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**CERTIFICATION
OF THE NOVEMBER 24, 2008 AMENDMENT
TO THE NJMC DISTRICT
SOLID WASTE MANAGEMENT PLAN**

BY ORDER OF THE COMMISSIONER:

A. Introduction

The New Jersey Solid Waste Management Act (SWMA; 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 or NJMC) develop comprehensive plans for waste management in their respective districts. On July 31, 1980 the Department of Environmental Protection (Department or DEP) approved the NJMC District Solid Waste Management Plan (District 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 NJMC Commissioners completed such a review and on November 24, 2008 adopted an amendment to its approved District Plan. The November 24, 2008 amendment proposes District Plan inclusion of the Total Waste Services, Inc. Transfer Station/Material Recovery Facility (TS/MRF), located on Block 480, Lots 1, 1.01, 6, 9, and 9.01 and Block 479, Lot 1.03 at 25-31 94th Street in the Township of North Bergen, with a maximum capacity of 850 tpd of solid waste types 13, 13C, and 27.

The amendment was considered administratively complete for review by the Department on December 15, 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 NJMC Commissioners on November 24, 2008 is approved as provided in N.J.S.A. 13:1E-24.

B. Findings and Conclusions with Respect to the NJMC District Solid Waste Management Plan Amendment

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the November 24, 2008 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 NJMC is notified of the elements relative to the November 24, 2008 amendment which are included below.

Elements of the November 24, 2008 Amendment

Element: Facility Operations

The November 24, 2008 amendment to the District Plan is proposing District Plan inclusion of the Total Waste Services, Inc. TS/MRF, located on Block 480, Lots 1, 1.01, 6, 9, and 9.01 and Block 479, Lot 1.03 at 25–31 94th Street in the Township of North Bergen.

The property on which the facility is located is owned in part by the New York, Susquehanna and Western Railway Corporation (“NYS&W”) and in part by Millenium Resource Recovery, Ltd. (“Millenium”) which currently leases its portion of the property to NYS&W. The Department and the NJMC had been in litigation with the NYS&W and other parties concerning the Department’s authority to regulate five transfer stations, not including this facility, located alongside NYS&W rail tracks in North Bergen in a case captioned New York Susquehanna and Western Railway Corporation v. Lisa Jackson, New Jersey Meadowlands Commission et al., Civil Action No.: 05-4010(KSH)(D.N.J.). The other parties included various solid waste entities involved with the above referenced facilities. That litigation was recently terminated in a Judicial Consent Order (“JCO”) filed November 6, 2008. By that time, only two of the original five transfer stations remained in the litigation. Total Waste Services, Inc. (“Total Waste”) was not a party to the litigation, but signed the JCO in order to implement its proposal to take over operations of the facility at the above address.

In the JCO, Total Waste and NYS&W have agreed to a time frame and a process whereby Total Waste will seek A-901 approval, District Plan inclusion, a Solid Waste Facility (SWF) Permit and a Certificate of Public Convenience and Necessity (CPCN) allowing it to operate the facility as a non-rail carrier solid waste facility pursuant to the SWMA. Pursuant to the JCO, until the Permit is issued, NYS&W has agreed to operate the facility in accordance with current rail carrier facility regulations found at N.J.A.C. 7:26-2D.1. The JCO also provides that NYS&W, Millenium, and Total Waste will enter into contracts providing that if Total Waste obtains all permits, approvals, and authorizations necessary to operate the 94th Street Facility, Total Waste will operate the 94th Street Facility and NYS&W will enter into an easement with Millenium to allow the portion of the 94th Street Facility which is situated on the NYS&W property to remain in its current location and be used in Total Waste’s operation of the 94th St. Facility. The parties have entered into those contracts, and the easement has been provided.

Should the DEP not issue Total Waste a SWF Permit, or should the Permit be issued and Total Waste cease operations, NYS&W is authorized to renew operations at the facility in accordance with the N.J.A.C. 7:26-2D.1 regulations while, pursuant to the Clean Railroads Act of 2008, Pub. L. No. 110-432, secs. 601 et seq., NYS&W seeks A-901 approval, District Plan inclusion, and a SWF Permit. To date, as authorized by the JCO, Total Waste has submitted its application for A-901 approval and a SWF Permit.

The November 24, 2008 District Plan amendment proposes District Plan inclusion of the Total Waste Services, Inc. TS/MRF with an initial capacity of up to 750 tpd of solid waste types 13, 13C, and 27 and a maximum capacity of 850 tpd of the same solid waste types. Specifically, the November 24, 2008 District Plan amendment proposes to allow the subject facility to increase its loading to 850 tpd of solid waste after a six-month period during which the maximum capacity is 750 tpd, if there are no site issues related to traffic, litter, etc.

The November 24, 2008 District Plan amendment identifies the facility's operating hours as twenty-four hours per day, Monday through Sunday.

Lastly, the November 24, 2008 District Plan amendment reads that, "[I]n the event that railcars are unavailable to complete the standard transfer process, Total Waste Services, Inc. has an agreement with a local vendor, AJ Recycling for trucking of waste to their facility in the Bronx, New York". The Department's Bureau of County Environmental and Waste Enforcement responded to our request for comment that AJ Recycling currently has neither A-901 approval nor a CPCN and thus may not collect or transport solid waste within the State of New Jersey until these approvals have been obtained.

Issue: 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 NJMC 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 November 24, 2008 amendment to the approved District Plan and certify to the NJMC Commissioners that the November 24, 2008 amendment is approved as further specified below.

The District Plan inclusion of the Total Waste Services, Inc. TS/MRF, located on Block 480, Lots 1, 1.01, 6, 9, and 9.01 and Block 479, Lot 1.03 at 25–31 94th Street in the Township of North Bergen, with an initial capacity of up to 750 tpd of solid waste types 13, 13C, and 27 and a maximum capacity of 850 tpd of the same waste types is approved.

This certification shall not be construed as an expression of the DEP's intent to issue a SWF Permit for any proposed facility or operation. 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. 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 District 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 NJMC Commissioners and pursuant to N.J.S.A. 13:1E-24c. and f., the NJMC Commissioners 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 District 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 District 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 NJMC District Solid Waste Management Plan which was adopted by the NJMC Commissioners on November 24, 2008.

April 27, 2009

Date

Mark N. Mauriello, Acting Commissioner
Department of Environmental Protection