

**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 AUGUST 15, 2007
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 District Plan at any time and, if found inadequate, a new District Plan must be adopted. The Essex County Board of Chosen Freeholders (County Freeholders) completed such a review and on August 15, 2007 adopted an amendment to its approved County Plan.

The August 15, 2007 amendment proposes County Plan inclusion of the County Plan Update in response to the updated Statewide Solid Waste Management Plan.

The amendment was considered administratively complete for review by the Department on September 28, 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 August 15, 2007 is approved as provided in N.J.S.A. 13:1E-24.

On April 13, 2002, New Jersey Department of Environmental Protection Commissioner Bradley M. Campbell signed Administrative Order No. 2002-10, which requires, among other things, that the Department revise, update and readopt the Statewide Solid Waste Management Plan. On January 3, 2006, New Jersey Department of Environmental Protection Commissioner Lisa P. Jackson formally adopted the updated Statewide Solid Waste Management Plan

The updated Statewide Solid Waste Management Plan reaffirms the state's goal of recycling 50% of the MSW stream. The overall strategy for achieving this ambitious goal starts with a quantification, on a statewide basis, of the increased tonnage of recycled materials needed. This is further calculated on a per county basis, with an analysis of current MSW recycling tonnages by county, and the necessary increases required by each county. The statewide increase needed is also expressed in terms of increased recycling tonnage by material, such as newspaper, corrugated, food waste, etc. Additionally, the plan targets specific classes of generators (schools, multi-family housing complexes, small and medium-sized businesses) that need to be focused on in terms of expanded recycling opportunities for the materials identified.

The state, through this Solid Waste Management Plan update, establishes the overall policy objectives and goals for solid waste management in New Jersey. The counties and the NJMC shall have the responsibility for developing their respective district solid waste management plans consistent with the state's goals and objectives. Therefore, as noted in the State Plan, each district shall, within one year of the adoption of the updated Statewide Solid Waste Management Plan or January 3, 2007, adopt and submit to the Department, an updated district solid waste plan. This district plan update shall demonstrate consistency with the State Plan. Further, the district plans shall reiterate the district plan requirements contained in N.J.S.A. 13:1E-21. Specifically, revised district plan updates shall include, but not be limited to the following components:

- 1) Designation of the department, unit or committee of the county government (or district in the case of the NJMC) to supervise the implementation of the district plan;
- 2) An inventory of the quantity of solid waste generated within the district for the ten-year period commencing with the adoption of updated district solid waste management plan;
- 3) An inventory of all solid waste and recycling facilities (lot and block and street address) including approved waste types and amounts, hours of operation and approved truck routes;
- 4) An outline of the solid waste disposal strategy to be utilized by the district for a ten-year planning period;
- 5) A procedure for the processing of applications for inclusion of solid waste and recycling facilities within the district solid waste management plans. The procedure shall state the applicant requirements for inclusion into the district plan and the specific county review

process/procedures, including time frames for county approvals or rejections and subsequent submittals to the Department. **Note-** the criteria for inclusion shall **not** include a requirement that local zoning or planning board approval(s) be obtained as a condition for inclusion within the district solid waste management plan, nor shall such a requirement be made a condition for subsequent construction or operation of any facility; and

- 6) Identify the additional tonnage of recycled materials in the MSW stream (by material commodity types) required by each county to meet the mandated MSW recycling goal, a strategy for the attainment of the recycling goals as outlined above. The strategy shall include, as necessary:
 - a) the designation of the currently mandated recyclable materials and additional materials, if any, to be source separated in the residential, commercial and institutional sectors;
 - b) a listing of those entities providing recycling collection, processing and marketing services for each of the designated recyclable materials;
 - c) the communication program to be utilized to inform generators of their source separation and recycling responsibilities;
 - d) a comprehensive enforcement program that identifies the county and/or municipal entity(ies) responsible for enforcement of the recycling mandates, specifies the minimum number of recycling inspections that will be undertaken by these entities on an annual basis and details the penalties to be imposed for non-compliance with the municipal source-separation ordinance and county solid waste management plan. Additionally, the updated district plan shall include copies of each municipal source separation ordinance.

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 August 15, 2007 amendment to the District 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 August 15, 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 August 15, 2007 Amendment

Element: Designation of County Plan Implementation Agency

The August 15, 2007 amendment to the County Plan reaffirms the designation of the Essex County Utilities Authority (ECUA) as the County Plan implementation agency.

Element: Inventory of the Quantity of Solid Waste Generated Within The County for the Next Ten Years

Using the Department's waste generation data for 2004 and population projections provided by the Essex County Department of Planning, the County Plan includes the total tonnages of solid waste types 10, 13, 13C, 23, 25, and 27 to be generated within Essex County in 2007, 2012, and 2015 as 2,109,271, 2,132,783, and 2,151,853, respectively.

Element: Inventory of Solid Waste and Recycling Facilities

The August 15, 2007 amendment to the County Plan identifies the solid waste and recycling facilities included in the County Plan; however, important planning information regarding the facilities, including lot and block designation, capacity, acceptable materials, and operating hours is incomplete or inaccurate in many cases. The County is directed to address this issue as noted below in Section C. of this certification.

Element: Solid Waste Disposal Strategy to be Utilized by the County for the Next Ten Years

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 into an agreement (Waste Disposal Agreement) with the Port Authority of New York and New Jersey (Port Authority) for the delivery to and processing of processible waste generated within the County at the Essex County Resource Recovery Facility (ECRRF) 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 twenty-two 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 ends in December, 2009.

Secondly, on June 20, 2001, 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 processible waste generated within the County not delivered to the ECRRF pursuant to a voluntary contract. This amendment, directed the subject waste to the Ellesor TS/MRF (now owned and operated by Waste Management of New Jersey, Inc. (WMNJI)), located at 864 Julia Street in the City of Elizabeth, based on a non-discriminatory procurement process. The subject County Plan amendment also included the WMNJI TS/MRF, located at 77 Brookside Place in the Borough of Hillsdale, in the County Plan as the designated backup facility for this waste. This amendment to the County Plan was certified as approved by the Department on December 22, 2001.

Most recently, the County Freeholders approved a County Plan amendment on December 5, 2007 for the County Plan inclusion of regulatory flow control over the portion of processible waste generated within the County not delivered to the ECRRF pursuant to a voluntary contract. Specifically, the December 5, 2007 amendment to the County Plan proposes the direction of the subject waste to the WMNJI TS/MRF, located at 864 Julia Street in the City of Elizabeth, based on a non-discriminatory procurement process. This amendment was deemed administratively complete by the Department on December 26, 2007 and is currently under review.

As for non-processible waste (solid waste type 13, 13C, the non-recycled portion of type 23, and the non-processible portion of type 27), on August 19, 1998, the County Board of Chosen Freeholders adopted an amendment to the County Plan, which proposed County Plan inclusion of regulatory flow control over non-processible waste generated within the County. This amendment, directed the subject waste to the WMNJI TS/MRF, located at 666 Front Street in the City of Elizabeth, based on a non-discriminatory procurement process. This amendment to the County Plan was certified as approved by the Department on December 2, 1998.

On December 14, 2005, the County Board of Chosen Freeholders adopted an amendment to the County Plan, which, amongst other things, proposed County Plan inclusion of regulatory flow control over non-processible waste pursuant to a non-discriminatory procurement, and to include the Canadian Pacific (CP) Railroad Transload Facility as the County's designated facility to which non-processible waste is directed. The agreement between CP and the ECUA will terminate in December, 2011. This amendment to the County Plan was certified by the Department on May 24, 2006; however, because of an oversight by the County, waste flow of the subject waste was not approved by the Department until July 20, 2006, when it issued its

approval of a June 8, 2006 request for administrative action by the ECUA.

In summary, the current agreement between the Port Authority and the ECUA for the disposal of contract processible waste generated within the County will terminate in December, 2009 and the current agreement between CP and the ECUA for the disposal of solid waste types 13, 13C, 23 (non-recycled portion), and 27 (non-processible portion) generated within the County will terminate in December, 2011. The August 15, 2007 County Plan amendment includes the continuance of a strategy of regulatory flow control over contract solid waste types 10, 13, 13C, 23, 25, and 27 pursuant to the above noted non-discriminatorily bid agreements.

The previous contract between the ECUA and WMNJI for the portion of processible waste not directed to the ECRRF expired in June, 2007 and thus, until the Department approves a County Plan amendment including in the County Plan a contract by and between the ECUA and a solid waste disposal provider, pursuant to N.J.A.C. 7:26-6.10, the above noted waste types not directed to the ECRRF may be disposed of pursuant to a free-market system.

Element: County Plan Inclusion Process

The August 15, 2007 County Plan amendment seeks to include the County's process to review and act on all requests for inclusion into the County Plan.

First, an applicant submits two copies of an application to the Essex County Division of Planning (ECDP). Within thirty business days of receipt, the ECDP will determine if the application is administratively complete. Once the application is deemed administratively complete, the ECDP will review the application for consistency with the County Plan and applicable County codes and regulations. The application is then reviewed by both the ECUA and the Essex County Health Department (ECHD). The full technical review process by these agencies will occur within sixty business days from the time that the application is considered administratively complete.

Once the application is considered administratively and technically complete, the ECHD and ECUA Board of Commissioners will make their recommendations to the ECDP. At this time, the application is submitted to the County Solid Waste Advisory Council (SWAC) for their consideration. The SWAC will then vote upon a pending application and make a recommendation for or against County Plan inclusion to the County Freeholders.

Following the SWAC meeting, ECDP submits the application and SWAC's recommendation to the County Freeholders regarding inclusion of the proposed amendment to the County Plan. The County Freeholders then act on the matter at one of their regularly scheduled meetings.

All applicants for County Plan inclusion of a solid waste facility or recycling center must provide specific information about the proposed operation to the County. This information includes, but is not limited to, the following:

- Three copies of a site plan;
- Proof of notification to the host municipality of intent to operate;
- A copy of a 8 ½” x 11” tax map identifying the location of site, the street address, and the lot and block designation of the site;
- A key map showing the boundary of the facility plotted on a 7.5 minute USGS Quadrangle Map;
- A copy of the deed or record indicating that the applicant is the owner of the site or a copy of the lease for the site with its owner and written documentation demonstrating that the owner is aware of the operations proposed for the site.

The August 15, 2007 amendment reads that “it typically takes between six (6) months to one (1) year to obtain the necessary approval for the inclusion of a facility in the County...Plan”. The County is directed to specify a clear and concise timeline for the periods between the completion of the technical review, SWAC review, and a final vote by the County Freeholders.

Element: Recycling

In 2003, Essex County recycled 34.7% of its municipal solid waste (MSW) and 58.0% of its total solid waste (TSW). Since the release of the updated Statewide Solid Waste Management Plan in early 2006, the Department has determined MSW recycling rates of 33.1% and 37.4% and TSW recycling rates of 58.8% and 62.3% for 2004 and 2005, respectively.

The August 15, 2007 County Plan amendment proposes County Plan inclusion of updates to several sections of the County’s recycling strategy, including updated programs, recycling initiatives, and enforcement.

Designated Recyclable Materials – the following is a listing of the designated recyclable materials included in the County Plan for the residential sector.

- | | |
|------------------------------------|---------------------------------------|
| Aluminum beverage containers | Mixed paper (junk mail, office paper) |
| Corrugated cardboard | Newsprint |
| Glass food and beverage containers | Used motor oil |
| Lead-acid batteries | White goods |
| Leaves | |

The following is a listing of the designated recyclable materials for the commercial and institutional sectors included in the County Plan:

- | | |
|------------------------------------|----------------|
| Aluminum beverage containers | Newsprint |
| Corrugated cardboard | Office paper |
| Glass food and beverage containers | Used motor oil |
| Lead-acid batteries | White goods |
| Leaves | |

Updated Programs – The County through the August 15, 2007 County Plan amendment proposes County Plan inclusion of several programs. These include recycling programs aimed at increasing the recycling of traditional recyclables, in the commercial sector and in multi-family dwellings, and less traditional recyclables, including household hazardous waste.

Recycling Initiatives – The County through the August 15, 2007 County Plan amendment proposes County Plan inclusion of its strategy to attain a recycling rate of 50% MSW. The County's strategy to attain a recycling rate of 50% MSW is to increase the amount of recycling of designated recyclables through increased coordination with municipal recycling coordinators, increased education and outreach in the commercial and institutional sectors, and increased recycling enforcement.

Enforcement – The County through the August 15, 2007 County Plan amendment proposes County Plan inclusion of the ECHD to enforce and administer the provisions of the County Plan, including those elements dealing with recycling.

The Department's Bureau of Recycling and Planning (BRP) submitted comments regarding the proposed recycling element of the August 15, 2007 County Plan amendment. The BRP's comments strongly encourage that the County include plastic containers (types 1 and 2), steel and tin-plated steel cans, and ferrous scrap in the County Plan as designated recyclables. The designation of these materials as mandatory recyclables is commonplace across the State, as markets for these materials are currently and have been historically abundant. The designation of steel and tin-plated steel cans and ferrous scrap is especially important for the commercial and institutional sectors, as the solid waste generated by these sectors may be disposed of at facilities where the capability for steel and iron recovery does not exist.

Also, although the Department does not question the County's commitment to recycling, the Department's data indicates that Essex County's MSW recycling rate is well below the statutory minimum. As a planning aid to the counties, the State constructed and published in the Statewide Solid Waste Management Plan, Table B-1, which highlights the additional tonnage of material each county must recycle in order to reach a MSW recycling rate of 50%. However, the August 15, 2007 amendment to the County Plan does not identify the specific means by which the County will recycle the additional 180,000 tons of material, cited in Table B-1, required for the County to reach a 50% MSW recycling rate going forward. The County is therefore directed to address this issue as noted below in Section C. of this certification.

The Department's Division of County Environmental and Waste Enforcement (DCEWE) submitted comments regarding the proposed enforcement component of the August 15, 2007 County Plan amendment. The DCEWE's comments specifically read that the County Plan should specify which agency(ies) will be conducting recycling inspections of multi-family dwellings and businesses. The County is directed to address this issue as noted below in Section C. of this certification.

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 August 15, 2007 amendment to the approved County Plan and certify to the County Freeholders that the August 15, 2007 amendment is approved as further specified below.

The County Plan inclusion of the August 15, 2007 County Plan Update in response to the updated Statewide Solid Waste Management Plan is approved; however, the County must submit a County Plan amendment within 180 days of the date of this approval to address the following deficiencies noted in Section B. of this certification:

- a complete listing of all solid waste facilities and recycling centers, including lot and block designation, street address, capacity, acceptable waste types/materials, and operating hours included in the County Plan;
- specific timelines after completion of the technical review of an application for applicants seeking inclusion in the County Plan;
- the identification of the specific means by which the County will recycle the additional 180,000 tons of material, cited in Table B-1, required for the County to reach a 50% MSW recycling rate going forward; and
- the identification of which agency(ies) will be conducting recycling inspections of multi-family dwellings and commercial establishments.

The County may submit the required amendment as an administrative action, pursuant to N.J.A.C. 7:26-6.11 et seq. Please note that the Department is requiring the County to meld the submissions in response to the requirements contained in the State Plan update, as identified above, into one unified document for the purpose of general circulation.

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 August 15, 2007.

February 4, 2008

Date

Lisa P. Jackson, Commissioner
Department of Environmental Protection