

*This is a copy of the June 5, 2000 Administrative Action for the UNION COUNTY UTILITY
AUTHORITY signed by Guy Watson on July 13, 2000.*

Division of Solid and Hazardous Waste

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July 13, 2000

Joseph Spatola, Director
Union County Utilities Authority
1499 Routes 1&9 North
Rahway, New Jersey 07065

Dear Mr. Spatola:

On June 5, 2000, the Department of Environmental Protection's (DEP or Department) Division of Solid and Hazardous Waste received a request for administrative action dated May 31, 2000 which was in furtherance of a previous request for administrative action issued by the Union County Utilities Authority (UCUA) on March 20, 2000. By letter dated May 1, 2000, the DEP remanded to the UCUA this earlier March 20, 2000 request for administrative action citing concerns submitted by the Hackensack Meadowlands Development Commission (HMDC) with respect to its contractual obligations with the UCUA under the HMDC Bulky Waste Recycling Facility Services Agreement and the HMDC Industrial Waste Recycling Facility Services Agreement (collectively the HMDC Agreements).

Specifically, on March 22, 2000 the Department had received UCUA Resolution No. 17-00 adopted on February 23, 2000 which authorized by administrative action DEP permitted materials recovery facilities that enter into agreements with the UCUA to accept and recycle specific waste types provided all residue generated therefrom is delivered to certain Hackensack Meadowlands Development Commission (HMDC) facilities.

Pursuant to a March 11, 1999 amendment and a June 16, 1999 administrative action (collectively "the March 1999 Amendment") approved by the Department on June 1, 1999 and June 29, 1999, respectively, all solid waste types 13 (including 13C), 23 and 27 (collectively "the regulated waste") generated from within Union County are directed to the HMDC materials recovery facility for recycling and to the HMDC's 1E North Area Landfill (collectively "the HMDC facilities") for disposal of all residue after recycling. The HMDC Agreements require the HMDC to recycle a minimum of 40% of all waste directed to its materials recovery facility with a monetary penalty assessed for each ton of waste processed which is not recycled at that rate.

The UCUA determined that it is desirable to supplement the March 1999 amendment to allow private DEP permitted materials recovery facilities to accept the regulated waste provided that such materials recovery facilities enter into contracts with the UCUA wherein such facilities agree to deliver all residue remaining after recycling of regulated waste to the HMDC facilities. After receipt of Resolution No. 17-00, the Department received a copy of a March 9, 2000 letter from the HMDC to counsel for the UCUA expressing some concern that this new policy may affect its contracts with the UCUA. Therefore, in an administrative action dated May 1, 2000, the Department remanded to the

UCUA the earlier March 20, 2000 administrative action request for resolution of contractual obligations between the UCUA and the HMDC. The May 1, 2000 administrative action noted that upon resolution, the DEP would reconsider a UCUA issued administrative action to allow DEP permitted materials recovery facilities that enter into agreements with the UCUA to accept and recycle the regulated waste provided all residue generated therefrom is delivered to certain HMDC facilities.

On May 17, 2000 the UCUA adopted Resolution No. 33-00 which provides for the UCUA's waiver of any and all claims for contract penalties under the HMDC Agreements for any instances occurring between July 12, 1999 to the date of the Resolution in which the HMDC has failed to satisfy the established recycling goals of the HMDC Agreements.

The May 31, 2000 UCUA request for administrative action, in addition to requesting administrative action approval of Resolution No. 33-00, also reiterates the request for DEP approval of the policy (described within Resolution No. 17-00) which authorizes DEP permitted materials recovery facilities that enter into agreements with the UCUA to accept and recycle specific waste types provided all residue generated therefrom is delivered to HMDC facilities. Further, to the extent that the HMDC continues to receive regulated waste directly from waste generators and that waste is not subject to prior materials recovery efforts by contracting MRFs, the HMDC will attempt to recycle this incoming regulated waste although there will be no established recycling goals. By letter dated July 12, 2000 to the UCUA, the HMDC concurs with this revised recycling policy.

Pursuant to N.J.A.C. 7:26-6.11(b)10., the Department considers the May 31, 2000 request to approve UCUA Resolution No. 17-00 to constitute an acceptable administrative action. Therefore, this request is hereby approved as an administrative action pursuant to N.J.A.C. 7:26-6.11(f).

However, the Department does not consider the May 31, 2000 administrative action request to approve Resolution No. 33-00 to constitute an acceptable administrative action (except to the extent that it reiterates the request to approve Resolution No. 17-00 which has been granted). The waiver of any and all claims for contract penalties under the HMDC Agreements for failure to achieve established recycling rates is strictly a contractual matter between two signatory parties to a contract and it is not appropriate for the DEP to approve of same within the context of the administrative action process identified at N.J.A.C. 7:26-6.11. Furthermore, the Department reminds the UCUA of their continuing obligation to achieve statutorily mandated recycling goals. Therefore, the Department will not act upon the request of the UCUA to approve Resolution No. 33-00 as an administrative action.

If you have any questions relative to this matter, please contact me at (609) 984-3438.

Sincerely,

Guy Watson, Chief
Bureau of Recycling and Planning