



State of New Jersey

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CERTIFICATION OF THE DECEMBER 19, 2012 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 December 12, 2012 adopted an amendment to its approved County Plan. Said amendment was approved by the Essex County Executive (County Executive) on December 19, 2012.

The December 19, 2012 amendment proposes County Plan inclusion of:

- The Agreement by and between the Essex County Utilities Authority (ECUA) and Waste Management of New Jersey, Inc. (WMNJI) for the transfer, transportation, and disposal of processible commercial solid waste types 10, 23, 25, and 27 generated within Essex County; and,

- The direction of all processible commercial solid waste types 10, 23, 25, and 27 to the WMNJI Transfer Station/Material Recovery Facility (TS/MRF) on Julia Street in the City of Elizabeth.

The amendment was considered administratively complete for review by the Department on January 22, 2013 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 December 12, 2012 and approved by the County Executive on December 19, 2012 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 December 19, 2012 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 December 19, 2012 amendment which are included below.

Elements of the December 19, 2012 Amendment

Element: Facility History

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, 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 10, 23, 25, and 27

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)], Essex County has employed a bifurcated system of solid waste disposal for processible (waste types 10, 23, 25, and the processible portion of waste type 27) waste.

Firstly, the County entered in to an agreement (Waste Disposal Agreement) with the Port Authority of New York and New Jersey (Port Authority) for the delivery to and processing of municipal processible solid waste generated within the County at the Essex County Resource Recovery Facility (ECRRF), now owned and operated by Covanta Essex Co., in the City of Newark. As a result of the terms of the Waste Disposal Agreement regarding guaranteed delivery of specific quantities of processible waste, the ECUA entered into voluntary contracts with each of the County's municipalities and other generators located within the County to provide for the disposal of processible waste at the ECRRF. The voluntary contracts were for a ten-year period, which ended in December 2009. On February 25, 2010, the Essex County Board of Chosen Freeholders adopted an amendment to the County Plan which proposed County Plan inclusion of a 5-year extension of the Waste Disposal Agreement (WDA) by and between the ECUA and the Port Authority for the transfer, transportation, and disposal of municipal processible solid waste types 10, 23, 25, and 27. This amendment was remanded to the County on August 26, 2010 due to concerns with the submission. These concerns were addressed by the County through a September 9, 2010 request for administrative action to the County Plan, which was approved by the Department on October 28, 2010.

Secondly, on June 20, 2001, the Essex 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 processible waste generated at commercial establishments within the County not delivered to the ECRRF pursuant to a voluntary contract. The June 20, 2001 amendment to the County Plan, directed the subject waste to the WMNJI TS/MRF, located at 864 Julia Street in the City of Elizabeth, Union County, based on a non-discriminatory procurement process. This amendment to the County Plan was certified as approved by the Department on December 22, 2001.

This strategy of waste flow control over processible commercial solid waste types 10, 23, 25, and 27 was reaffirmed by the County through December 5, 2007 and December 22, 2009 amendments to the County Plan, which again directed said waste to the WMNJI TS/MRF, located on Julia Street in the City of Elizabeth, based on a non-discriminatory procured contract by and between the ECUA and WMNJI. These amendments to the County Plan were certified as approved by the Department on May 14, 2008 and May 19, 2010, respectively.

On December 12, 2012, the County Freeholders adopted an amendment to the County Plan, which proposes County Plan inclusion of:

- The Agreement by and between the ECUA and WMNJI for the transfer, transportation, and disposal of processible commercial solid waste types 10, 23, 25, and 27 generated within Essex County; and,
- The direction of all processible commercial solid waste types 10, 23, 25, and 27 to the WMNJI TS/MRF on Julia Street in the City of Elizabeth.

This amendment to the County Plan was approved by the County Executive on December 19, 2012.

Element: Non-Discriminatory Procurement Process

On May 29, 2012, the ECUA advertised the issuance of bid specifications calling for receipt of bids on June 28, 2012 for the provision of transfer, transportation, and disposal of approximately 150,000 tons of processible commercial solid waste in The Record and the Star-Ledger. On May 28, 2012, the ECUA advertised the issuance of bid specifications calling for receipt of bids on June 28, 2012 for the provision of transfer, transportation, and disposal of approximately 150,000 tons of processible commercial in Waste & Recycling News. Therefore, this procurement process was open to all bidders, regardless of geographical location. The ECUA received five bids. WMNJI was determined by the ECUA and their Special Counsel to be the lowest bidder fully in compliance with the subject bid specifications, bidding \$58.00 per ton for the first year, \$58.50 per ton for the second year, and \$59.00 per ton for the third year of the disposal contract, scheduled to end on December 31, 2015.

Additional Elements of the Essex County District Solid Waste Management Plan

Element: Municipal Solid Waste (MSW) Recycling in Essex County

On August 15, 2007, the Essex County Board of Chosen Freeholders adopted an amendment to the County Plan which, among other things, included specific strategies for achieving the State's statutorily-mandated minimum MSW recycling rate of 50%. This amendment to the County Plan was certified as approved by the Department on February 4, 2008.

The most recent recycling data compiled by the State shows that in 2011, 45.5% of Essex County MSW was recycled. Using 2011 Department data, Essex County will have to recycle an additional 36,850 tons of MSW to reach a MSW recycling rate of 50%.

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; and,

- 2) 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; and,
- 3) Coordinate with each municipality in the County that in 2011 had an MSW recycling rate of 25% or less and develop strategies to increase their respective recycling rates by at least 25% by the end of calendar year 2013, and prepare plans to implement those strategies.

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 January 1, 2014 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.

Element: Assessment and Collection of Recycling Enhancement Act Tax on Essex County Solid Waste sent to The Essex County Resource Recovery Facility for Disposal per the WDA

The current WDA by and between the ECUA and the Port Authority was included in the County Plan through a September 9, 2010 request for administrative action to the County Plan, which was approved by the Department on October 28, 2010. This DEP-approved WDA, which directs all municipal processible solid waste types 10, 23, and 27 generated within Essex County to the ECRRF in the City of Newark is set to expire on February 1, 2015. The County is hereby reminded that upon expiration of the current WDA, all non-recycled, municipal processible solid waste types 10, 23, and 27 generated within Essex County will be subject to the \$3.00 per ton tax identified at N.J.S.A. 13:1-E-96.5.

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 December 19, 2012 amendment to the approved County Plan and certify to the County Freeholders that the December 19, 2012 amendment is approved as further specified below.

The December 19, 2012 amendment proposing County Plan inclusion of:

- The Agreement by and between the ECUA and WMNJI for the transfer, transportation, and disposal of processible commercial solid waste types 10, 23, 25, and 27 generated within Essex County; and,
- The direction of all processible commercial solid waste types 10, 23, 25, and 27 to the WMNJI TS/MRF on Julia Street in the City of Elizabeth 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 to 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 Essex County District Solid Waste Management Plan which was adopted by the Essex County Board of Chosen Freeholders on December 12, 2012 and approved by the Essex County Executive on December 19, 2012.

June 20, 2013

Date

Bob Martin, Commissioner
Department of Environmental Protection