



## State of New Jersey

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### CERTIFICATION OF THE JANUARY 15, 2016 AMENDMENT TO THE ESSEX COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN

#### BY ORDER OF THE COMMISSIONER:

#### A. Introduction

The New Jersey Solid Waste Management Act (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 (previously formally known as the New Jersey Meadowlands Commission, and now known as New Jersey Sports and Exposition Authority or NJSEA) develop comprehensive plans for waste management in their respective districts. On August 13, 1980, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Essex 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 Essex County Board of Chosen Freeholders (County Freeholders) completed such a review and on January 13, 2016 adopted an Amendment to its approved County Plan. Said Amendment was approved by the Essex County Executive (County Executive) on January 15, 2016.

The January 15, 2016 Amendment (Amendment) proposes County Plan inclusion of:

- The five-year publicly bid contract by and between the Essex County Utilities Authority (ECUA) and Waste Management of New Jersey, Inc. (Waste Management) for the transfer, transportation, and disposal of all solid waste types 13, 13C, 23 (non-processible portion) and 27 (non-hazardous industrial waste portion) generated in Essex County for the period January 1, 2016 until December 31, 2020; and,

- The direction (waste flow) of all solid waste types 13, 13C, 23 (non-processible portion) and 27 (non-hazardous industrial waste portion) generated within Essex County to the Waste Management Transfer Station/Material Recovery Facility (TS/MRF) in the City of Elizabeth for the term of the above noted Contract.

Since January 1, 2016, the ECUA has been operating under Temporary Orders issued by the Department on December 29, 2015 and February 29, 2016. By virtue of the Orders, the Department issued a temporary approval of the five year publicly bid contract between ECUA and Waste Management for the transfer, transportation and disposal of all solid waste types 13, 13C, 23 (non-processible portion) and 27 (non-hazardous industrial waste portion) generated in Essex County. On a temporary basis, the Orders approved the direction of waste in accordance with the terms and conditions of the above-referenced contract. The temporary approval of the above-referenced contract for waste direction shall terminate on May 30, 2016 or upon final certification by the Department of this Amendment to the Essex County District Solid Waste Plan, whichever event shall first occur.

The Amendment was considered administratively complete for review by the Department on February 9, 2016 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 January 13, 2016 and approved by the County Executive on January 15, 2016 is approved as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the January 15, 2016 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 relative to the January 15, 2016 Amendment which are included below.

**Elements of the January 15, 2016 Amendment**

**Element: Facility History of Waste Management of NJ, Inc. TS/MRF**

A May 18, 1994 Department certification of an amendment to the Union County District Solid Waste Management Plan (Union County Plan) adopted by the Union County Board of Chosen Freeholders on December 8, 1993 approved the acceptance of solid waste types 10, 13, 13C, 23, 25, and 27 at the Ellesor, Inc. TS/MRF. The facility was included in the Union County Plan as being located at 864 Julia Street in the City of Elizabeth. A number of

subsequent amendments to the Union County Plan have: increased the daily capacity of the facility; noted a change in ownership; included minor changes in facility operations; incorporated weekly averaging into the operational structure; and changed permitted truck routes to the facility.

**Element: County Plan Inclusion of Regulatory Flow Control over Solid Waste Types 13, 13C, 23 (non-processible portion), and 27 (non-processible portion)**

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 Essex County Board of Chosen Freeholders adopted a County Plan Amendment on August 19, 1998, which included the County's revised solid waste disposal strategy for non-processible solid waste. The August 19, 1998 Amendment to the County Plan proposed County Plan inclusion of the strategy of implementing regulatory flow control of non-processible solid waste based upon a non-discriminatory procurement process. The result of this non-discriminatory procurement process was the County's proposed direction of all non-processible solid waste to the Waste Management of New Jersey, Inc. Transfer Station/Material Recovery Facility (TS/MRF), located on Front Street in the City of Elizabeth.

In a December 3, 2003 amendment to the County Plan, the County again proposed County Plan inclusion of a strategy of implementing regulatory flow control over non-processible solid waste based upon the completion of a non-discriminatory procurement process. This Amendment to the County Plan, through which the County proposed the flow of all non-processible solid waste generated within Essex County to the NJMC Erie Landfill, was certified as approved by the Department on May 19, 2004.

In an administrative action to the County Plan dated June 8, 2006, the County proposed County Plan inclusion of a contract for the transfer, transportation, and disposal of solid waste types 13, 13C, 23 (non-recycled portion), and 27 (non-processible portion) generated within Essex County entered into between the ECUA and the Delaware & Hudson Railway Company, Inc. d/b/a Canadian Pacific Railway (CP) and the direction of all of the subject waste types to the CP Transload Facility for processing and disposal. This request for administrative action to the County Plan was approved by the Department on July 20, 2006.

In a March 10, 2011 amendment to the County Plan, the County proposed County Plan inclusion of a strategy for implementing regulatory flow control over solid waste types 13, 13C, 23 (non-recycled portion), and 27 (non-processible portion) based upon the completion of a non-discriminatory procurement process. This amendment to the County Plan, through which the County proposed the flow of all solid waste types 13, 13C, 23 (non-recycled portion), and 27 (non-processible portion) generated within Essex County

to the NJMC Keegan Landfill in the Town of Kearny until December 31, 2015, was certified by the Department on September 13, 2011.

Lastly, on January 13, 2016, the County Freeholders adopted an Amendment to the County Plan, which proposes County Plan inclusion of:

- The five-year publicly bid contract by and between the ECUA and Waste Management for the transfer, transportation, and disposal of all solid waste types 13, 13C, 23 (non-processible portion) and 27 (non-hazardous industrial waste portion) generated in Essex County for the period January 1, 2016 until December 31, 2020; and,
- The direction (waste flow) of all solid waste types 13, 13C, 23 (non-processible portion) and 27 (non-hazardous industrial waste portion) generated within Essex County to the Waste Management Transfer Station/Material Recovery Facility (TS/MRF) in the City of Elizabeth for the term of the above noted Contract.

This Amendment to the County Plan was approved by the County Executive on January 15, 2016.

**Element: Non-Discriminatory Procurement Process**

On September 22, 2015, the ECUA advertised the issuance of bid specifications calling for receipt of bids for the provision of transfer, transportation, and disposal of solid waste types 13, 13C, 23 (non-processible portion) and 27 (non-hazardous industrial waste portion) locally in the Bergen Record and the Star Ledger. On September 16, 2015, the ECUA advertised the issuance of bid specifications calling for receipt of bids for the provision of transfer, transportation, and disposal of solid waste types 13, 13C, 23 (non-processible portion) and 27 (non-hazardous industrial waste portion) regionally and nationally in the New York Times. Therefore, this procurement process was open to all bidders, regardless of geographical location. The ECUA received three bids on October 15, 2015. Waste Management was determined by the ECUA to be the lowest bidder in compliance with the bid specifications, bidding \$65.50, \$66.00, \$66.50, \$67.00, and \$67.50 per ton for each year of the five-years of the disposal contract, scheduled to end on December 31, 2020.

**C. Certification of the Essex 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 January 15, 2016 Amendment to the approved County Plan and certify to the County Freeholders that the January 15, 2016 Amendment is approved as further specified below.

The January 15, 2016 Amendment proposing County Plan inclusion of:

- The five-year publicly bid contract by and between the ECUA and Waste Management for the transfer, transportation, and disposal of all solid waste types 13, 13C, 23 (non-processible portion) and 27 (non-hazardous industrial waste portion) generated in Essex County for the period January 1, 2016 until December 31, 2020; and,
- The direction (waste flow) of all solid waste types 13, 13C, 23 (non-processible portion) and 27 (non-hazardous industrial waste portion) generated within Essex County to the Waste Management Transfer Station/Material Recovery Facility (TS/MRF) in the City of Elizabeth for the term of the above noted Contract.

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

**1. 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.

**2. 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.

**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 County 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 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 Essex County District Solid Waste Management Plan which was adopted by the Essex County Board of Chosen Freeholders on January 13, 2016 and approved by the Essex County Executive on January 15, 2016.

MAY 26 2016

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Date

  
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Bob Martin, Commissioner  
Department of Environmental Protection