

**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 JUNE 17, 2004
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 June 17, 2004 adopted an amendment to its approved County Plan. The June 17, 2004 amendment proposes County Plan inclusion of regulatory flow control over solid waste types 13, 13C, 23, and 27 generated within Union County pursuant to a nondiscriminatory procurement, and to include two Waste Management of New Jersey, Inc. (WMNJ) Transfer Station/Materials Recovery Facilities (TS/MRFs), one located at 1520 Lower Road in the City of Linden, the other located at 625-647 South Front Street in the City of Elizabeth, as the County's designated facilities to which solid

waste types 13, 13C, 23, and 27 are directed.

The amendment was considered administratively complete for review by the Department on June 22, 2004 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 June 17, 2004 is approved, 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 June 17, 2004 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 of the June 17, 2004 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
Division of Compliance and Enforcement, DEP
Division of Solid and Hazardous Waste, DEP
Office of Air Quality Management, DEP
Green Acres Program, DEP
Land Use Regulation Element, DEP
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
Office of Local Environmental Management
Department of Agriculture
Department of Health and Senior Services
Department of Transportation
Department of Community Affairs
U.S. Environmental Protection Agency

Elements of the June 17, 2004 Amendment

Element: County Plan Inclusion of Regulatory Flow Control Over Solid Waste Types 13, 13C, 23, and 27

The June 17, 2004 amendment is proposing County Plan inclusion of regulatory flow control over solid waste types 13, 13C, 23, and 27 pursuant to a nondiscriminatory procurement, and to include two WMNJ TS/MRFs, one located at 1520 Lower Road in the City of Linden, the other located at 625-647 South Front Street in the City of Elizabeth, as the County's designated facilities to which solid waste types 13, 13C, 23, and 27 are directed.

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 Union County Freeholders adopted a County Plan amendment on December 17, 1997, which included the County's revised solid waste disposal strategy. The certification of this amendment by the Department on April 30, 1998 approved County Plan inclusion of the strategy to offer voluntary contracts to each of the County's 21 municipalities and to commercial haulers servicing Union County customers, for the disposal of processible waste types 10 and 25 at the Union County Resource Recovery Facility (UCRRF). This certification, however, rejected the County Plan inclusion of the imposition of regulatory flow control of waste types 13, 23, and 27 to the J&J Recycling Company, Inc. Transfer Station, located in the City Elizabeth, and the Linden Landfill, located in the City of Linden, due to the County's failure to demonstrate that the relevant contracts were awarded to the designated facilities in a nondiscriminatory manner.

A March 11, 1999 County Plan amendment proposed regulatory flow control of waste types 13, 23, and 27 based upon the completion of nondiscriminatory bid contracts. This amendment, certified by the Department on June 1, 1999, delineated waste flow for waste types 13, 23, and 27, as follows:

- All non-recycled solid waste types 13 and 23 was directed to the New Jersey Meadowlands Commission (NJMC) TS/MRF, located at 100 Baler Boulevard in North Arlington, Bergen County for the provision of bulky waste recycling services;
- All non-recycled solid waste type 27 was directed to the NJMC TS/MRF for industrial waste recycling services; and
- All residue remaining after recycling solid waste types 13, 23, and 27 at the NJMC TS/MRF was directed to the NJMC 1-E North Area Landfill, located at 100 Baler Boulevard in the Borough of North Arlington, Bergen County and Kearney, Hudson County, and now directed to the Erie Landfill, located at 100 Baler Boulevard in the Borough of North Arlington for disposal.

An administrative action dated June 16, 1999 and approved by the Department on June 29, 1999 clarified that solid waste types 13 (including 13C) and 27 generated within Union County shall not be recycled at any other materials recovery facility prior to delivery to the NJMC TS/MRF

for recycling.

An administrative action dated March 20, 2000 and approved by the Department on May 1, 2000 included within the County Plan the policy of allowing fully-permitted material recovery facilities to accept and recycle solid waste types 13, 23, and 27, provided that the facilities enter into agreements with the UCUA to deliver all residue remaining after recycling to NJMC facilities for disposal.

An administrative action dated May 31, 2000 and approved by the Department on July 13, 2000 included within the County Plan the policy that to the extent that the NJMC continues to receive solid waste directly from Union County waste generators and that waste is not subject to prior materials recovery efforts by contracting MRFs, the NJMC will attempt to recycle incoming solid waste although there will be no established recycling goals.

Element: Facility Histories

WMNJ Transfer Station/Material Recovery Facility (Lower Road, City of Linden)

The WMNJ Transfer Station, located on Block 580, Lot 53, 1520 Lower Road, City of Linden (formerly known as Automated Modular Systems of AMS), was included in the County Plan for the acceptance of waste types 10, 13, 23, 25, and 27, in a May 19, 1987 plan amendment, certified by the Department on July 21, 1987. The certification noted that the maximum capacity would be determined during the permitting phase for the facility.

The AMS facility was included in the County Plan as a materials recovery facility and recycling center for Class A and B recyclable materials through a February 25, 1993 amendment, certified by the Department on September 10, 1993. This amendment also added Lot 52 to the facility location and established a capacity of 1,200 tons per day (tpd) of solid waste and recyclable materials.

WMNJ Transfer Station/Material Recovery Facility (South Front Street, City of Elizabeth)

The WMNJ TS/MRF, located on South Front Street in the City of Elizabeth (formerly owned and operated by J & J Recycling Company), was included in the County Plan for the acceptance of 1,000 tpd (5,500 tons per week) of commingled construction and demolition debris in a plan amendment adopted by the Union County Board of Chosen Freeholders on March 14, 1991. The amendment was deemed approved pursuant to N.J.A.C. 7:26-6.10(h).

An amendment to the County Plan adopted on September 14, 1995 proposed the acceptance of portions of type 10 waste at the South Front Street facility. This amendment also included into the County Plan the expansion of the facility site to include Block 4, Lot 1454 for truck queuing and Block 4, Lots 1458 and 0055A for storage. Lastly, this County Plan amendment proposed County Plan inclusion of a 1,000 tpd Class B recycling center at the site of the TS/MRF. The amendment

was certified as approved by the Department on December 26, 1995.

An administrative action dated March 24, 1997 and approved by the Department in April 1997 included in the County Plan an overall facility capacity of 2,000 tpd for the J & J Recycling Company, Inc. TS/MRF and Class B Recycling Facility, allowing for increased flexibility at the site.

Element: Non-Discriminatory Procurement Process

On December 2, 2003, the Union County Utilities Authority (UCUA) issued bid specifications calling for receipt of bids on January 12, 2004 for the transfer, transportation, and disposal of the non-processible portion of the County's solid waste. 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 one bid. Waste Management of New Jersey, Inc. was the low bidder, resulting in pricing of \$78.00, \$80.00, and \$82.00 per ton for disposal for the three years beginning on July 1, 2004, July 1, 2005, and July 1, 2006, respectively.

Element: Long-Term Disposal of County's Type 13, 13C, 23, and 27 Solid Waste

The agreement between the UCUA and Waste Management of New Jersey, Inc. commenced on July 1, 2004 and will terminate on June 30, 2007. Pursuant to N.J.S.A. 13:1E-21, every District's solid waste management plan shall include sufficient available suitable sites to provide solid waste facilities to treat and dispose of the actual and projected amounts of solid waste generated within that District over a 10-year period. As this amendment proposes the inclusion of a contract for disposal with a period substantially less than ten years from the date of this certification, the County will soon again have to negotiate for the disposal of the solid waste types subject of this amendment. Therefore, Union County shall submit to the Department a plan amendment specifying the arrangements the County has made for the long-term disposal of the solid waste types 13, 23 (non-recycled portion), and 27 (non-processible portion), not less than one year prior to the termination of the subject contract.

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 June 17, 2004 amendment to the approved County Plan and certify to the County Freeholders that the June 17, 2004 amendment is approved.

The County Plan inclusion of regulatory flow control over solid waste types 13, 13C, 23, and 27 generated within Union County pursuant to a nondiscriminatory procurement, and to include two Waste Management of New Jersey, Inc. (WMNJ) Transfer Station/Materials Recovery Facilities (TS/MRFs), one located at 1520 Lower Road in the City of Linden, the other located at 625-647 South Front Street in the City of Elizabeth, as the County's designated facilities to which solid

waste types 13, 13C, 23, and 27 are directed is approved.

This certification shall not be construed as an expression of the DEP's intent to issue a solid waste facility permit or permit modification for any proposed facility or operation.

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 approve 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 June 17, 2004.

October 25, 2004

Date

Bradley M. Campbell, Commissioner
Department of Environmental Protection