



State of New Jersey

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CERTIFICATION OF THE FEBRUARY 28, 2012 AMENDMENT TO THE ATLANTIC 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 June 24, 1982, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Atlantic 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 Atlantic County Board of Chosen Freeholders (County Freeholders) completed such a review and on February 28, 2012 adopted an amendment to its approved County Plan.

The February 28, 2012 County Plan amendment proposes County Plan inclusion of a revised solid waste flow control system whereby the Atlantic County Utilities Authority (ACUA) Landfill located at the Atlantic County Environmental Park at Block 703, Lot 4 and Block Nos. 603, 604, 606, 606, 607 and 703, Lots 13, 12, 11 10, and 1-5, and 1, 2 and 6, 7, and 1-3 in Egg Harbor Township, is designated as the only disposal facility for all solid waste types 10, 13, 13C, 23, 25, 27 and 27A generated by any residential, public, commercial, industrial or institutional establishment located within Atlantic County.

The amendment was considered administratively complete for review by the Department on March 14, 2012 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 28, 2012 is approved, as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the February 28, 2012 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 February 28, 2012 amendment which are included below.

Elements of the February 28, 2012 Amendment

Element: Background

On July 28, 2009, the Atlantic County Board of Chosen Freeholders adopted an amendment to the County Plan that was developed in response to the updated Statewide Solid Waste Management Plan. This County Plan amendment contained among other things the required identification of the solid waste disposal strategy adopted by the county. The solid waste disposal strategy identified in the amendment was a market participant strategy which allowed delivery of solid waste to any legal in-state or out-of-state solid waste facility. This plan amendment was certified as approved in part and remanded in part on January 15, 2010.

On April 20, 2010, the Atlantic County Board of Chosen Freeholders adopted an amendment to the County Plan to amend the solid waste disposal strategy by switching to an intra-state solid waste flow control system. Accordingly, the ACUA Landfill located at the Atlantic County Environmental Park in Egg Harbor Township, was the in-state designated disposal facility for all solid waste types 10, 13, 13C, 23, 25, 27 and 27A generated within Atlantic County. Alternatively, under this system, solid waste has been delivered to an out-of-state disposal facility. This plan amendment was certified as approved in part and remanded in part on August 27, 2010. The Department remanded that section of the proposed plan amendment pertaining to the waste flow sunset provision because it didn't conform with the ten year planning requirement as contained in the Solid Waste Management Act and it made solid waste financing problematic.

Element: Solid Waste Flow Control

The February 28, 2012 County Plan amendment proposes County Plan inclusion of a revised solid waste flow control system whereby the Atlantic County Utilities Authority (ACUA) Landfill located at the Atlantic County Environmental Park in

Egg Harbor Township, is designated as the only disposal facility for all solid waste types 10, 13, 13C, 23, 25, 27 and 27A generated by any residential, public, commercial, industrial or institutional establishment located within Atlantic County. This revision in the solid waste control system will enable the ACUA to ensure a balanced financial position whereby future State financial aid will not be required.

The proposed Solid Waste Management Plan Amendment is appropriate under the recent U.S. Supreme Court decision in United Haulers Association v. Oneida Herkimer Solid Waste Management Authority, 550 U.S. 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. As in Oneida Herkimer, the direction of waste to a facility run by a public authority places only an incidental burden on interstate commerce that is outweighed by its 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 County Plan. No alternative out-of-state disposal will be permitted.

The February 28, 2012 plan amendment notes that transfer stations receiving waste generated from outside of Atlantic County as well as waste generated within Atlantic County shall dispose of residual waste at the ACUA landfill in the proportion that Atlantic County waste bears to the total amount of waste processed at the facility.

Element: Solid Waste Enforcement

The February 28, 2012 states that the enforcement responsibilities will be shared by the Atlantic County Health Department, the Atlantic County Utilities Authority and the DEP, in accordance with all applicable laws, including the provisions of the Atlantic County Solid Waste Management Plan.

The Department notes that it does not enforce waste flow provisions of County Plans but delegates that responsibility to the County Health Departments through the provisions of the County Environmental Health Act.

The use of permitted transfer stations/material recovery facilities to remove materials from Atlantic County generated solid waste for the purposes of recycling or re-use is not a violation of the provisions of the County Plan, provided that the residue resulting from Atlantic County generated solid waste delivered to such transfer stations/materials recovery facility is disposed at the ACUA Landfill in accordance with the provisions of the Atlantic County District Solid Waste Management Plan.

The July 28, 2009 County Plan amendment noted that the Atlantic County Health Department would continue to provide enforcement under its CEHA obligations, which at a minimum include:

- 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 Atlantic County Solid Waste Management Plan and NJDEP 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.

The January 15, 2009 certification of this amendment noted among other things that the frequency of investigations per year at large solid waste generators and smaller generators is simply not enough to be an effective deterrent to disposal of recyclables in the trash. As further noted in the January 15, 2009 certification, the County was directed to provide within 180 days of the January 15, 2009 date, a subsequent submission, containing revisions of the proposed enforcement strategy. Atlantic County submitted an administrative action dated July 14, 2010 which among other things increased the number of inspections by municipal recycling coordinators.

The July 28, 2009 County Plan amendment also listed the designated recyclable materials which must be recycled from the solid waste stream.

Recycling Mandate

New Jersey's Statewide Solid Waste Management Plan calls for, among other things, a framework for the counties to assess strategies to achieve the statutorily-mandated recycling targets of 50% of the municipal solid waste (MSW) stream and 60% of the total solid waste stream (N.J.S.A. 13:1E-99.13). In response, Atlantic County adopted the July 28, 2009 County Plan amendment to, among other things, identify the means that it would take to achieve these targets.

As noted above, the July 28, 2009 County Plan amendment proposed County Plan inclusion of updates to several sections of the County's recycling strategy. The amendment indicated that measures intended to increase recycling will result in the achievement of the mandatory recycling goals by 2019. The January 15, 2009 certification of this amendment noted that this date is well beyond the time frame established in the 1987 Recycling Act. Additionally, though the amendment identified many strategies to enhance recycling, there was a lack of detail on how these strategies would be implemented. As further noted in the January 15, 2009 certification, the County was directed to provide within 180 days of the January 15, 2009 date, a subsequent submission, containing a detailed description of how the ACUA will assist municipal recycling efforts to achieve the 50% and 60% recycling goals and a revised timetable for a more timely achieving of these goals a timetable for achievement of these goals. Atlantic County submitted an administrative action dated July 14, 2010 which listed various initiatives to be undertaken to reach the mandatory recycling goals however, no definitive date

was established indicating when the mandatory recycling goals would be met therefore that part of the administrative action was rejected.

According to the latest available data, Atlantic County recycled in 2010, 32.7% of the municipal solid waste stream and 53.2% of the total waste stream. Therefore, further work is required by the County and the ACUA to meet the mandated recycling goals.

Therefore, pursuant to the requirements of N.J.S.A. 13:1E-99.13 that the county develop, adopt and implement a recycling plan that achieves the recycling targets above, the County is hereby directed to submit to the Department, beginning on December 1, 2012 and every six months thereafter, a report detailing:

1. Actions taken to implement the recycling strategies contained in the County's adopted and approved recycling plan.,
2. The specific results achieved; and,
3. Geographic areas or economic sectors where recycling needs improvement, and strategies to increase recycling in those areas or sectors.

These reports shall be due until such time as the Department determines that the County has achieved the above noted recycling targets. These reports will assist the Department in evaluating your county's progress in achieving the mandatory recycling rates and in identifying issues that may be preventing the county's ability to achieve that recycling rate.

Regionalization

Pursuant to its responsibilities under the Solid Waste Management Act, the Department has examined the possible impacts that instituting waste flow control as detailed in this amendment may have on, among other things, the remaining landfill capacity at the ACUA Landfill, as well as operational efficiencies at other disposal facilities in the region. Furthermore, there may be opportunities to (i) ensure that the ACUA Landfill capacity is conserved, (ii) maximize recycling, and (iii) optimize use of disposal facilities in the region.

Therefore, the County is directed to undertake a study that evaluates the following issues:

1. Current and projected public and private regional waste disposal capacity which may be underutilized, including, but not limited to, the following counties: Cape May, Cumberland, Camden, Gloucester, and Salem (the "Regional Counties"); and,
2. The lowest possible disposal rate that could be obtained by Atlantic County with each of the Regional Counties.

Furthermore, the County is directed to perform a cost/benefit analysis to determine whether the County could realize cost savings by utilizing disposal facilities in Regional Counties, taking into consideration the County's cost to operate its solid waste disposal facility, and the value of long-term preservation of landfill space at the ACUA Landfill.

To assist the County in this study, the Department will be scheduling a meeting between the County and Department staff, prior to the County conducting the above-noted study, to determine the parameters of this study and provide information in the Department's possession which may be useful to the County in conducting this study. The County is hereby directed to submit a report to the Department setting forth the results of its study by December 1, 2012, which report shall contain the County's recommendations. The Department will review the report within 60 days of its receipt, and meet with the County to discuss the results.

C. Certification of the Atlantic 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 February 28, 2012 amendment to the approved County Plan and certify to the County Freeholders that the February 28, 2012 amendment is approved, as further specified below.

The February 28, 2012 County Plan amendment proposes County Plan inclusion of a revised solid waste flow control system whereby the Atlantic County Utilities Authority (ACUA) Landfill located at the Atlantic County Environmental Park at Block 703, Lot 4 and Block Nos. 603, 604, 606, 606, 607 and 703, Lots 13, 12, 11 10, and 1-5, and 1, 2 and 6, 7, and 1-3 in Egg Harbor Township, is designated as the only disposal facility for all solid waste types 10, 13, 13C, 23, 25, 27 and 27A generated by any residential, public, commercial, industrial or institutional establishment located within Atlantic 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 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. 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.

4. 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.

5. Effective Date of Amendment

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

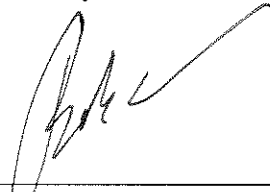
6. Reservation of Authority

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 Atlantic County District Solid Waste Management Plan, which was adopted by the Atlantic County Board of Chosen Freeholders on February 28, 2012.

8/10/2012
Date



Bob Martin, Commissioner
Department of Environmental Protection