



State of New Jersey

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CERTIFICATION OF THE MARCH 17, 2011 AMENDMENT TO THE ESSEX 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) 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 March 10, 2011 adopted an amendment to its approved County Plan. Said amendment was approved by the Essex County Executive (County Executive) on March 17, 2011.

The March 17, 2011 amendment proposes County Plan inclusion of:

- The five-year Contract by and between the Essex County Utilities Authority (ECUA) and the New Jersey Meadowlands Commission (NJMC) for the disposal of solid waste types 13, 13C, 23 (non-processible portion), and 27 (non-processible portion) generated within Essex County; and,

- The direction (waste flow) of all solid waste types 13, 13C, 23 (non-processible portion), and 27 (non-processible portion) generated within Essex County to the NJMC Keegan Landfill in the Town of Kearny for the term of the above noted Contract.

The amendment was considered administratively complete for review by the Department on April 14, 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 March 10, 2011 and approved by the County Executive on March 17, 2011 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 March 17, 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 relative to the March 17, 2011 amendment which are included below.

Elements of the March 17, 2011 Amendment

Element: Facility History

On May 27, 1992, the Commissioners of the NJMC adopted an amendment to their District Solid Waste Management Plan (District Plan) to include a proposed landfill for non-processible solid waste to be located at the former Keegan Landfill on Block 205, Lots 18, 19, 24, 27, and 28-33 in the Town of Kearny, Hudson County. This amendment to the District Plan was certified as approved by the Department on December 2, 1992.

On November 28, 2006, the Commissioners of the NJMC adopted a District Plan amendment which proposed District Plan inclusion of, amongst other things, the Keegan Landfill, to be located on Block 205, Lots 18, 19.02, 24, 27-33 off of Bergen Avenue in the Town of Kearny to accept up to 3,000 tons per day of solid waste types 13, 13C, 23, and 27. The November 28, 2006 District Plan amendment proposed District Plan inclusion of the facility's operating hours as 6:00 am – 4:00 pm, Monday through Friday and 6:00 am – 1:00 pm, Saturday. The November 28, 2006 District Plan amendment also noted that the height of the Keegan Landfill will be limited to 60 feet above mean sea level. This amendment to the District Plan was certified as approved by the Department on April 10, 2007.

On October 6, 2008, the Department approved a request for administrative action to the District Plan dated October 1, 2008. This request for administrative action proposed to amend the District Plan to reflect a change in the operating schedule for the Keegan Landfill from 6:00 am – 4:00 pm, Monday through Friday and 6:00 am – 1:00 pm, Saturday to 6:00 am – 4:00 pm, Monday through Friday and 6:00 am – 1:30 pm, Saturday.

Keegan Landfill is currently operating under the provisions of a Temporary Certificate of Authority to Operate (TCAO) issued by the Department on December 18, 2008. Said TCAO was issued due to a solid waste emergency situation and allowed the facility to operate beginning January 1, 2009 for one year with the possibility of subsequent renewal(s) on an annual basis. The current TCAO is set to expire on December 31, 2011.

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.

On March 10, 2011, the County Freeholders adopted an amendment to the County Plan, which proposes County Plan inclusion of:

- The five-year Contract by and between the ECUA and the NJMC for the disposal of solid waste types 13, 13C, 23 (non-processible portion), and 27 (non-processible portion) generated within Essex County; and,
- The direction of all solid waste types 13, 13C, 23 (non-processible portion), and 27 (non-processible portion) generated within Essex County to the NJMC Keegan Landfill in the Town of Kearny for the term of the above noted Contract.

This amendment to the County Plan was approved by the County Executive on March 17, 2011.

Element: Non-Discriminatory Procurement Process

On October 5, 2010 and October 12, 2010, the ECUA advertised the issuance of bid specifications calling for receipt of bids for the provision of transfer, transportation, and disposal of non-processible waste in the Star Ledger. On October 11, 2010, the ECUA advertised the issuance of bid specifications calling for receipt of bids for the provision of transfer, transportation, and disposal of non-processible waste in Waste & Recycling News. Therefore, this procurement process was open to all bidders, regardless of geographical location. The ECUA received six bids on November 4, 2010. The NJMC was determined by the ECUA to be the lowest bidder in compliance with the bid specifications, bidding \$48.00, \$52.00, \$52.00, \$54.00, and \$54.00 per ton for each year of the five-years of the disposal contract, scheduled to end on December 31, 2015.

Element: Contract Review by the Department

The Department's Division of County Environmental and Waste Enforcement (DCEWE) submitted comments regarding the March 17, 2011 County Plan amendment. The DCEWE's comments specifically read that the County must submit the subject contract to the Department's Bureau of Solid Waste & Hazardous Waste Regulation for their review and approval as provided for in the Solid Waste Utility Control Act (N.J.S.A. 48:3-1 et seq., N.J.S.A. 48:13A-1 et seq.).

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 March 17, 2011 amendment to the approved County Plan and certify to the County Freeholders that the March 17, 2011 amendment is approved as further specified below.

The March 17, 2011 amendment proposing County Plan inclusion of:

- The five-year Contract by and between the ECUA and NJMC for the disposal of solid waste types 13, 13C, 23 (non-processible portion), and 27 (non-processible portion) generated within Essex County; and,
- The direction of all solid waste types 13, 13C, 23 (non-processible portion), and 27 (non-processible portion) generated within Essex County to the NJMC Keegan Landfill in the Town of Kearny for the term of the above noted Contract 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. 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 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 March 10, 2011 and approved by the Essex County Executive on March 17, 2011.

September 13, 2011

Date

Bob Martin, Commissioner
Department of Environmental Protection