



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Site Remediation and Waste Management Program

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CERTIFICATION OF THE JULY 10, 2019 AMENDMENT TO THE GLOUCESTER COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN

BY ORDER OF THE DEPARTMENT:

A. Introduction

The New Jersey Solid Waste Management Act ("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 & Exposition Authority or NJSEA) develop comprehensive plans for waste management in their respective districts. On September 26, 1980, the Department of Environmental Protection ("Department" or "DEP") approved the Gloucester 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 Gloucester County Board of Chosen Freeholders ("County Freeholders") completed such a review and on July 10, 2019 adopted an amendment to its approved County Plan.

The July 10, 2019 amendment ("Amendment") proposes County Plan inclusion of:

- The 10-year Resource Recovery Facility ("RRF") service agreement by and between the Gloucester County Improvement Authority ("GCIA") and Wheelabrator Gloucester Company, L.P. ("Wheelabrator") for the incineration of solid waste types 10, 13, 23, and 25 generated within all municipalities within the Gloucester County Solid Waste Management District at Wheelabrator's RRF in West Deptford, New Jersey commencing on January 1, 2020, and shall continue from that date until December 31, 2029, based on an open and non-discriminatory procurement process. The residual incinerator ash (type 27I) generated from the Wheelabrator RRF will be disposed of at the GCIA's landfill located at the Solid Waste Complex in South Harrison Township; and,

- The direction of all solid waste types 10, 13, 23, and 25 generated in Gloucester County to the Wheelabrator RRF for incineration pursuant to regulatory waste flow control.

The Amendment was considered complete for review by the Department on August 1, 2019 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 July 10, 2019 is approved as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the 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 July 10, 2019 Amendment

Element: Facility History of Wheelabrator

On March 4, 1985, the Gloucester County Board of Chosen Freeholders adopted an amendment to their County Plan to include a resource recovery facility located on Parcel 3, Block 1, Lot 1 in the Township of West Deptford. This County Plan amendment was certified as approved by the Department on May 29, 1985.

On May 3, 1989, the Gloucester County Board of Chosen Freeholders adopted an amendment to their County Plan to include the designation of truck routes to the Wheelabrator RRF. This County Plan amendment was certified as approved by the Department on December 13, 1989.

On February 21, 1990, the Gloucester County Board of Chosen Freeholders adopted an amendment to their County Plan to include revisions to the truck routes to the Wheelabrator RRF. This County Plan amendment was certified as approved by the Department on July 30, 1990.

Lastly, On June 4, 2008, the Gloucester County Board of Chosen Freeholders adopted an amendment to their County Plan to include the GCIA's plan amendment submittal of its response to the Statewide Solid Waste Management Plan. The Wheelabrator RRF was listed as a facility in the County's inventory of facilities to accept waste types 10, 13, 23, and 25. This County Plan amendment was certified as approved by the Department on November 18, 2008.

Element: County Plan Inclusion of Regulatory Flow Control over Solid Waste Types 10, 13, 23, and 25

In response to the May 1, 1997 decision of the United States Court of Appeals for the Third Circuit which declared unconstitutional New Jersey's historic system of solid waste flow control [See Atlantic Coast Demolition and Recycling, Inc v. Board of Chosen Freeholders of

Atlantic County et al 112 F.3d 652 (3d Cir. 1997), cert. denied-522 U.S. 966 (1997)], on February 18, 1998, the GCIA proposed to regulate the disposal of all solid waste generated within the County. The amendment noted that a procurement process for the disposal for all County generated waste would be undertaken by the GCIA on behalf of the County. However, since this procurement process was not yet completed at the time of adoption of the February 18, 1998 amendment, on March 24, 1998 the Department approved with modification this component of the amendment contingent upon receipt and approval by the DEP of a subsequent amendment or administrative action documenting the award of a non-discriminatory bid contract to provide disposal services.

On March 17, 1999, the Gloucester County Board of Chosen Freeholders adopted an amendment to their County Plan to include a strategy of implementing regulatory flow control based upon non-discriminatory procured solid waste disposal services. Since the County had adequately demonstrated that it secured a disposal contract with Wheelabrator in a non-discriminatory manner, the GCIA was approved to deliver all acceptable waste to the Wheelabrator RRF located in West Deptford Township, and all bypass waste to the GCIA Landfill located in South Harrison Township. However, since a non-discriminatory procurement was not completed for the ash residue and non-processible waste, those waste types were not subject to flow control and may be delivered to any licensed solid waste facility. This County Plan amendment was certified as approved on June 4, 1999. The disposal contract between Wheelabrator and the GCIA had a start date of January 1, 2000 and an end date of December 31, 2009.

In anticipation of the expiration of the disposal contract in 2009 and because the life of the services contract is greater than the five years allowed under Local Public Contracts Law, the GCIA engaged in another procurement process utilizing the McEnroe Act that resulted in securing a contract with Wheelabrator. Upon completion of the procedures outlined in the McEnroe Act, the County decided to amend the plan to allow for another 10-year contract with Wheelabrator. The parties used the existing agreement as the basis and foundation for their negotiations, making changes only to certain financial terms. The DEP and the Division of Local Government Services within the Department of Community Affairs ("Division") undertook a full and thorough review of the agreement. It was, for the most part, the same contractual relationship between the GCIA and Wheelabrator that the DEP and Division approved on June 4, 1999. The most material and significant change was that Wheelabrator agreed to a substantial and material reduction in the starting tipping fees to \$72 per ton, which represented over \$10 per ton savings from the prior agreement. The new agreement was approved by the Department on December 23, 2009 and by the Division on December 28, 2009. The disposal contract between Wheelabrator and the GCIA had a start date of January 1, 2010 and an end date of December 31, 2019.

Element: Non-Discriminatory Procurement Process

Due to the anticipated expiration of the contract with Wheelabrator on December 31, 2019 and pursuant to provisions of the McEnroe Act, the GCIA published notice of a Request for Qualifications ("RFQ") on September 1, 2018 setting forth the minimum acceptable qualifications for vendors who wish to provide RRF services. The RFQ was published in *Waste Today Magazine*, a national, bimonthly trade publication that covers all aspects of the

solid waste industry and which informed both in and out-of-state vendors with potential interest in providing RRF services. The GCIA also published notice of the RFQ in the *South Jersey Times* on September 12, 2018.

The GCIA received qualification statements from Wheelabrator and Covanta Sustainable Solutions, LLC (“Covanta”) and concluded that both Wheelabrator and Covanta possessed the minimum qualifications for qualified vendors pursuant to N.J.S.A.13:1E-154b. On January 7, 2019, the GCIA published its selection of qualified vendors in *Waste Today Magazine* and the *South Jersey Times* and issued a Request for Proposals (“RFP”) to the qualified vendors. Responses from the qualified vendors were to be submitted no later than February 8, 2019. The deadline was subsequently extended at the request of Wheelabrator and Covanta, with the consent of the GCIA, to February 19, 2019. Wheelabrator and Covanta submitted timely proposals in response to the RFP. The GCIA found both proposals to be potentially advantageous to the public, and, in accordance with N.J.S.A. 13:1E-157, commenced negotiations with both Wheelabrator and Covanta.

As a result of the non-discriminatory bidding process undertaken by the GCIA and based on negotiations and evaluation of the overall proposals and financial elements submitted by each vendor, the GCIA determined that Wheelabrator’s proposal was in the best interest of the County and its ratepayers. The GCIA awarded the contract to Wheelabrator by resolution on May 16, 2019, contingent upon successful negotiation of the final Wheelabrator services agreement and approval by the Department and authorized the Executive Director of the GCIA to enter into final negotiations on the terms of the agreement.

C. Certification of the Gloucester 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 Amendment is approved as further specified below.

The County Plan inclusion of:

- The 10-year RRF service agreement by and between the Gloucester County Improvement Authority (“GCIA”) and Wheelabrator for the incineration of solid waste types 10, 13, 23, and 25 generated within all municipalities within the Gloucester County Solid Waste Management District at Wheelabrator’s RRF in West Deptford, commencing on January 1, 2020, and shall continue until December 31, 2029, based on an open and non-discriminatory procurement process. The residual incinerator ash (type 27I) generated from the Wheelabrator RRF will be disposed of at the GCIA’s landfill located at the Solid Waste Complex in South Harrison Township; and
- The direction of all solid waste types 10, 13, 23, and 25 generated in Gloucester County to the Wheelabrator RRF for incineration pursuant to regulatory waste flow control.

D. Implementation of the Plan Amendment**1. Certification to Proceed with Implementation of Amendment**

This document shall serve as the Certification by 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.

2. 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 and -2.13, and N.J.A.C. 7:26A-1.3.

3. Effective Date of Amendment

The approved components of this Amendment shall take effect immediately.

4. Reservation of Authority

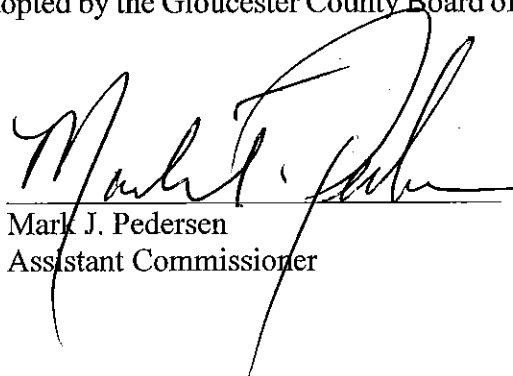
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform to the Statewide Solid Waste Management Plan, with appendices, which includes the Department's planning guidelines, rules, regulations, orders of the Department, and includes the compilation of individual county plans and amendments as they are approved.

E. Certification of Approval of the Amendment by 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 Gloucester County District Solid Waste Management Plan which was adopted by the Gloucester County Board of Chosen Freeholders on July 10, 2019.

11-12-19

Date



Mark J. Pedersen
Assistant Commissioner