



State of New Jersey

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CERTIFICATION OF THE FEBRUARY 11, 2016 AMENDMENT TO THE UNION 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 (previously formally known as the New Jersey Meadowlands Commission, and now known as New Jersey Sports and Exposition Authority or NJSEA) develop comprehensive plans for waste management in their respective districts. On August 13, 1980, the Department of Environmental Protection (Department or DEP) approved the Union County District Solid Waste Management Plan (County Plan).

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 Union County Board of Chosen Freeholders (County Freeholders) completed such a review and on February 11, 2016 adopted an amendment to its approved County Plan.

The February 11, 2016 Amendment (Amendment) proposes County Plan inclusion of:

- The direction of all non-processible solid waste types 13, 13C, 23, and 27 generated within Union County to the Waste Management of New Jersey, Inc. Transfer Station/Material Recovery Facility (TS/MRF) in the City of Elizabeth for disposal pursuant to regulatory solid waste flow control; and,

- The Solid Waste Disposal Services Agreement by and between the Union County Utilities Authority (UCUA) and Waste Management of New Jersey, Inc. TS/MRF in the City of Elizabeth for the disposal of non-processible solid waste types 13, 13C, 23, and 27 generated within Union County.

The Amendment was considered administratively complete for review by the Department on March 28, 2016 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 February 11, 2016 is approved as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the February 11, 2016 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 of the Amendment which are included below.

Elements of the February 11, 2016 Amendment

Element: Facility History of Waste Management of NJ, Inc. TS/MRF

A May 18, 1994 Department certification of an Amendment to the Union County District Solid Waste Management Plan adopted by the Union County Board of Chosen Freeholders on December 8, 1993 approved the acceptance of solid waste types 10, 13, 13C, 23, 25, and 27 at the Ellesor, Inc. TS/MRF. The facility was included in the Union County Plan as being located at 864 Julia Street in the City of Elizabeth. A number of subsequent amendments to the Union County Plan have: increased the daily capacity of the facility; noted a change in ownership; included minor changes in facility operations; incorporated weekly averaging into the operational structure; and changed permitted truck routes to the facility.

Element: County Plan Inclusion of Regulatory Flow Control over Non-Processible Solid Waste Types 13, 13C, 23 and 27

On September 25, 2006, the UCUA issued bid specifications calling for receipt of bids on October 20, 2006 for the provision of disposal services for solid waste types 13, 13C, 23, and 27 generated within Union County. The request for bids was advertised locally in The Home News & Tribune, throughout New Jersey utilizing The Star Ledger, regionally in The Philadelphia Enquirer, and nationally in Waste News. Therefore, this procurement process was open to all bidders, regardless of geographical location. The

UCUA received six bids. The County determined that Delaware and Hudson Railway Company, Inc. (DHRC) d/b/a Canadian Pacific Railway was the lowest complying and responsible bidder and on February 15, 2007 adopted an Amendment to the County Plan to include in the County Plan, amongst other things, the direction of all non-recycled solid waste types 13, 13C, 23, and 27 generated within Union County to the CP Transload Facility in the City of Newark, Essex County, for a period of 5 years.

On May 25, 2007, New Jersey Superior Court Judge Honorable Marianne Espinosa ruled in *Waste Management of New Jersey v. Union County Utilities Authority*, Docket No. UNN-L-4449-06, that the UCUA was permanently enjoined from implementing the subject contract with DHRC. Among the reasons for the Court's decision was the Court's finding that the subject facility was not a rail facility subject to preemption under the Interstate Commerce Commission Termination Act, 49 U.S.C. 10101 *et seq.*, and therefore, the facility failed to meet the bid specifications because it lacked the requisite permits and approvals. DHRC appealed this final order.

The February 15, 2007 Amendment to the County Plan was, as a result, certified as remanded, without prejudice, back to the County pending the outcome of the litigation.

On appeal, the Appellate Division vacated the court's permanent injunction that barred the UCUA from awarding the waste disposal contract to DHRC. *Waste Mgmt. of New Jersey, Inc. v. Union County Utils. Auth.*, 399 N.J. Super. 508 (App. Div. 2008). The Court's action was based on its determination that the record did not support a preliminary injunction. *Id.* at 519, 521. In so finding, the Court did not address the issue of "whether or to what extent federal preemption precludes state regulation of DHRC's activities." *Id.* at 528. The Court remanded for consideration of whether to impose an interlocutory injunction, finding that "plaintiff failed to demonstrate a reasonable probability of success but that the circumstances as presently understood do not necessarily militate against the entry of an interlocutory injunction." *Id.* at 538-39. The Court did not foreclose the trial court from deferring to DEP under the principles of primary jurisdiction, and specifically noted that the trial court might determine that an injunction is not required because DEP would ultimately review DHRC's need for a permit and any final agency action would be subject to review.

On remand, after a conference call with the parties and by Order dated April 30, 2008, Superior Court Judge William Wertheimer stayed the proceedings pending DEP's statutory review of the County Plan Amendment. DEP was accorded the full statutory period from the time of UCUA's resubmission of the County Plan Amendment. DEP was further ordered to advise all parties upon completion of the agency's review and on September 18, 2008 certified the resubmitted County Plan Amendment as approved.

On June 19, 2012, the Vice President of TLA-Newark, LLC, Marlene P. Wheaton, faxed a letter to the Department stating that the Company "ceased receiving solid waste at the facility effective Friday, June 15, 2012... [d]ue to the lack of critical resources necessary for the safe and efficient handling, management and disposal of solid waste

commodities.” The letter went on to state that the Company is unable to predict or ascertain whether they will be reopening the subject facility any time in the future.

As a result of the closure of the TLA-Newark, LLC TS/MRF and the corresponding loss of regulatory flow control over the non-recycled, solid waste types 13, 13C, 23, and 27 generated within Union County, the UCUA on June 21, 2012 entered into a shared services agreement with the NJMC for disposal services for the above noted non-recycled solid waste types for a maximum term of twelve months. The tipping fee over the term of the Agreement was to be \$52 per ton of solid waste. Through this agreement, the NJMC was to also “collect on behalf of, and remit to, the UCUA the amount of \$29.12 as and for its administrative rate component” which includes costs associated with the UCUA’s current solid waste debt.

The subject Solid Waste Disposal Agreement by and between the UCUA and NJMC was executed on September 19, 2013 and provides for a maximum term of three years of disposal services for non-recycled, solid waste types 13 (excluding automobiles, trucks, trailers, large vehicle parts, drums, and appliances), 13C, 23, and 27 generated within Union County. The tipping fee over the term of the Agreement will be \$55 per ton of solid waste from its commencement date to and including December 31, 2013; \$57 per ton of solid waste from January 1, 2014 through and including December 31, 2014; \$59 per ton of solid waste from January 1, 2015 through and including December 31, 2015; and \$60 per ton from January 1, 2016 through and including the Agreement’s expiration date of June 30, 2016. Pursuant to the Agreement, the NJMC will also “charge and collect from haulers [of the subject solid wastes] a rate component fee of \$29.12 per ton... for payment of the [UCUA’s] administrative and debt charges.”

Finally, in anticipation of the closure of NJMC disposal facilities in June 2016, UCUA issued Bid Specifications on November 15, 2015 for the provision of disposal services for non-processible solid waste types 13, 13C, 23 and 27. The UCUA received a single bid from Waste Management of NJ, Inc. (WMI) on December 10, 2015. By resolution duly adopted on December 16, 2015, the UCUA awarded a contract for a period of three years to WMI, as the lowest, complying and responsible bidder, for the provision of disposal services for non-processible waste. Per the contract, all non-processible waste will be directed to the WMI disposal facilities on Julia Street in the City of Elizabeth.

Element: Non-Discriminatory Procurement Process

On November 15, 2015, the UCUA advertised the issuance of Bid Specifications calling for receipt of bids for the provision of transfer, transportation, and disposal of non-processible solid waste types 13, 13C, 23 and 27 locally in the The Local Source, regionally utilizing The Star Ledger, and nationally utilizing Waste Recycling News. Therefore, this procurement process was open to all bidders, regardless of geographical location. The UCUA received one bid on December 10, 2015. Waste Management of NJ, Inc. was determined by the UCUA to be the lowest, complying and responsible bidder in compliance with the Bid Specifications, bidding \$68.50, \$69.87 and \$71.26 per ton for each year of the three year disposal contract, commencing on June 20, 2016.

C. Certification of the Union 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 district solid waste management plans, I have reviewed the Amendment to the approved County Plan and certify to the County Freeholders that the February 11, 2016 Amendment is approved as further specified below.

The County Plan inclusion of:

- The direction of all non-processible solid waste types 13, 13C, 23, and 27 generated within Union County to the Waste Management of New Jersey, Inc. TS/MRF in the City of Elizabeth for disposal pursuant to regulatory solid waste flow control; and,
- The Solid Waste Disposal Services Agreement by and between the Union County Utilities Authority and Waste Management of New Jersey, Inc. TS/MRF in the City of Elizabeth for the disposal of non-processible solid waste types 13, 13C, 23, and 27 generated within Union County.

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 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.

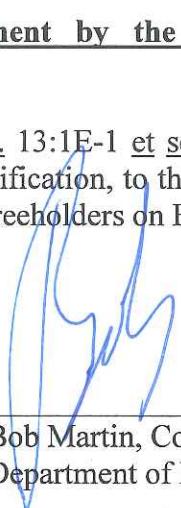
5. **Reservation of Authority**

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 County 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 County Plan which was adopted by the Union County Board of Chosen Freeholders on February 11, 2016.

6/13/2016
Date



Bob Martin, Commissioner
Department of Environmental Protection