

**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 NOVEMBER 8, 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 November 8, 2007 adopted an amendment to its approved County Plan. The November 8, 2007 amendment proposes County Plan inclusion of:

- the Union County Resource Recovery Facility (UCRRF), located in the City of Rahway, as the County's designated facility to which non-contract (see Section B. of this certification for definition) solid waste types 10 and 25 are directed;

- the disposal services agreement by and between the Union County Utilities Authority (UCUA) and Covanta Union, Inc. for the disposal of non-contract solid waste types 10 and 25; and
- the direction of all non-contract solid waste types 10 and 25 to the UCRRF for disposal.

The amendment was considered administratively complete for review by the Department on November 30, 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 November 8, 2007 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 November 8, 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 consistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the elements of the November 8, 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 Management 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 November 8, 2007 Amendment

Element: County Plan Inclusion of Regulatory Flow Control Over Solid Waste Types 10 and 25

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 Board of Chosen 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 twenty-one municipalities and to commercial haulers servicing Union County customers, for the disposal of solid waste types 10 and 25 at the UCRRF. These voluntary contracts were signed for a term of 25 years and will expire on July 15, 2023. In this certification, this portion of solid waste types 10 and 25 will hereafter be referred to as the contract waste.

On February 13, 2003, the County Board of Chosen Freeholders adopted an amendment to the County Plan which proposed County Plan inclusion of regulatory flow control over the portion of solid waste types 10 and 25 generated within the County not delivered to the UCRRF pursuant to a voluntary contract. The February 13, 2003 amendment to the County Plan was certified as approved by the Department on June 13, 2003. In this certification, this portion of solid waste types 10 and 25 will hereafter be referred to as the non-contract waste.

On November 8, 2007, the County Board of Chosen Freeholders adopted an amendment to the County Plan, which proposed County Plan inclusion of:

- the Union County Resource Recovery Facility (UCRRF), located in the City of Rahway, as the County's designated facility to which non-contract solid waste types 10 and 25 are directed;
- the disposal services agreement by and between the Union County Utilities Authority (UCUA) and Covanta Union, Inc. for the disposal of non-contract solid waste types 10 and 25; and
- the direction of all non-contract solid waste types 10 and 25 to the UCRRF for disposal.

Element: Facility History

Union County Resource Recovery Facility

A County Plan amendment adopted by the Union County Board of Chosen Freeholders on April 5, 1984 included the UCRRF, to be located on Block 144, Lots 40, 42, 43, 51, and 52; Block 146, Lots 24, 26, 29-32, 43, and 45; Block 148, Lots 29, 34, 36, 38, 40, and 41; Block 161, Lots 25-29; Block 162, Lots 1-6 and 16; Block 163, Lots 1-4; and Block 164, Lots 1-5 in the City of Rahway in

the County Plan. The facility's capacity was identified as 437,000 tons per year (tpy) of solid waste. This County Plan amendment was certified as approved by the Department on October 5, 1984.

An amendment to the County Plan adopted by the County Board of Chosen Freeholders on September 15, 1988 proposed the inclusion of Lots 6, 7, 8, 8.01, 10, 11, and 13 of Block 338 in the City of Rahway as the site of the UCRRF. This County Plan amendment was certified as approved by the Department on April 13, 1989.

A County Plan amendment adopted by the County Board of Chosen Freeholders on June 20, 1996 proposed County Plan inclusion of an increase in the capacity of the UCRRF to its nameplate capacity of 525,600 tpy of solid waste. This County Plan amendment was certified as approved by the Department on December 9, 1996.

The facility's capacity was then increased by 100 tons per day (tpd) through an administrative action dated July 8, 1997 and approved by the Department on July 14, 1997, bringing the facility's total capacity to 562,100 tpy of solid waste.

Lastly, a County Plan amendment adopted by the County Freeholders on November 30, 2006 included the UCRRF in the County Plan as being located on Block 338, Lots 6, 7, 8, 8.01, and parts of Lots 9, 10, 11, and 13 at 1499 Route 1/9 North in the City of Rahway. The November 30, 2006 County Plan amendment also included the facility's total capacity as 1,540 tpd of solid waste types 10, 25, and 27 and the facility's operating hours as 24 hours per day, Monday through Sunday.

Element: Non-Discriminatory Procurement Process

On August 15, 2007, the UCUA issued bid specifications calling for receipt of bids on September 12, 2007 for the disposal of non-contract solid waste types 10 and 25 generated within the County. The request for bids was advertised locally in The Home News & Tribune, throughout New Jersey utilizing The Star Ledger, and nationally in Waste News; therefore, this procurement process was open to all bidders, regardless of geographical location. The UCUA received four bids. Covanta Union, Inc. was the low bidder, bidding \$75.00, \$77.10, \$79.26, \$81.48, and \$83.76 per ton for disposal of up to 150,000 tons of non-contract solid waste types 10 and 25 for five one-year periods beginning on July 1, 2008.

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 November 8, 2007 amendment to the approved County Plan and certify to the County Freeholders that the November 8, 2007 amendment is approved.

The County Plan inclusion of:

- the Union County Resource Recovery Facility (UCRRF), located in the City of Rahway, as the County's designated facility to which non-contract solid waste types 10 and 25 are directed;
- the disposal services agreement by and between the Union County Utilities Authority (UCUA) and Covanta Union, Inc. for the disposal of non-contract solid waste types 10 and 25; and
- the direction of all non-contract solid waste types 10 and 25 to the UCRRF for disposal 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 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 November 8, 2007.

April 25, 2008

Date

Commissioner

Lisa P. Jackson,

Department of Environmental Protection