

**IN THE MATTER OF CERTAIN AMENDMENTS
TO THE ADOPTED AND APPROVED SOLID
WASTE MANAGEMENT PLAN OF THE
ESSEX COUNTY SOLID WASTE
MANAGEMENT DISTRICT**

**CERTIFICATION
OF THE DECEMBER 14, 2005
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 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 which 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 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 14, 2005 adopted an amendment to its approved County Plan. The December 14, 2005 amendment proposes County Plan inclusion of the Canadian Pacific Railway (CP) Transload Facility, a rail carrier

transload facility, to be located on Block 5088, Lots 60 and 70 at the Oak Island Rail Yard, 91 Bay Avenue in the City of Newark. The facility is proposed to receive a maximum of 2,000 tons per day (tpd) of solid waste Types 13, 13C, 23 (non-recycled portion), and 27 (non-processible portion).

The amendment was considered administratively complete for review by the Department on January 9, 2006 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 14, 2005 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 14, 2005 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 14, 2005 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 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 December 14, 2005 Amendment

Element: History of Regulatory Flow Control Over Solid Waste Types 13, 13C, 23, and 27 Generated Within Essex County

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 Freeholders adopted a County Plan amendment on August 19, 1998, which included the County's revised solid waste disposal strategy. The Department's December 2, 1998 certification of this amendment approved County Plan inclusion of the imposition of regulatory flow control over non-processible (Types 13, 13C, the non-recycled portion of Type 23, and the non-processible portion of Type 27) solid waste following the non-discriminatory procurement of transfer, transportation, and/or disposal services. To that end, the Essex County Utilities Authority's (ECUA) procurement process was open to all bidders regardless of geographic location. Waste Management of New Jersey, Inc. was determined to be the lowest responsible bid for non-processible waste by the ECUA and therefore, on July 9, 1998, was awarded a contract for the transfer, transportation, and/or disposal of all non-processible waste generated from within Essex County.

A December 3, 2003 County Plan amendment proposed regulatory flow control of solid waste Types 13, 13C, 23 (non-recycled portion), and 27 (non-processible portion) based upon the completion of a nondiscriminatory bid contract. On July 7, 2003, the ECUA issued bid specifications for the provision of transfer, transportation, and disposal of solid waste Types 13, 13C, 23 (non-recycled portion), and 27 (non-processible portion). The request for bids was open to all bidders regardless of geographical location. The New Jersey Meadowlands Commission was the low bidder, bidding \$69.00 for a two-year span. The agreement between the NJMC and the ECUA commenced on January 1, 2004 and was to expire on December 31, 2005. This amendment was certified as approved by the Department on May 19, 2004.

Although the December 14, 2005 amendment proposes County Plan inclusion of the CP Transload Facility for the receipt of a maximum of 2,000 tons per day (tpd) of solid waste Types 13, 13C, 23 (non-recycled portion), and 27 (non-processible portion), it does not address or seek to include the disposal contract between CP and the ECUA for this waste. Thus, effective January 1, 2006, the County Plan no longer has a provision for regulatory flow control over the subject solid waste types and therefore the above noted waste types generated within the County may be disposed of pursuant to a free market system.

If the County wishes to reinstitute flow control over the subject waste types pursuant to a non-discriminatory procurement process, the County shall include the disposal contract in the County Plan via the plan amendment process, pursuant to N.J.A.C. 7:26-6.11. In addition, as a part of any submission for County Plan inclusion of a solid waste disposal contract, the County shall include documentation demonstrating that the contract was reached in a non-discriminatory

manner, including copies of the published request for bids in local, regional, and national publications and copies of all bids received.

Element: Regulatory Requirements

On November 15, 2004, the Department adopted construction, operational, and record keeping requirements specifically for solid waste rail facilities at N.J.A.C. 7:26-2D. Rail facilities that fail to comply with the regulations are subject to penalties.

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 14, 2005 amendment to the approved County Plan and certify to the County Freeholders that the December 14, 2005 amendment is approved as further specified below.

The December 14, 2005 amendment proposing County Plan inclusion of Canadian Pacific Railway Transload Facility, a rail carrier transload facility, to be located on Block 5088, Lots 60 and 70 at the Oak Island Rail Yard, 91 Bay Avenue in the City of Newark is approved. The facility is proposed to receive a maximum of 2,000 tpd of solid waste Types 13, 13C, 23 (non-recycled portion), and 27 (non-processible portion).

The construction and operation of the subject facility shall be in compliance with N.J.A.C. 7:14A-1.1 et seq., 7:26-2D.1, 7:27-1.1 et seq., and other applicable law.

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 Essex County District Solid Waste Management Plan which was adopted by the Essex County Board of Chosen Freeholders on December 14, 2005.

May 24, 2006

Date

Lisa P. Jackson, Commissioner
Department of Environmental Protection