



State of New Jersey

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CERTIFICATION OF THE FEBRUARY 13, 2013 AMENDMENT TO THE MORRIS 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 January 29, 1981, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Morris 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 Morris County Board of Chosen Freeholders (County Freeholders) completed such a review and on February 13, 2013 adopted an amendment to its approved County Plan.

The February 13, 2013 amendment proposes County Plan inclusion of:

- The contract by and between the Morris County Municipal Utilities Authority (MCMUA) and Solid Waste Services, Inc., d/b/a J.P. Mascaro & Sons (Mascaro), for the combined operations of the two MCMUA Transfer Stations/Material Recovery Facilities (TS/MRFs) and the transportation and disposal of all solid waste received at the two MCMUA TS/MRFs, for a period of up to five years beginning on January 28, 2013, based on an open and non-discriminatory procurement; and,
- Three out-of-state landfills as the ultimate disposal facilities for the residual solid waste received at the two MCMUA TS/MRFs.

The amendment was considered administratively complete for review by the Department on March 4, 2013 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 13, 2013 is approved as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the February 13, 2013 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 13, 2013 amendment which are included below.

Elements of the July 19, 2012 Amendment

Element: Facility Histories

MCMUA – Parsippany-Troy Hills TS/MRF

On April 1, 1987, the Department proposed an amendment to the County Plan to include within it the Morris County Transfer Station, Inc. (MCTS) Transfer Station, located on a portion of Block 769, Lot 1 at the corner of Sharkey and Edwards Roads in the Township of Parsippany-Troy Hills. The facility was included in the County Plan with a design capacity of 1,000 tons per day (tpd) of solid waste types 10, 13, 23, 25, and 27. The July 28, 1987 certification of this amendment to the County Plan directed the Morris County Board of Chosen Freeholders to adopt an amendment to the County Plan proposing County Plan inclusion of Block 768, Lots 2, 3, and 5 in the Township of Parsippany-Troy Hills for increased site flexibility.

On September 15, 1987, the Morris County Board of Chosen Freeholders approved an amendment to the County Plan which proposed County Plan inclusion of Block 768, Lots 2 and 3 in the Township of Parsippany-Troy Hills as additional property available for use as a part of the MCTS Transfer Station. This amendment was certified as approved by the Department on September 28, 1987.

A County Plan amendment adopted by the Morris County Board of Chosen Freeholders on December 22, 1993 included the proposed purchase of the MCTS Transfer Station in the Township of Parsippany-Troy Hills by the MCMUA in the County Plan. This amendment was certified as approved by the Department on December 29, 1993.

A request for administrative action dated September 7, 1999 and approved by the Department on September 20, 1999 included Block 768, Lot 2.01 and Block 770, Lots 17, 18, and 19 as part of the MCMUA's Transfer Station in the Township of Parsippany-Troy Hills.

A request for administrative action dated January 3, 2001 and approved by the Department on January 11, 2001 included utilization of weekly averaging at the MCMUA Transfer Station in the Township of Parsippany-Troy Hills in the County Plan.

An amendment adopted by the Morris County Board of Chosen Freeholders on December 21, 2004 proposed County Plan inclusion of a capacity expansion at the MCMUA TS/MRF in the Township of Parsippany-Troy Hills. Specifically, the December 21, 2004 amendment to the County Plan proposed County Plan inclusion of an increase in the capacity of the subject facility to 2,050 tpd of solid waste. This amendment was certified as approved by the Department on May 13, 2005.

Lastly, on April 11, 2007, the Morris County Board of Chosen Freeholders approved an amendment to its County Plan, which proposed County Plan inclusion of, amongst other things, the MCMUA TS/MRF, located on Block 768, Lots 2.01 and 3, Block 769, Lot 1, and Block 770, Lots 17-19 at 1100 Edwards Road in the Township of Parsippany-Troy Hills. This County Plan amendment included the subject facility in the County Plan to accept up to 2,050 tpd of solid waste types 10, 13, 13C, 23, 25, and 27 from 7:00 am – 4:00 pm, Monday through Friday and 7:30 am – 11:00 am, Saturday.

MCMUA – Mount Olive TS/MRF

On April 1, 1987, the Department proposed an amendment to the County Plan to include within it the MCTS, Inc. Transfer Station, located at the intersection of Goldmine Road and Flanders-Netcong Road on Block 14, Lot 1 in the Township of Mount Olive. The MCTS, Inc. Transfer Station in Mount Olive was included in the County Plan with a design capacity of 510 tpd. This amendment was certified as approved by the Department on July 28, 1987.

A County Plan amendment adopted by the Morris County Board of Chosen Freeholders on December 22, 1993, included the proposed purchase of the MCTS Transfer Station in the Township of Mount Olive by the MCMUA. This amendment was certified as approved by the Department on December 29, 1993.

On June 8, 1994, the Morris County Board of Chosen Freeholders adopted an amendment to the County Plan which proposed inclusion of the clarification of the operating capacity of the MCMUA TS/MRF in the Township of Mount Olive. Specifically, this amendment to the County Plan proposed County Plan inclusion of the maximum operating capacity for the MCMUA TS/MRF in the Township of Mount Olive as 650 tpd of solid waste. This amendment was certified as approved by the Department on October 17, 1994.

A request for administrative action to the County Plan dated January 3, 2001 and approved by the Department on January 11, 2001 proposed County Plan inclusion of the utilization of weekly averaging at the MCMUA TS/MRF in the Township of Mount Olive in the County Plan. As a result, the subject facility was included in the County Plan to receive a maximum daily capacity of 975 tons of solid waste and a weekly capacity not to exceed 3,900 tons of solid waste.

A request for administrative action to the County Plan received on August 11, 2004 and approved by the Department on August 19, 2004 approved County Plan inclusion of a capacity increase of 100 tpd at the MCMUA TS/MRF in the Township of Mount Olive, bringing the average daily capacity to 750 tons and maximum weekly capacity to 4,500 tons.

An amendment to the County Plan adopted by the Morris County Board of Chosen Freeholders on December 21, 2004 included a capacity expansion at the MCMUA TS/MRF in the Township of Mount Olive. Specifically, the December 21, 2004 amendment to the County Plan proposed County Plan inclusion of an increase in the capacity of the subject facility to 1,500 tpd of solid waste. This amendment was certified as approved by the Department on May 13, 2005.

On March 4, 2005, the Department received a letter from the MCMUA clarifying that the previous block and lot designation of the MCMUA TS/MRF in the Township of Mount Olive, Block 14, Lot 1 currently corresponds to Block 4500, Lot 5.

Lastly, on April 11, 2007, the Morris County Board of Chosen Freeholders adopted an amendment to its County Plan, which proposed County Plan inclusion of, amongst other things, the MCMUA TS/MRF, located on Block 4500, Lot 5 at 168 Gold Mine Road in the Township of Mount Olive. This County Plan amendment included the subject facility in the County Plan to accept up to 1,500 tpd of solid waste types 10, 13, 13C, 23, 25, and 27 from 7:00 am – 4:30 pm, Monday through Friday and 7:00 am – 1:00 pm, Saturday.

Element: MCMUA TS/MRFs Solid Waste Facility Permit (SWF) Conditions

As noted above, the Department circulated copies of the February 13, 2013 amendment to the County Plan to various administrative review agencies. In response to this request for comment, the Department's Bureau of Transfer Stations and Recycling Facilities commented as follows:

- 1) It is noted on Page 3 of the plan amendment under the “Operations of the Transfer Stations,” that there is provision in the contract by and between the MCMUA and Mascaro for an incentive for the operator to separate and market recovered recyclable materials. There are four accompanying requirements that require compliance by the operator. Please be aware that the only materials that can be recovered from the solid waste stream at the MCMUA’s Mt. Olive TS/MRF and Parsippany-Troy Hills TS/MRF are ferrous metals and tires, respectively, as approved within the SWF Permits for each facility (refer to Permit Requirement No. 47 of each of the two SWF Permits). Be advised that if the operator intends to recover any additional materials other than those approved within the respective SWF Permits, the MCMUAA is required to submit SWF Permit modifications and receive approvals prior to the operator initiating any additional recovery of recyclable materials.

- 2) Finally, please refer to Requirement No. 39 of the MCMUA’s Parsippany Troy-Hills TS/MRF SWF Permit and Requirement No. 40 of the MCMUA’s Mt. Olive TS/MRF SWF Permit which identifies the waste types that each facility is authorized to accept and those materials that are prohibited for acceptance. The operator (Mascaro) should be aware that Class A, Class B, Class C, and Class D materials separated at the point of generation cannot be accepted at these two facilities.

Element: County Plan Inclusion of Regulatory Flow Control Over Solid Waste Types 10, 13, 13C, 23, 25, and 27

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. den., November 10, 1997)], the Morris County Board of Chosen Freeholders have adopted a solid waste disposal strategy of implementing regulatory flow control of solid waste based upon non-discriminatory procurement processes.

On December 9, 1997, the MCMUA submitted a request for administrative action to the County Plan which petitioned the Department to reaffirm the solid waste disposal system in place in the County. That system included the MCMUA’s November 7, 1997 contract with MCTS for the operations of the two TS/MRFs and transportation of the resulting solid waste at out-of-state landfill facilities and a January 6, 1993 contract by and between the MCMUA and Waste Management of Pennsylvania, Inc. for use of their out-of-state landfill facilities. The Department approved this request for administrative action on January 9, 1998 after determining that the County sufficiently demonstrated that the procurement processes for the above noted contracts were consistent with the criteria set forth in the Atlantic Coast decision.

On July 24, 2002, the Morris County Board of Chosen Freeholders adopted an amendment to the County Plan, which proposed County Plan inclusion of, amongst other things, the terms and conditions of the Waste Management of New Jersey, Inc. bid dated April 9, 2002, which provided for the operation of the two MCMUA TS/MRFs and transportation and disposal of the residual solid waste to out-of-state disposal facilities. This amendment was certified as approved by the Department on December 20, 2002.

On April 9, 2008, the Morris County Board of Chosen Freeholders adopted an amendment to the County Plan, which proposed County Plan inclusion of:

- Waste Management of New Jersey, Inc. as the operator of the two MCMUA TS/MRFs, located in the Townships of Parsippany-Troy Hills and Mount Olive, respectively, for a period of five years beginning on January 27, 2008, based on an open and non-discriminatory procurement;
- Four solid waste transporters for the transportation of residual solid waste from the two MCMUA TS/MRFs to the ultimate disposal facilities for this solid waste; and,
- Six out-of-state disposal facilities as the ultimate disposal facilities for the residual solid waste received at the two MCMUA TS/MRFs.

This amendment to the County Plan was certified as approved by the Department on August 5, 2008.

Lastly, on February 13, 2013, the County Freeholders adopted an amendment to the County Plan, which proposes County Plan inclusion of:

- The contract by and between the MCMUA and Mascaro for the combined operations of the two MCMUA TS/MRFs and the transportation and disposal of all solid waste received at the two MCMUA TS/MRFs, for a period of up to five years beginning on January 28, 2013, based on an open and non-discriminatory procurement; and,
- Three out-of-state landfills as the ultimate disposal facilities for the residual solid waste received at the two above noted MCMUA TS/MRFs.

Element: Non-Discriminatory Procurement Process

On July 9, 2012, the MCMUA advertised the issuance of bid specifications calling for receipt of bids on September 13, 2012 for three alternative options for the combined operation of the MCMUA's two TS/MRFs and transportation and disposal of all solid waste received at the subject TS/MRFs in The Daily Record, the Star-Ledger, and Waste & Recycling News. Therefore, this procurement process was open to all bidders, regardless of geographical location. The MCMUA received eight bids. Mascaro was determined by the MCMUA and their technical and legal counsels to be the lowest bidder fully in compliance with the subject bid specifications, bidding \$67.19 per ton for the

combined operation of the MCMUA's two TS/MRFs and transportation and disposal of all solid waste received at the subject TS/MRFs for each year of the contract.

C. Certification of the Morris 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 13, 2013 amendment to the approved County Plan and certify to the County Freeholders that the February 13, 2013 amendment is approved as further specified below.

The February 13, 2013 amendment proposing County Plan inclusion of:

- The contract by and between the MCMUA and Mascaro for the combined operations of the two MCMUA TS/MRFs and the transportation and disposal of all solid waste received at the two MCMUA TS/MRFs, for a period of up to five years beginning on January 28, 2013, based on an open and non-discriminatory procurement; and,
- Three out-of-state landfills as the ultimate disposal facilities for the residual solid waste received at the two above noted MCMUA TS/MRFs 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 District 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 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 Morris County District Solid Waste Management Plan which was adopted by the Morris County Board of Chosen Freeholders on February 13, 2013.

July 19, 2013

Date

Bob Martin, Commissioner
Department of Environmental Protection