

**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 MAY 11, 2006
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 May 11, 2006 adopted an amendment to its approved County Plan. The May 11, 2006 amendment proposes County Plan inclusion of a capacity increase at the Lemcor, Inc. Transfer Station/Materials Recovery Facility (TS/MRF), located on Block 5005, Lots 1.02, 3, and 15 at 221-253 Foundry Street, City

of Newark. Specifically, the May 11, 2006 amendment proposes increasing the capacity of the subject facility from 1,200 tons per day (tpd) to 2,000 tpd of solid waste types 10, 13, 13C, 23, and 27.

The amendment was considered administratively complete for review by the Department on June 20, 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 May 11, 2006 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 May 11, 2006 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 May 11, 2006 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 May 11, 2006 Amendment

Element: Site History

The property proposed for the Lemcor, Inc. TS/MRF is currently owned by Foundry Street Development, LLC. This site has been the subject of remedial investigation and action since the late 1970s. This is a result of the presence of chemical contaminants in the soil and groundwater underlying the subject property. Negotiations between Ashland Chemical, previous owners of the site, and the Department are ongoing regarding appropriate remedial action. These issues must be addressed in the permitting process.

On July 22, 2004, the Essex County Freeholder Board adopted an amendment to their County Plan to include within it the Lemcor, Inc. Transfer Station/Materials Recovery Facility (TS/MRF), to be located on Block 5005, Lots 1 and 15, at 221 Foundry Street, City of Newark for the acceptance of an average daily capacity of 1,200 tons and a maximum daily capacity of 1,680 tons of solid waste types 10, 13, 13C, 23, and 27. This County Plan amendment was certified as approved by the Department on December 29, 2004.

The May 11, 2006 amendment proposes County Plan inclusion of a capacity increase at the Lemcor, Inc. TS/MRF, located on Block 5005, Lots 1.02, 3, and 15 at 221-253 Foundry Street, City of Newark. Specifically, the May 11, 2006 amendment proposes increasing the capacity of the subject facility from 1,200 tons per day (tpd) to 2,000 tpd of solid waste types 10, 13, 13C, 23, and 27.

Element: Disposal of Solid Waste from Counties with a State Approved Waste Flow

The May 11, 2006 County Plan amendment does not note the origin of solid waste to be received at the proposed facility. Essex County, as well as other counties in New Jersey, have procured non-discriminatory bids for their solid waste disposal and have State approved waste flows. As per N.J.A.C. 7:26-6.12, if the Lemcor, Inc. TS/MRF receives solid waste from a county with an approved waste flow, this waste or the resulting residue, after recycling, must be disposed of in conformance with the provisions of the respective county solid waste management plan.

Element: Regulatory Requirements

Transfer stations/material recovery facilities are subject to the provisions of N.J.A.C. 7:27-5, "Prohibition of Air Pollution." This regulation prohibits the release of odors and other air contaminants which interfere with the enjoyment of life and property. Further, transfer stations/material recovery facilities are also subject to N.J.A.C. 7:27-8.2(a)16 which requires air pollution control permits for any equipment which vents a solid waste facility directly or indirectly into the outdoor atmosphere. Such vents may require devices to control odors and other air contaminants. Finally, if the proposed operation will discharge pollutants as defined in N.J.A.C. 7:14-1.9, said operation must secure a New Jersey Pollutant Discharge Elimination System Permit and/or a Treatment Works Approval for pollutant discharges prior to operation.

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 May 11, 2006 amendment to the approved County Plan and certify to the County Freeholders that the May 11, 2006 amendment is approved as further specified below.

The May 11, 2006 amendment proposing County Plan inclusion of the Lemcor, Inc. TS/MRF, to be located on Block 5005, Lots 1.02, 3, and 15, at 221-253 Foundry Street, City of Newark, for the acceptance of a maximum daily capacity of 2,000 tons of solid waste types 10, 13, 13C, 23, and 27 is approved.

This certification shall not be construed as an expression of the DEP's intent to issue a solid waste facility permit or permit modification for any proposed facility or operation.

The construction or operation of any solid waste facility shall be preceded by the acquisition of all necessary permits and approvals pursuant to N.J.S.A. 13:1E-1 et seq., and all other applicable laws. The issuance of operating permits pursuant to the Solid Waste Management Act is limited to those applicants found by the DEP and the Attorney General of the State of New Jersey to be deserving of licensing under the provisions of N.J.S.A. 13:1E-126.

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 May 11, 2006.

September 1, 2006

Date

Lisa P. Jackson, Commissioner
Department of Environmental Protection