



## State of New Jersey

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### **CERTIFICATION OF THE SEPTEMBER 15, 2011 AMENDMENT TO THE UNION 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 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 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 Union County Board of Chosen Freeholders (County Freeholders) completed such a review and on September 15, 2011 adopted an amendment to its approved County Plan.

The September 15, 2011 amendment proposes County Plan inclusion of:

- 1) Extensions of and modification to the terms and provisions of the Union County Resource Recovery Facility (UCRRF) Lease Agreement and the amended Waste Disposal Agreement (WDA) by and between the Union County Utilities Authority (UCUA) and Covanta Union, Inc. for the operation of the UCRRF;
- 2) Extensions of and modification to the terms and provisions of the Local Waste Agreements by and between the County and certain municipalities; and
- 3) The reaffirmation of the implementation and enforcement of regulatory solid waste flow control for processible solid waste generated in Union County.

The amendment was considered administratively complete for review by the Department on September 26, 2011 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 September 15, 2011 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 September 15, 2011 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 September 15, 2011 amendment which are included below.

**Elements of the September 15, 2011 Amendment**

**Municipal Solid Waste (MSW) Recycling in Union County**

On November 30, 2006, the Union County Board of Chosen Freeholders adopted an amendment to the County Plan which included specific strategies for achieving the State's statutorily-mandated minimum MSW recycling rate of 50%. This amendment to the County Plan was approved by the Department on June 29, 2007; however, in the certification of this amendment the Department requested that the County submit additional detail regarding its plan to increase its recycling rate.

Two subsequent requests for administrative action to the County Plan proposed County Plan inclusion of additional specifics regarding the above noted deficiencies. These respective requests for administrative action to the County Plan were acted on by the Department on February 17, 2009 and July 1, 2009.

The most recent recycling data compiled by the State shows that in 2009, 31.3% of Union County MSW was recycled. Using 2009 Department data, Union County will have to recycle an additional 94,600 tons of MSW to reach a MSW recycling rate of 50%. Due to the County's lack of progress towards reaching the State's 50% MSW recycling mandate, the Department hereby directs the County to provide a quantified and specific update to the Department on the recycling and compliance measures which have occurred since the two above noted requests for administrative action were acted on by the Department in 2009. This update shall be submitted to the Department within 90 days of the date of this certification.

In this regard, the County is reminded that the Department adopted an Update to the Statewide Solid Waste Management Plan in 2006, which set forth, among other things, a framework for the counties in assessing various strategies to be employed to achieve the statutorily-mandated recycling goals and, although the state does not prescribe specific actions to be taken, the Department strongly recommends that the County, at a minimum:

- 1) Assess compliance with the requirements of the County recycling plan within the institutional sector, including public and private schools, government buildings, recreational facilities and other public locations within the county. This assessment should include what specific actions the County will take if a school board or government body refuses to follow recycling mandates;
- 2) Increase compliance and enforcement inspections at solid waste facilities within the County to assess the presence of designated recyclable materials in loads of solid waste transported and delivered for disposal; and,
- 3) Coordinate with appropriate municipal authorities for increased compliance and enforcement inspections at commercial establishments, where quantities of designated recyclables (especially corrugated cardboard and various grades of paper) may be present.

It should also be noted that, relative to the above, the Department is available to assist the county in developing appropriate recycling compliance and other strategies to achieve mandated recycling goals. Finally, in order to assess progress by the county in achieving the state's mandated recycling goals, the county is directed to submit, beginning on July 1, 2012 and every six months thereafter, a report detailing actions taken, and specific results achieved, until such time as the Department determines that the county has achieved these goals.

Discussions were held between the Department and the UCUA on November 1, 2011 regarding the UCUA's delivery obligations under the proposed Amendment to the Amended and Restated WDA and the relationship of those obligations to compliance with the State-mandated 50% MSW recycling rate. During the discussions and in a follow-up letter submitted to the Department in the afternoon of November 1, 2011, the UCUA's Counsel attested that if the UCUA is unable to deliver 330,000 tons of acceptable solid waste from Union County for disposal at the UCRRF, a provision in Section 5 of the Second Amendment allows for the UCUA to enter in to Local Waste Agreements with local units within New Jersey for the disposal of solid waste at the UCRRF in order to mitigate any potential or real shortfall. Specifically, Section 5 of the subject document reads that "[n]otwithstanding any provision of this Agreement to the contrary, the UCUA may accept additional deliveries of Acceptable Waste under a Local Waste Agreement with a New Jersey Local Unit in mitigation of shortages in deliveries of Acceptable Waste under a different Local Waste Agreement."

### **Local Waste Agreement “Put or Pay” Provisions**

The Department notes that the County is hereby advised that any solid waste disposal agreements with Union County municipalities or other Union County solid waste transporters or generators that contain a “put or pay” provision, with monetary penalties associated for not delivering a minimum specified amount of solid waste, and which may impinge on the ability of the County to achieve the mandated 50% MSW recycling rate, shall not be enforced by the County, the UCUA, or any other organization as these provisions may contradict State law.

### **Solid Waste Flow Control for Processible Waste Generated In Union County**

On December 18, 1997, the Union County Board of Chosen Freeholders adopted an amendment to the County Plan which proposed County Plan inclusion of, amongst other things, a plan for the UCUA to offer 25-year voluntary contracts to each of the County’s 21 municipalities and all commercial transporters servicing Union County customers for the disposal of processible solid waste types 10 and 25 at the UCRRF. These voluntary contracts were signed for a term of 25 years and were set to expire on July 15, 2023. The Department’s certified this component of the December 18, 1997 amendment to the County Plan as approved on April 30, 1998.

On November 8, 2007, the Union County Board of Chosen Freeholders adopted an amendment to the County Plan which proposed County Plan inclusion of, amongst other things, the direction of all processible solid waste not subject to a voluntary contract by and between the UCUA and a Union County municipality or solid waste transporter servicing Union County customers to the UCRRF for processing and disposal. The last of the five one-year contracts by and between the UCUA and Union County municipalities and/or solid waste transporters servicing Union County customers for solid waste type 10 and 25 not subject to one of the 25-year voluntary contracts were due to expire on June 30, 2013. This amendment to the County Plan was certified as approved by the Department on April 25, 2008.

The September 15, 2011 amendment to the County Plan proposes County Plan inclusion of the direction of all processible solid waste generated within Union County to the UCRRF for processing and disposal as per executed Local Waste Agreements by and between the UCUA and other parties. The current maximum term of any existing or future Local Waste Agreements as per the subject amendment shall be December 17, 2031.

### **Solid Waste Flow Control Enforcement**

During the Department's review, the Bureau of Recycling and Planning noted that it has discovered, via analyses of the monthly summaries of solid waste received by the Department as per N.J.A.C. 7:26-2.13(e), that the owner/operator of a transfer station/material recovery facility (TS/MRF) in Middlesex County is accepting large quantities of type 10 solid waste generated within Union County at said TS/MRF, but is not delivering that solid waste to the UCRRF for ultimate disposal. According to the monthly summaries submitted to the Department by Covanta Union, Inc. for the UCRRF, this situation has been occurring for over 18 months. Thus, Union County is hereby directed to conduct an investigation in to the above noted issue and report the results to the Department within 90 days of the date of this certification. The Department appreciates the importance of solid waste flow control, but without consistency and integrity, the system is unfair and subject to increased legal challenge.

The Division of Solid Waste and Pesticides Enforcement echoed these concerns commenting that the "UCUA shall dedicate [E]nforcement staff to investigate and enforce waste flow control throughout Union County, with an emphasis on Type 10 waste among the subscription service/non-contract municipalities in Union County. UCUA must consistently demonstrate to the Department that it has a viable waste flow enforcement program which serves as an effective deterrent among solid waste collectors to return all Type 10 solid waste to the Union County RRF in accordance with the approved Union County solid waste management plan."

### **Recycling Enhancement Act Tax**

Please note that the Department has recently requested legal advice as to whether the payment of the \$3.00 tax required on certain solid wastes that are disposed of within or transferred through New Jersey by the Recycling Enhancement Act (N.J.S.A. 13:1E-96.2 et seq.) is applicable to the solid waste subject of the September 15, 2011 amendment to the County Plan. The Department has asked that counsel expedite their review and will inform the County, the UCUA, and Covanta Union, Inc. of its determination shortly.

### **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 September 15, 2011 amendment to the approved County Plan and certify to the County Freeholders that the September 15, 2011 amendment is approved as further specified below.

The September 15, 2011 amendment proposes County Plan inclusion of:

- 1) Extensions of and modification to the terms and provisions of the UCRRF Lease Agreement and the amended WDA by and between the UCUA and Covanta Union, Inc. for the operation of the UCRRF;
- 2) Extensions of and modification to the terms and provisions of the Local Waste Agreements by and between the County and certain municipalities; and
- 3) The reaffirmation of the implementation and enforcement of regulatory solid waste flow control for processible solid waste generated in Union County is approved.

**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 District 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. 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.

**4. 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.

**5. Effective Date of Amendment**

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

**6. 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 County 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 September 15, 2011.

November 8, 2011

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Date

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Bob Martin, Commissioner  
Department of Environmental Protection