

**IN THE MATTER OF CERTAIN AMENDMENTS  
TO THE ADOPTED AND APPROVED SOLID  
WASTE MANAGEMENT PLAN OF THE  
UNION COUNTY SOLID WASTE  
MANAGEMENT DISTRICT**

**CERTIFICATION  
OF THE JUNE 21, 2007  
AMENDMENT TO THE UNION COUNTY 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 or NJMC) develop comprehensive plans for waste management in their respective districts. On August 13, 1980, the Department of Environmental Protection (Department or DEP) approved the Union County District Solid Waste Management Plan (County Plan).

The Act requires that all district plans be based on and accompanied by a report detailing the existing waste disposal situation in the district, and a plan which includes the strategy to be followed by the district in meeting the solid waste management needs of the district for a ten-year planning period. The report must detail the current and projected waste generation for the district, inventory and appraise all facilities in the district, and analyze the waste collection and transportation systems that serve the district. The disposal strategy must include the maximum practicable use of resource recovery techniques. In addition to this strategy, the plan must designate sufficient available suitable sites for the disposal of the district's waste for a ten-year period.

The Act further provides that a district may review its District Plan at any time and, if found inadequate, a new District Plan must be adopted. The Union County Board of Chosen Freeholders (County Freeholders) completed such a review and on June 21, 2007 adopted an amendment to its approved County Plan. The June 21, 2007 amendment proposes County Plan inclusion of:

- 1) the New Jersey Meadowlands Commission (NJMC) 1-E Landfill, located on Block 149, Lot 10 in the Town of Kearny and Lot 1 of Blocks 175-178, 180-183, 185-189 in the Borough of North Arlington as the County's designated facility to which solid waste types 13, 13C, 23, and 27 are directed;
- 2) the interlocal solid waste services agreement by and between the Union County Utilities Authority (UCUA) and the NJMC for solid waste disposal services of solid waste types 13, 13C, 23, and 27 generated within the County; and
- 3) the direction, via regulatory flow control, of solid waste types 13, 13C, 23, and 27 generated within the County to the NJMC 1-E Landfill in the Town of Kearny and Borough of North Arlington.

The amendment was considered administratively complete for review by the Department on June 26, 2007. The Department has reviewed this amendment, and has determined that the amendment adopted by the County Freeholders on June 21, 2007 is approved, with modifications, as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the June 21, 2007 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 June 21, 2007 amendment, which are included below.

In conjunction with the review of the amendment, the Department circulated copies to sixteen administrative review agencies and solicited their review and comment. Pursuant to N.J.S.A. 13:1E-24a(2) and (3), these agencies included various bureaus, divisions, and agencies within the Department. All agencies contacted are as follows:

Division of Water Quality, DEP  
 Division of Parks and Forestry, DEP  
 Division of Fish and Wildlife, DEP  
 Division of Compliance and Enforcement, DEP  
 Division of Solid and Hazardous Waste, DEP  
 Office of Air Quality Management, DEP  
 Green Acres Program, DEP  
 Land Use Regulation Element, DEP  
 New Jersey Turnpike Authority  
 New Jersey Advisory Council on Solid Waste Management  
 Office of Local Environmental Management  
 Department of Agriculture  
 Department of Health and Senior Services  
 Department of Transportation  
 Department of Community Affairs

U.S. Environmental Protection Agency  
**Elements of the June 21, 2007 Amendment**

**Element: Facility History**

**NJMC 1-E Landfill**

The June 21, 2007 amendment to the County Plan seeks to include the New Jersey Meadowlands Commission (NJMC) 1-E Landfill, located on Block 149, Lot 10 in the Town of Kearny and Lot 1 of Blocks 175-178, 180-183, 185-189 in the Borough of North Arlington as the County's designated facility to which solid waste types 13, 13C, 23, and 27 are directed. Pursuant to the Revised Temporary Certificate of Authority to Operate for the NJMC 1-E Landfill, the facility is permitted to receive solid waste types 13, 13C, and 27.

**Element: County Plan Inclusion of Interlocal Solid Waste Services By and Between the UCUA and NJMC For Solid Waste**

The Interlocal Solid Waste Services Agreement by and between the UCUA and NJMC would provide for a maximum of eighteen months of disposal services for solid waste types 13, 13C, 23, and 27 at a rate of \$60 per ton. The subject Agreement notes that the UCUA shall have the right to terminate the Agreement if:

- 1) a change in law or determination by a court of competent jurisdiction that limits the rights of the UCUA or the NJMC to perform their respective obligations under the Agreement;
- 2) a determination is rendered by a court of competent jurisdiction in the Waste Management of New Jersey v. Union County Utilities Authority suit, which would permit the UCUA to implement its contract award to Delaware and Hudson Railway Company, Inc. ((D&HRC) d/b/a/ Canadian Pacific Railway, if and once all necessary approvals are obtained from the Department; or
- 3) a determination is rendered by a court of competent jurisdiction in the Waste Management of New Jersey v. Union County Utilities Authority suit requiring that the UCUA reprocur solid waste disposal services for the subject waste types in accordance with the Local Public Contracts Law, if and once all necessary approvals are obtained from the Department.

Lastly, the contract refers to the NJMC 1-E Landfill and also "Landfill facilities". Although the NJMC plans to eventually dispose of non-putrescible solid wastes at the Keegan Landfill in the Town of Kearny, beginning in 2009, this site must obtain all applicable permits from the Department prior to operation.

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

On September 25, 2006, the UCUA issued bid specifications calling for receipt of bids on October 20, 2006 for the provision of disposal services for solid waste types 13, 13C, 23, and 27 generated within Union County. The request for bids was advertised locally in The Home News & Tribune, throughout New Jersey utilizing The Star Ledger, regionally in The Philadelphia Enquirer, and nationally in Waste News. Therefore, this procurement process was open to all bidders, regardless of geographical location. The UCUA received six bids. The County determined that D&HRC was the lowest complying and responsible bidder.

On May 25, 2007, New Jersey Superior Court Judge Honorable Marianne Espinosa ruled in Waste Management of New Jersey v. Union County Utilities Authority, Docket No. UNN-L-4449-06, that the UCUA, for several reasons, was permanently enjoined from implementing the subject contract with D&HRC. As the UCUA's current contract for disposal services for solid waste types 13, 13C, 23, and 27 generated within the County is set to expire on June 30, 2007, the UCUA thus had only five weeks to put a system in place to provide for the disposal of the subject waste types generated within the County.

As a result, the UCUA elected to negotiate with the NJMC, pursuant to an exception to public bidding under the Local Public Contracts Law, specifically at N.J.S.A. 40A:11-5(2), to secure disposal for solid waste types 13, 13C, 23, and 27 on an interim basis during the pendency of the County's and D&HRC's appeal of the above noted decision to the New Jersey Appellate Division. This approach is consistent with the recent United States Supreme Court ruling in United Haulers Ass'n, Inc. v. Oneida Herkimer Solid Waste Management Authority, U.S. , \_ U.S. \_, 127 S.Ct. 1786, 167 L.Ed.2d 655 (2007) which held that waste flow direction to a publicly-owned facility, especially when significant public benefit would be accomplished, would not be unconstitutional.

Based on the fact that, in light of the timing of Judge Espinosa's ruling, the County had little time to make other arrangements for disposal of county waste; that the NJMC is a public agency; that significant public benefits, including, but not necessarily limited to, a cheaper disposal rate and continued collection of monies needed to pay back outstanding solid waste facility debt will result from implementation of the interim contract with the NJMC, I find this overall approach to be a reasonable approach to a difficult situation, and consistent with the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

**Element: Long-Term Disposal of County's Type 13, 13C, 23, and 27 Solid Waste**

The term of the subject interlocal solid waste services agreement is eighteen months. Pursuant to N.J.S.A. 13:1E-21, every District's solid waste management plan shall include sufficient available suitable sites to provide solid waste facilities to treat and dispose of the actual and projected amounts of solid waste generated within that District over a 10-year period. Therefore, Union County shall submit to the Department a plan amendment specifying the arrangements the

County has made for the long-term disposal of the solid waste types 13, 23 (non-recycled portion), and 27 (non-processible portion), not less than six months prior to the termination of the subject contract.

**C. Certification of the Union 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 June 21, 2007 amendment to the approved County Plan and certify to the County Freeholders that the June 21, 2007 amendment is approved, with modifications.

The County Plan inclusion of:

- 1) the New Jersey Meadowlands Commission (NJMC) 1-E Landfill, located on Block 149, Lot 10 in the Town of Kearny and Lot 1 of Blocks 175-178, 180-183, 185-189 in the Borough of North Arlington as the County's designated facility to which solid waste types 13, 13C, and 27 are directed;
- 2) the interlocal solid waste services agreement by and between the Union County Utilities Authority (UCUA) and the NJMC for solid waste disposal services of solid waste types 13, 13C, and 27 generated within the County; and
- 3) the direction, via regulatory flow control, of solid waste types 13, 13C, and 27 generated within the County to the NJMC 1-E Landfill in the Town of Kearny and Borough of North Arlington are approved.

All references to solid waste type 23 in the June 21, 2007 amendment to the County Plan are hereby eliminated and this waste type shall be disposed of through an open market until the County submits a plan amendment, pursuant to N.J.A.C. 7:26-6.10 which provides for some other system of disposal. It should also be noted that, according to records of the Department for calendar year 2006, solid waste type 23 represents less than seven per cent, by weight, of the waste streams that are the subject of this amendment. Additionally, ninety seven percent of the total of the reported waste type 23 sent for disposal originated in the Cities of Linden and Plainfield and the Township of Union. Inasmuch as this waste type is generally highly recyclable, and the current Union County municipal solid waste recycling rate is approximately 26%, well below the statutory goal of 50%, a great priority should be placed on the recycling of the material components of solid waste type 23.

This certification shall not be construed as an expression of the DEP's intent to issue a solid waste facility permit or permit modification for any proposed facility or operation.

**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. Types of Solid Wastes Covered by the County Plan**

The provisions of the County Plan shall apply to all solid wastes defined in N.J.S.A. 13:1E-3 and N.J.A.C. 7:26-2.13 including waste types 10, 13, 23, 25, and 27 and all applicable subcategories and shall not apply to liquid and hazardous wastes. All nonhazardous materials separated at the point of generation for sale or reuse are subject to regulation in accordance with N.J.A.C. 7:26A-1 et seq.

## **4. 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.

## **5. 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.

## **6. Effective Date of Amendment**

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

**7. 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 certify the amendment as outlined in Section C. of this certification, to the Union County District Solid Waste Management Plan which was adopted by the Union County Board of Chosen Freeholders on June 21, 2007.

June 29, 2007

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Date

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Lisa P. Jackson, Commissioner  
Department of Environmental Protection