\_\_\_\_\_  
Lisa P. Jackson, Commissioner  
Department of Environmental Protection