



## State of New Jersey

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### CERTIFICATION OF THE APRIL 20, 2010 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 April 20, 2010 adopted an amendment to its approved County Plan.

The April 20, 2010 County Plan amendment proposes County Plan inclusion of an intra-state solid waste flow control system. Under this system, solid waste is directed to a specific in-state disposal facility, or, alternatively allowed to be disposed of at any legal out-of-state facility. Specifically, the April 20, 2010 amendment proposes to establish intra-state solid waste flow control 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 in-state disposal facility for all solid waste types 10, 13, 13C, 23, 25, 27 and 27A generated within Atlantic County. Alternatively, solid waste may be delivered to an out-of-state disposal facility.

The amendment was considered administratively complete for review by the Department on May 6, 2010 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 April 20, 2010 is approved in part and remanded in part, 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 April 20, 2010 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 April 20, 2010 amendment which are included below.

**Elements of the April 20, 2010 Amendment**

**Element: Background**

On December 13, 1988, the County Freeholders adopted an amendment to the County Plan which proposed an interim/bypass landfill at the Atlantic County Utilities Authority (ACUA) Environmental Park located on Block 17A, Lots 9, 11, 12; Block 18A, Lots 2-6; Block 19A, Lots 1 & 2; block 20A, Lots 1 & 2; Block 21A, Lots 1-5 in Egg Harbor Township. On May 26, 1989, the Department approved with modification this amendment requiring the submission of a viable bird deterrent plan for the proposed landfill. On July 25, 1989, the County Freeholders adopted a subsequent amendment to the County Plan which outlined a bird deterrent plan for the proposed interim/bypass landfill. On September 5, 1989, the Department rejected the July 25, 1989 amendment due to the determination that the bird deterrent plan was not viable. The Department did, however, state that a limited use landfill may be appropriate for the site. On October 24, 1989 and November 14, 1989, the County Freeholders adopted subsequent amendments to the County Plan which designated a limited use landfill for waste types 13 and 27 (bulky waste and dry industrial waste, respectively) at the ACUA Environmental Park in Egg Harbor Township. This plan amendment was certified as approved on April 30, 1990.

On March 8, 1997 and May 8, 1997, the Department received requests, with accompanying documentation, from the ACUA for a research, development, and demonstration (RD&D) project for the night landfilling of municipal (type 10) solid waste at the ACUA limited use landfill. On October 8, 1997, the Department issued to the ACUA a Certificate of Authority to Operate (CAO) a RD&D project at the limited use landfill. The CAO authorized the ACUA to landfill 100 tons per day of municipal waste at night for research purposes to demonstrate that birds will not be attracted to the night activity. On December 16, 1997, the Department issued a

subsequent COA which allowed the ACUA to increase the daily tonnage to 300 tons. Both of these COA's expired on October 7, 1998. On September 17, 1998, the Department issued another COA which extended the RD&D project until September 16, 1999 and increased the maximum amount of type 10 solid waste that may be landfilled to 800 tons per day and not to exceed 3,600 tons per week. Further, on July 30, 1998, the County adopted an amendment to the County Plan which memorialized the above noted RD&D project time extension and tonnage increase. This plan amendment was certified as approved on January 4, 1999.

On July 2, 1999, the Atlantic County Board of Chosen Freeholders adopted an amendment to the County Plan that provided for continued nighttime landfilling of municipal solid waste at the Atlantic County Utilities Authority (ACUA) Landfill in Egg Harbor Township, Atlantic County. This plan amendment was certified as approved with modification on October 21, 1999.

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 recently updated Statewide Solid Waste Management Plan. This County Plan amendment contained 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 with modification on January 15, 2010.

#### **Element: Solid Waste Flow Control**

The April 20, 2010 plan amendment proposes to amend the solid waste disposal strategy approved pursuant to the July 28, 2009 plan amendment by switching to an intra-state solid waste flow control system. Accordingly, the ACUA Landfill located at the Atlantic County Environmental Park at Block in Egg Harbor Township, is 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 may be delivered to an out-of-state disposal facility.

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.

The April 20, 2010 plan amendment notes that the required public purpose of the ACUA is to process and market designated recyclable materials, providing scheduled household hazardous waste collection events, administration of the Atlantic County Adopt-a-road (litter abatement) program, and conducting recycling education throughout the County.

**Element: Solid Waste Enforcement**

The ACUA is the agency that will enforce the intra-state waste flow control provisions of the County Plan.

The use of permitted solid waste transfer stations, located within the State of New Jersey, to facilitate the transportation of solid waste generated within Atlantic county to permitted out-of-state disposal facilities is not a violation of the provisions of the County Plan. Similarly, the use of permitted material recovery facilities, located within the State of New Jersey, 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 materials recovery facility is disposed of in accordance with the provisions of the Atlantic County District Solid Waste Management Plan.

**Element: Sunset Provision**

The April 20, 2010 plan amendment proposes that the intra-state waste flow shall expire on March 1, 2014, unless a subsequent County Plan amendment is adopted to extend such expiration date.

Pursuant to N.J.S.A. 13:1E-20(a)1, every solid waste management plan shall be developed for a period of not less than 10 years. Also, pursuant to N.J.S.A. 13:1E-21(b)6, every solid waste management plan shall formulate the method or methods of financing solid waste management. Furthermore, the financing of solid waste management generally requires long term bonding. The sunset provision of the solid waste flow contained in the April 20, 2010 plan amendment makes financing problematic. Therefore, the Department is remanding the sunset provision contained in the April 20, 2010 plan amendment back to Atlantic County. The County is required to submit within 180 days of this certification a subsequent plan amendment to establish a ten year solid waste disposal/financing strategy. However, as noted in Section C. of this certification, the County Plan inclusion of the intra-state waste flow is approved and may commence immediately.

**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 April 20, 2010 amendment to the approved County Plan and certify to the County Freeholders that the April 20, 2010 amendment is approved in part and remanded in part, as further specified below.

The County Plan inclusion of intra-state waste flow control is approved and may commence immediately. The 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 the designated in-state 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 may be delivered to an out-of-state disposal facility.

As noted in Section B. of this certification, the Department is remanding that section of the proposed plan amendment pertaining to the waste flow sunset provision because it doesn't conform with the ten year planning requirement as contained in the Solid Waste Management Act and it makes solid waste financing problematic. The County is required to submit within 180 days of the date of this certification a subsequent plan amendment to establish a ten year solid waste disposal/financing strategy in accordance to the provisions of the Solid Waste Management Act. This subsequent plan amendment may be submitted pursuant to the administrative action requirements contained in N.J.A.C. 7:26-6.11 et seq.

**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.

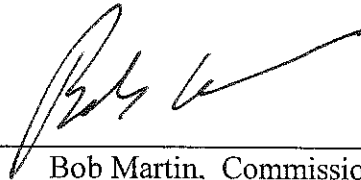
**6. Reservation of Authority**

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 in part and remand in part 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 April 20, 2010.

8/27/2010  
Date

  
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Bob Martin, Commissioner  
Department of Environmental Protection

