

**CERTIFICATION
OF THE APRIL 28, 2009
AMENDMENT TO THE HUDSON 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 27, 1982, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Hudson 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 Hudson County Board of Chosen Freeholders (County Freeholders) completed such a review and on April 23, 2009 adopted an amendment to its approved County Plan. Said amendment was approved by the Hudson County Executive on April 28, 2009.

The April 28, 2009 amendment proposes County Plan inclusion of the:

- Advanced Enterprises Recycling, Inc. (AER) Transfer Station/Materials Recovery Facility (TS/MRF), located in the City of Newark, as the designated disposal facility for solid waste types 10 and 25 generated within the County;
- New Jersey Meadowlands Commission (NJMC) Keegan Landfill, located in the Town of Kearny, as the designated disposal facility for all grits and screenings and solid waste types 13, 13C, 23, 27, and 27A generated within the County;
- Contract by and between the Hudson County Improvement Authority (HCIA) and AER for the disposal of solid waste types 10 and 25 generated within the County; and

- The Interlocal Solid Waste Disposal Services Agreement by and between the HCIA and NJMC for the disposal of all grits and screenings and solid waste types 13, 13C, 23, 27, and 27A generated within the County.

The amendment was considered administratively complete for review by the Department on May 20, 2009 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 23, 2009 and approved by the Hudson County Executive on April 28, 2009 is approved with modification as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the April 28, 2009 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 28, 2009 amendment which are included below.

Elements of the April 28, 2009 Amendment

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 Hudson County Freeholders adopted a County Plan amendment on November 13, 1997, which included the County's revised solid waste disposal strategy. The certification of this amendment by the Department on December 30, 1997 approved County Plan inclusion of the strategy of implementing regulatory flow control of solid waste based upon a nondiscriminatory procurement process. Until this process could be completed, the certification of the November 13, 1997 amendment directed the delivery of solid waste to the SWT&R Transfer Station (TS), located in the City of Newark.

In a February 11, 1998 amendment to the County Plan, the County proposed a strategy of implementing regulatory flow control based upon the completion of nondiscriminatory procured solid waste disposal services. This amendment, certified by the Department on May 27, 1998, directed the flow of all solid waste generated within Hudson County to the SWT&R TS.

Further, in a March 11, 1999 amendment to the County Plan, certified as approved by the Department on June 8, 1999, the County proposed County Plan inclusion of the following waste flows based upon the completion of non-discriminatory bid contracts:

- Solid waste types 13, 23, 27, 27A, and grits and screenings to the NJMC 1-E North Area Landfill, located in the Borough of North Arlington;
- Up to 100,000 tons per year of solid waste types 10 and 25 to the Union County Resource Recovery Facility, located in the City of Rahway; and
- Up to 300,000 tons per year of waste types 10 and 25 to the SWT&R TS for processing and transfer and transport to the Grand Central Landfill, located in Pen Argyl, Pennsylvania.

A July 8, 2004 amendment to the County Plan proposed County Plan inclusion of regulatory flow control over solid waste types 10 and 25 pursuant to a non-discriminatory procurement, and to include the SWT&R TS as the County's designated facility to which all solid waste types 10 and 25 generated within Hudson County were directed. The amendment also proposed County Plan inclusion of the NJMC Erie Landfill, located in the Borough of North Arlington, as the designated facility for disposal of all solid waste types 13, 13C, 23, and 27 (including 27A) and grits and screenings generated within Hudson County. This amendment was certified as approved by the Department on January 30, 2005.

On April 23, 2009, the County Board of Chosen Freeholders adopted an amendment to the County Plan, which proposed County Plan inclusion of the:

- AER TS/MRF, located in the City of Newark, as the designated disposal facility for solid waste types 10 and 25 generated within the County;
- NJMC Keegan Landfill, located in the Town of Kearny, as the designated disposal facility for all grits and screenings and solid waste types 13, 13C, 23, 27, and 27A generated within the County;
- Contract by and between the Hudson County Improvement Authority (HCIA) and AER for the disposal of solid waste types 10 and 25 generated within the County; and
- The Interlocal Solid Waste Disposal Services Agreement by and between the HCIA and NJMC for the disposal of all grits and screenings and solid waste types 13, 13C, 23, 27, and 27A generated within the County.

This amendment to the County Plan was approved by the County Executive on April 28, 2009.

Element: Facilities' Histories

Advanced Enterprises Recovery, Inc. TS/MRF

On October 2, 2002, the Essex County Board of Chosen Freeholders adopted an amendment to the Essex County Plan proposing Essex County Plan inclusion of the AER TS/MRF, located on Block 5070, Lots 25 (part), 41, and 43 in the City of Newark, for the acceptance of a maximum of 2,000 tons per day (tpd) of solid waste types 10, 13, 13C, 23, and 27. This amendment was certified as approved by the Department on March 18, 2004.

Keegan Landfill

On May 27, 1992, the Commissioners of the Hackensack Meadowlands Development Commission (now known as the New Jersey Meadowlands Commission or NJMC) adopted an amendment to their District Solid Waste Management Plan (NJMC District Plan) to include a proposed landfill for non-processible solid waste to be located at the former Keegan Landfill on Block 205, Lots 18, 19, 24, 27, and 28-33 in the Town of Kearny, Hudson County. This amendment to the District Plan was certified as approved by the Department on December 2, 1992.

On November 28, 2006, the Commissioners of the NJMC adopted a District Plan amendment which proposed District Plan inclusion of, amongst other things, the Keegan Landfill, located on Block 205, Lots 18, 19.02, 24, 27-33 off of Bergen Avenue in the Town of Kearny to accept up to 3,000 tpd of solid waste types 13, 13C, 23, and 27. The November 28, 2006 District Plan amendment proposed District Plan inclusion of the facility's operating hours as 6:00 am – 4:00 pm, Monday through Friday and 6:00 am – 1:00 pm, Saturday. The November 28, 2006 District Plan amendment also noted that the height of the Keegan Landfill will be limited to 60 feet above mean sea level. This amendment to the District Plan was certified as approved by the Commissioner on April 10, 2007.

Lastly, on October 6, 2008, the Department approved a request for administrative action to the District Plan dated October 1, 2008. This request for administrative action to the District Plan proposed to amend the District Plan to reflect a change in the operating hours for the Keegan Landfill from as 6:00 am – 4:00 pm, Monday through Friday and 6:00 am – 1:00 pm, Saturday to 6:00 am – 4:00 pm, Monday through Friday and 6:00 am – 1:30 pm, Saturday.

Element: Non-Discriminatory Procurement Process

On October 27, 2008, the HCIA issued bid specifications calling for receipt of bids on December 4, 2008 for the provision of transfer, transportation, and/or disposal of processible waste generated within Hudson County. The request for bids was advertised locally and throughout New Jersey in The Star Ledger and nationally in Waste News. Therefore, this procurement process was open to all bidders, regardless of geographical location. As a result, the HCIA received four bids. AER was determined by the HCIA to be the lowest responsible bidder, bidding \$67.00, \$69.00, \$70.50, \$71.50, and \$72.00 per ton, respectively for all-inclusive disposal services for a five-year term beginning on July 19, 2009 and ending on June 30, 2014.

Element: Direction of Solid Waste Types 13, 13C, 23, and 27 to the Keegan Landfill

The NJMC is a public body corporate and politic of the State of New Jersey, whose statutory functions include providing for the reclamation and redevelopment of land within the 30.4 square mile Meadowlands District, N.J.S.A. 13:17-6(j), and providing facilities for the disposal of solid waste, N.J.S.A. 13:17-10; N.J.S.A. 13:17-6(w). The NJMC, along with the Town of Kearny, owns the land occupied by the Keegan Landfill, which is located in the Town of Kearny and within the Meadowlands District. The NJMC is the entity responsible for the operation of

the Keegan Landfill, currently through a Temporary Certificate of Authority to Operate and ultimately through a Solid Waste Facility Permit issued and to be issued by the Department, respectively. The subject Interlocal Solid Waste Services Agreement by and between the HCIA and NJMC is for a five-year term beginning on January 1, 2009 and expiring on January 1, 2014. It provides for the direction of all grits and screenings and solid waste types 13, 13C, 23, and 27 generated within Hudson County to the publicly owned and operated Keegan Landfill.

Direction of the above-described solid waste to the Keegan Landfill is consistent with the conclusion of the U.S. Supreme Court in United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Management Authority, 550 U.S. 330, 127 S. Ct. 1786, 1797 (2007). On April 30, 2007, Chief Justice Roberts of the U.S. Supreme Court, writing for the majority, concluded that the Oneida-Herkimer Solid Waste Management Authority's flow control ordinance, which directed solid waste to a publicly-owned and operated landfill, did not discriminate against interstate commerce because it treated in-state private business interests exactly the same as out-of-state ones. The decision also recognized the traditional role of government in the provision of solid waste disposal services.

Element: Disposal of Solid Waste Type 27A

During the review phase of the planning process, the Department's Bureau of Landfill and Hazardous Waste Permitting noted that the Keegan Landfill is not permitted to accept solid waste type 27A. ID 27A waste is defined as waste material consisting of asbestos or asbestos containing waste at N.J.A.C. 7:26-2.13(g). Therefore, Hudson County solid waste type 27A will remain free market (allowed to be taken to any disposal facility authorized to accept such waste) until the NJMC receives a modification to its Solid Waste Facility Permit from the Department allowing the acceptance of type 27A waste or other non-discriminatorily procurement processes are undertaken by the County and approved by the Department.

Element: Disposal of Grits and Screenings

Although the NJMC Keegan Landfill is permitted to accept grits and screenings, representatives of the NJMC have expressed their desire not to have the entirety of this material generated within Hudson County directed to the Keegan Landfill. In addition, grits and screenings are not listed as "acceptable waste" in the subject Interlocal Solid Waste Services Agreement by and between the HCIA and NJMC. Therefore, grits and screenings generated within Hudson County will remain free market.

C. Certification of the Hudson 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 28, 2009 amendment to the approved County Plan and certify to the County Freeholders that the April 28, 2009 amendment is approved as further specified below.

The County Plan inclusion of the:

- AER TS/MRF, located in the City of Newark, as the designated disposal facility for solid waste types 10 and 25 generated within the County;
- NJMC Keegan Landfill, located in the Town of Kearny, as the designated disposal facility for all grits and screenings and solid waste types 13, 13C, 23, 27, and 27A generated within the County;
- Contract by and between the Hudson County Improvement Authority (HCIA) and AER for the disposal of solid waste types 10 and 25 generated within the County; and
- The Interlocal Solid Waste Disposal Services Agreement by and between the HCIA and NJMC for the disposal of all grits and screenings and solid waste types 13, 13C, 23, 27, and 27A generated within the County is approved with modification.

Specifically, all of the above aspects are approved, with the exception that all references to grits and screenings and solid waste type 27A are hereby eliminated from the above noted solid waste flow direction.

D. Other Provisions Affecting the Plan Amendment

1. 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.

2. 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.

3. 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.

4. Effective Date of Amendment

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

effect immediately.

5. 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 the amendment with modification, as outlined in Section C. of this certification, to the Hudson County District Solid Waste Management Plan, which was adopted by the Hudson County Board of Chosen Freeholders on April 23, 2009 and approved by the Hudson County Executive on April 28, 2009.

July 15, 2009

Date

Mark N. Mauriello, Acting Commissioner
Department of Environmental Protection