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**CERTIFICATION
OF THE MARCH 18, 2008 AMENDMENT
TO THE HUNTERDON 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 October 2, 1981, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Hunterdon County District Solid Waste Management Plan (County Plan).

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 Hunterdon County Board of Chosen Freeholders (County Freeholders) completed such a review and on March 18, 2008 adopted an amendment to its approved County Plan. The March 18, 2008 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 August 5, 2008 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 18, 2008 is approved in part, remanded in part, and rejected in part 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 municipal solid waste (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 Hunterdon County District Solid Waste Management Plan Amendment

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the March 18, 2008 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 in part and inconsistent in part with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the elements relative to the March 18, 2008 amendment which are included below.

Elements of the March 18, 2008 Amendment

Element: Designation of County Plan Implementation Agency

The March 18, 2008 County Plan amendment reaffirms the designation of the Hunterdon County Utilities Authority (HCUA) as the County Plan implementation agency.

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

The March 18, 2008 amendment to the County Plan does not include an inventory of the quantity of solid waste expected to be generated within the County for the next ten years. The County is directed to address this issue as noted below in Section C. of this certification.

Element: Inventory of Solid Waste and Recycling Facilities

The March 18, 2008 amendment to the County Plan does not include a list of the solid waste facilities and recycling centers located within the County. 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

The March 18, 2008 County Plan amendment reads that, “[t]he County of Hunterdon intends to dispose of solid waste generated within the County by processing the solid waste at the Hunterdon County Transfer Station”. Hunterdon County has been employing a free-market approach to solid waste management for at least the last decade. If the County wishes to reinstitute solid waste flow control to the above noted facility, the County will need to include a clear statement reading as much in the County Plan. Until such time, it is the Department’s position that the disposal strategy included in the County Plan is that of a free-market approach.

Element: County Plan Inclusion Process

The March 18, 2008 County Plan amendment seeks to include the County’s process to review and act on all requests for inclusion of solid waste facilities and recycling centers in the County Plan.

Upon notification that an application is deemed administratively complete, the applicant shall publish notice of the application to amend the County Plan in two newspapers, one of general circulation within the County and one in the official newspaper of the municipality, once each week for two consecutive weeks. Proof of public notice must be sent to the HCUA, Division of Solid Waste and Recycling Services. The notice shall state the nature of the facility, address (including lot and block numbers) of the proposed facility, locations where the public can inspect the subject application, and statement that written comments on the proposed facility will be accepted by the Hunterdon County Solid Waste Advisory Council (SWAC) during the sixty days following the publication date of the second notice.

After the close of the public comment period, a County SWAC subcommittee will prepare a written recommendation and forward the recommendation to the full County SWAC, with a copy sent to the applicant. The County SWAC will then consider the application at a public meeting no later than 60 days following the date of the close of the public comment period. The applicant will be informed of the date of the meeting and will have the opportunity to be heard at the meeting prior to the County SWAC taking final action on the application.

The action taken by the County SWAC will be forwarded to the Hunterdon County Board of Chosen Freeholders for formal consideration no later than 90 days after notification of the recommendation of the County SWAC.

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 the following:

- Contact information of the owner(s) of the site and operator(s) of the proposed facility;
- Copy of the deed or record establishing ownership of the facility property or a legal agreement to use the property in question for the proposed purpose;
- Location of the proposed facility, including a 7.5 minute USGS Quadrangle Map delineating public access roads to the proposed site, streams, lakes, or other surface water bodies and sensitive receptors, such as hospitals, schools, recreation areas, churches, and homes within one-half mile from the property boundary and a tax map outlining the lot and block numbers of the proposed site, all adjacent properties, and properties within one-half mile from the property boundary of the proposed site;
- Description of the current property use and municipal zoning of the proposed site;
- Eight copies of a site plan at a scale not to exceed 1 inch equals 100 feet which delineates the property boundary, location of all buildings and equipment, boundaries of areas related to the receipt, storage, processing, and transferring of all unprocessed and processed solid waste, and traffic flow;
- Statement of the list of benefits to be realized by the owner, the community in which the facility is to be located, and the surrounding communities;
- Statement as to why there is a need for the facility to be located in Hunterdon County;
- Statement as to how the proposed facility and the management strategy meets the needs for proper management of solid waste generated within Hunterdon County and complements existing solid waste facilities already provided for in the County Plan;
- Listing and description of the types and quantities of solid waste/recyclables to be managed at the proposed facility, including estimated maximum daily and annual capacity by weight and volume for each waste type/material;
- Description of the source or point of generation of all solid waste types to be managed at the proposed facility, whether it is generated within or outside Hunterdon County, and copies of any agreements, which guarantee a steady flow of this waste to the proposed facility;
- Description of the proposed technology to be employed to manage the accepted solid waste and a listing of where this technology has been used successfully;
- A list of all products and residual waste, expressed in tons per day, resulting from the proposed operation;
- Identification of existing or potential markets for each of the products to be recovered from the solid waste;
- Identification of the disposal facility(ies) that will manage residual waste from the proposed facility;
- Identification of the proposed hours and days of operation of the proposed facility;
- Description of the primary truck traffic routes to and from the proposed facility;
- The proposed means to control and/or limit access to the proposed facility, both during and after operating hours;
- The daily average, maximum number, and types of vehicles bringing solid waste or other materials to the proposed facility and the daily average, maximum number, and types of vehicles transferring materials and residue from the proposed facility; and
- Identification of any local, state, or federal permits and/or approvals that may be required for the proposed facility.

Condition 21 of the County's Solid Waste Management Plan Amendment Procedures for Solid Waste Facilities reads, "[a]n economic analysis of the proposed facility which projects and approximates capital, operating and maintenance expenditures, as well as any revenues to be realized from the anticipated sale of recovered products, if applicable. The analysis shall project the tipping charges to be levied to users of the facility". Alan Johnson, Solid Waste Coordinator for the County, clarified in verbal conversation with the DEP staff on December 10, 2008, that this Condition is meant to minimize the possibility that a solid waste facility or recycling center would go out of business, leaving solid waste or recyclable materials behind. As such, this Condition is rejected as the State has existing regulations regarding financial assurances for Class B, C, and D recycling centers at N.J.A.C. 7:26A-3.4(c) and other mechanisms to effectuate the proper removal, transportation, and disposition of all materials which may be abandoned on a solid waste facility or recycling center site.

The DCEWE also commented on this Condition, specifically commenting that, "the Solid Waste Utility Control Act (SWUCA)...does preempt the County from setting rates that the facility can charge. Solid waste facility rate regulation is solely under the purview of the SWUCA".

Condition 22 of the County's Solid Waste Management Plan Amendment Procedures for Solid Waste Facilities reads, "[a] certified letter from the zoning officer of the municipality in which the proposed site is located, stating that the proposed facility is a permitted use, conditional use, and/or any special conditions that would apply under current municipal zoning". As case law has consistently shown, the Department preempts local zoning and planning issues when dealing with solid waste facilities and recycling centers and thus, this component of the County's Solid Waste Management Plan Amendment Procedure for Solid Waste facilities is rejected.

Element: Recycling

In 2003, Hunterdon County recycled 19.4% of its municipal solid waste (MSW) and 31.9% of its total solid waste (TSW). Using 2003 Department data, Hunterdon County will have to recycle an additional 33,000 tons of MSW to reach a MSW recycling rate of 50%. Since the release of the updated Statewide Solid Waste Management Plan in early 2006, the Department has determined MSW recycling rates of 14.4%, 21.2%, and 21.8% and TSW recycling rates of 29.6%, 34.2%, and 35.3% for Hunterdon County in 2004, 2005, and 2006, respectively.

The March 18, 2008 County Plan amendment proposes County Plan inclusion of updates to several sections of the County's recycling strategy, including recycling initiatives and enforcement.

Designated Recyclable Materials – The March 18, 2008 amendment to the County Plan proposes County Plan inclusion of the following listing of the designated recyclable materials for the residential sector included in the County Plan:

Aluminum cans	Mercury-containing devices
Antifreeze	Mixed office and computer paper
Bimetal cans	Newsprint
Corrugated cardboard	Other paper, magazines, junk mail
Glass containers	Petroleum-contaminated soil
Household batteries	Plastic containers (types 1 and 2)
Lead-acid batteries	Used motor oil

The March 18, 2008 amendment to the County Plan proposes County Plan inclusion of the following listing of the designated recyclable materials for the commercial, industrial, and institutional sectors included in the County Plan:

Aluminum cans	Newsprint
Antifreeze	Other paper, magazines, junk mail
Bimetal cans	Plastic containers (types 1 and 2)
Corrugated cardboard	Tires
Glass containers	Used motor oil
Lead-acid batteries	White goods and light iron
Mixed office and computer paper	

Recycling Initiatives – The County through the March 18, 2008 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 number of designated recyclables (as noted above) in the County Plan and to increase recycling education and enforcement. The subject amendment notes that the County will begin providing recycling educational materials for disbursement by municipal officials and the Hunterdon County Health Department (HCHD). In addition, the County will offer supplemental recycling education and enforcement to municipalities at cost through an interlocal agreement, if municipalities can show that their education and enforcement actions have been documented as being unsuccessful. Lastly, going forward, the County, on behalf of its municipalities, will solicit reports from companies known to collect recyclables within the County and from owners of commercial and institutional properties.

Enforcement – The County through the March 18, 2008 County Plan amendment proposes County Plan inclusion of the HCHD to enforce and administer the provisions of the County Plan.

The DCEWE submitted extensive comments regarding the proposed enforcement component of the March 18, 2008 County Plan amendment. The DCEWE’s comments, dated August 20, 2008 and attached to this certification, specifically read that the County Plan is severely deficient and does not address, in large part, the guidance provided to the HCHD by the Office of Local

Environmental Management in 2006.

In addition, the Bureau of Recycling and Planning commented on point C. of Section 8 of the March 18, 2008 amendment to the County Plan, which reads that solid waste transporters must “[u]nless otherwise provided by the municipality or County, have the ability to provide recycling collection services for the materials that comprise the Municipal Solid Waste Stream as designated by the New Jersey Department of Environmental Protection. The cost for recycling collection services must be made available to customers upon request if the solid waste transporter charges an additional fee for the service”. Although the Department appreciates the County’s efforts to increase the percentage of those serviced by curbside collection within the County, there is no provision within the Solid Waste Management Act (Act) which would allow the County to take such an approach and thus the above language is rejected. However, N.J.S.A. 13:1E-99.17 does allow a municipality to require that every solid waste transporter servicing customers within their municipality bid on a contract for the collection of recyclable materials, if “required to do so by the district recycling plan of the county in which the...transporter engages in solid waste collection or transportation services”. This provision of the Act would accomplish the same goal as that intended in the above referenced part C. of Section 8 of the subject amendment to the County Plan and the Department strongly encourages the County to consider this alternative approach.

The County is directed to address these deficiencies as noted below in Section C. of this certification.

C. Certification of the Hunterdon 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 18, 2008 amendment to the approved County Plan and certify to the County Freeholders that the March 18, 2008 amendment is approved in part, remanded in part, and rejected in part as further specified below.

The County Plan inclusion of the March 18, 2008 County Plan Update in response to the updated Statewide Solid Waste Management Plan is approved with the exception of Conditions 21 and 22 of the County’s Procedure for Solid Waste Facilities, which are remanded and rejected, respectively as noted in Section B. of this certification.

In addition, the County must submit a County Plan amendment to address the deficiencies noted in Section B. of this certification within 180 days of the date of this certification.

- inventory of the quantity of solid waste to be generated within the County over the next ten years;
- inventory of solid waste facilities and recycling centers in the County Plan; and
- those elements of the recycling compliance and enforcement strategy noted in the attached comments from the Department’s DCEWE.

The County may submit the required amendment as a request for 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. 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.

2. 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.

3. 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.

4. Effective Date of Amendment

The approved components of the amendment to the County Plan contained herein shall take effect immediately.

5. 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 in part, remand in part, and reject in part the amendment, as outlined in Section C. of this certification, to the Hunterdon County District Solid Waste Management Plan which was adopted by the Hunterdon County Board of Chosen Freeholders on March 18, 2008.

December 22, 2008

Date

Mark N. Mauriello, Acting Commissioner
Department of Environmental Protection