



State of New Jersey

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CERTIFICATION OF THE AUGUST 3, 2016 AMENDMENT TO THE SALEM 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 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 February 11, 1981, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Salem 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 Salem County Board of Chosen Freeholders (County Freeholders) completed such a review and on August 3, 2016 adopted an Amendment to its approved County Plan.

The August 3, 2016 Amendment (Amendment) proposes County Plan inclusion of a solid waste flow control system whereby the Salem County Improvement Authority (SCIA) landfill located at 52 McKillip Road in Alloway Township, is designated as the only solid waste disposal facility for all solid waste types 10, 13, 13C, 23, 25, 27, and 27A generated within all municipalities by any residential, public, commercial, industrial, or institutional establishment located within Salem County.

The Amendment was received on September 28, 2016 and considered administratively complete for review by the Department on October 3, 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 August 3, 2016 is approved as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the August 3, 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 relative to the August 3, 2016 amendment which are included below.

Elements of the August 3, 2016 Amendment

Element: Solid Waste Flow Control

The August 3, 2016 Amendment proposes County Plan inclusion of a solid waste flow control system whereby the SCIA landfill located at 52 McKillip Road in Alloway Township, is designated as the only solid waste disposal facility for all solid waste types 10, 13, 13C, 23, 25, 27, and 27A generated within all municipalities by any residential, public, commercial, industrial, or institutional establishment located within Salem County. In the Amendment, Salem County has deemed the implementation of a solid waste flow control system is to be in the public interest and will enable the SCIA to obtain necessary and sufficient income from the Salem County Landfill to operate and maintain the landfill without a significant increase in fees and costs.

The Amendment states that no person shall, regardless of intent, engage, cause or otherwise arrange for the collection, transportation or disposal of any solid wastes generated within Salem County to be disposed at any other solid waste disposal facility except as authorized or directed by this Amendment. No alternative out-of-state disposal will be permitted.

The Amendment is appropriate under the recent U.S. Supreme Court decision in United Haulers Association v. Oneida Herkimer Solid Waste Management Authority, 550 US, 330 (2007). In Oneida Herkimer, a group of haulers challenged county flow control ordinances under the Commerce Clause of the U.S. Constitution; the challenged ordinances directed waste to a facility run by a public authority. In Oneida Herkimer, the direction of waste to a facility run by a public authority was found to place only an incidental burden on interstate commerce that is outweighed by the public purpose and is thus permissible under the Commerce Clause. The ordinances upheld in Oneida Herkimer

are similar in their effect to the proposed amendment to the Salem County Solid Waste Management Plan.

Element: Materials Recovery

It shall not be considered a violation of the Salem County Solid Waste Management Plan for a fully-permitted materials recovery facility (MRF) located either within or outside of Salem County, operating in full compliance with applicable statutes, rules and permit conditions, to receive bulky waste and construction and demolition waste (waste types 13 and 13C) containing recyclable material as defined in N.J.S.A. 13:1E-99.12 generated from within Salem County for the purpose of materials recovery/recycling, and, after separation of recyclable materials, delivery of non-recyclable residue to the disposal facility designated in this Amendment, subject to execution of an agreement (Agreement) between the MRF and Salem County containing, without limit, the following provisions which the Department has determined to be reasonable:

- The MRF guarantees delivery of all non-recyclable residue back to Salem County's designated disposal facility after the extraction of recyclable material from the mixed solid waste stream accepted at the MRF, or fees in lieu of same, if agreed to in such an Agreement.

- All such residue delivered to the designated disposal facility in the Solid Waste Management Plan by or on behalf of the MRF shall be tipped at Salem County's full tipping rate including any administrative fees.

- The MRF shall, upon reasonable notice, allow Salem County personnel or duly authorized representatives reasonable access to the MRF to monitor compliance with the Solid Waste Management Plan and/or the Agreement and records which are required to be maintained on-site in accordance with N.J.A.C. 7:26-2.13 (or other record keeping requirements) during normal business operating hours. Such access, unless otherwise provided by law or regulation, shall not include access to confidential processes, proprietary or confidential business or facility records, or information or records not pertinent to monitoring the County Plan/Agreement. Said personnel shall not interfere with normal facility operations. Nothing herein shall limit any authority conferred by the Solid Waste Management Act, implementing regulations, or other applicable laws.

The Department shall not deem reasonable or approve any Agreement that guarantees a static or set percentage or volume of residue be returned to the County of origin.

Unless and until any such Agreement has been executed, County Waste flow direction shall be strictly complied with.

The County shall submit a copy of any such Agreement to the Department as an amendment to the County Plan pursuant to N.J.A.C. 7:26-6.11 et seq. The Department will review the Agreement's conditions to ensure they are reasonable and consistent with the District's Solid Waste Management Plan, State Statutes, the State Solid Waste Management Plan and certify, modify, or reject same accordingly.

Element: Solid Waste Enforcement

The Amendment states and authorizes the enforcement responsibilities to be shared by the Salem County Health Department, the SCIA and the DEP in accordance with all applicable laws, including the provisions of the Salem County Solid Waste Management Plan.

The Salem County Health Department and SCIA enforcement personnel shall perform at a minimum the following enforcement activities:

- Monitor the operation of solid waste facilities;
- Monitor activities of solid waste transporters;
- Identify and prosecute illegal or promiscuous solid waste dumping;
- Investigate solid waste complaints from citizens;
- Monitor solid waste generators for compliance with the Salem County Solid Waste Management Plan and DEP regulations;
- Monitor solid waste and recycling haulers and transporters for compliance with the State and County laws, regulations, and policies; and,
- Monitor solid waste facilities and recycling centers for compliance with State and County laws, regulations, and policies.

C. Certification of the Salem 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 August 3, 2016 Amendment to the approved County Plan and certify to the County Freeholders that the Amendment is approved as further specified below.

The Amendment which proposed County Plan inclusion of a solid waste flow control system whereby the Salem County Improvement Authority landfill located at 52 McKillip Road in Alloway Township, is designated as the only solid waste disposal facility for all solid waste types 10, 13, 13C, 23, 25, 27, and 27A generated within all municipalities by any residential, public, commercial, industrial, or institutional establishment located within Salem County, is approved.

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 and which was executed prior to the Certification 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 in

this Amendment. Any solid waste collection operation or disposal facility authorized by the Department and operating pursuant to a contract which is inconsistent with this Amendment, 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 authorized entity may, upon application to the Department, and for good cause shown, obtain an extension of time in writing to complete such renegotiation.

2. Compliance

All solid waste facility owners and/or operators authorized by the Department and operating within the County and affected by this Amendment shall operate in compliance with this Amendment and all other approved provisions of the County Plan. Any facility owner or operator 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., N.J.A.C. 7:26-1 et seq., and in violation of their authorization to operate a solid waste facility, recycling center, or a collection system 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, 27, and 27A as allowed by law 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**

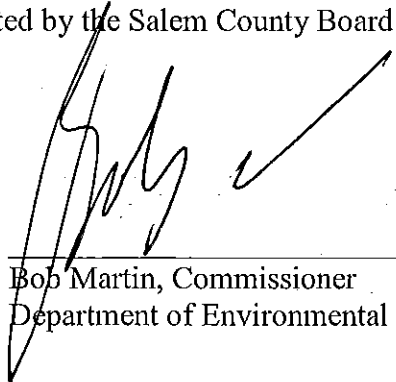
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform to the Statewide Solid Waste Management Plan, with appendices, which includes the Department's 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 Salem County District Solid Waste Management Plan which was adopted by the Salem County Board of Chosen Freeholders on August 3, 2016.

Date

2/24/2017



Bob Martin, Commissioner
Department of Environmental Protection