

**CERTIFICATION
OF THE SEPTEMBER 14, 2010
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 September 8, 2010 adopted an amendment to its approved County Plan. Said amendment was approved by the Hudson County Executive on September 14, 2010.

The September 14, 2010 amendment to the County Plan proposes County Plan inclusion of a staged capacity increase at the Veolia ES Solid Waste of New Jersey, Inc. (Veolia) Transfer Station/Materials Recovery Facility (TS/MRF) located on Block 1602, Lots 11-26 and Block 1603, Lots 37-59 at 264 Broadway in the City of Jersey City. Specifically, the September 14, 2010 amendment to the County Plan proposes increasing the capacity of the subject facility from 375 tons per day (tpd) to 900 tpd of solid waste types 10, 13, 13C, 23, and 27.

The amendment was considered administratively complete for review by the Department on November 10, 2010 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 September 8, 2010 and approved by the Hudson County Executive on September 14, 2010 is approved in part and

remanded in part 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 September 14, 2010 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 September 14, 2010 amendment which are included below.

Elements of the September 14, 2010 Amendment

Element: Facility History and Operations

On August 10, 1989, the Hudson County Board of Chosen Freeholders adopted an amendment to the County Plan to include, amongst other things, the Robros Recycling Corporation (Robros) Transfer Station (TS), located on Block 1602, Lots 11-26 and Block 1603, Lots 37-59 in the City of Jersey City in the Hudson County District Solid Waste Management Plan (County Plan). The August 10, 1989 amendment to the County Plan did not identify a capacity or the acceptable solid waste types for acceptance at the Robros TS. This amendment to the County Plan was certified as approved, with modification, by the Department on January 26, 1990.

On January 31, 2000, the Department approved a request for administrative action to the County Plan. This administrative action amended the County Plan to include the following:

- The change of the name and ownership of the Robros TS to Eastern Waste Services, Inc.;
- The designation of the facility as a TS/MRF;
- A maximum capacity of 375 tpd of solid waste; and
- The acceptable solid waste types as types 10, 13, 13C, 23, and 27.

On February 13, 2007, the Department approved a request for administrative action to the County Plan dated February 6, 2007 to reflect a name change of the Onyx Waste Services, Inc. TS/MRF to the Veolia TS/MRF. This request for administrative action to the County Plan identified the subject facility's street address as 264 Broadway in the City of Jersey City.

An amendment to the County Plan adopted by the Hudson County Board of Chosen Freeholders on August 9, 2007 proposed, amongst other things, reaffirmation of County Plan inclusion of the Veolia TS/MRF, as being located on Block 1602, Lots 11-26 and Block 1603, Lots 37-59 at 264 Broadway in the City of Jersey City to accept up to 375 tpd of solid waste types 10, 13, 13C, 23, and 27. This portion of the County Plan amendment was certified as approved by the Department on February 4, 2008.

The September 14, 2010 amendment to the County Plan is proposing County Plan inclusion of a

staged increase in the capacity of the subject facility from 375 tpd to 900 tpd of solid waste types 10, 13, 13C, 23, and 27.

Element: Agreement By and Between the Hudson County Improvement Authority (HCIA) and Veolia

An Agreement by and between the HCIA and Veolia was executed on September 13, 2010. The Agreement outlines, amongst other things, specific terms between the HCIA and Veolia regarding the proposed expansion of the Veolia TS/MRF located in the City of Jersey City.

Section 5 of the Agreement reads that "[u]pon receipt of all necessary approvals required by applicable law for the increase in capacity, Veolia shall be entitled to operate the Facility at a daily tonnage of 550 [TPD] upon the passing of forty-five...days from the date of notice from Veolia of its intention to increase the daily tonnage capacity" to the HCIA, Hudson County, and the City of Jersey City. The Agreement goes on to read that Veolia must operate at a capacity "of at least 500 tpd on a regular basis" for a minimum of four months from the date that the incoming tonnage of solid waste is permitted to increase from 375 tpd to allow the HCIA, Hudson County, and the City of Jersey City sufficient opportunity to assess the full potential impacts of further expansion. This assessment shall include a community meeting no less than sixty days after the daily tonnage reaches 500 tons on a regular basis to discuss any issues related to the capacity increase.

The Agreement goes on to read that should the HCIA, Hudson County, and the City of Jersey City be satisfied with Veolia's operation during said four-month period that Veolia shall then be entitled to seek an additional increase up to 725 tpd upon the passing of forty-five days from the date of notice from Veolia to the HCIA, Hudson County, and the City of Jersey City Veolia of its intention to increase the daily tonnage capacity. The Agreement goes on to read that Veolia must operate at a capacity "of at least 700 tpd on a regular basis" for a minimum of four months from the date that the incoming tonnage of solid waste is permitted to increase from 500 tpd to allow the HCIA, Hudson County, and the City of Jersey City sufficient opportunity to assess the full potential impacts of further expansion. Prior to Veolia receiving authorization from the HCIA to further increase its capacity, a community meeting will be conducted to discuss any issues related to the capacity increase.

The Agreement continues that should the HCIA, Hudson County, and the City of Jersey City be satisfied with Veolia's operation of the subject facility during said four-month period, Veolia shall be entitled to increase its daily capacity to 900 tons of solid waste upon the passing of forty-five days from the date of notice from Veolia to the HCIA, Hudson County, and the City of Jersey City.

The Department has several concerns with the subject Agreement. Firstly, Section 4 of the Agreement reads that any material deviation from the representations contained in Veolia's application to the HCIA for said capacity increase and/or failure to fulfill all of the terms and conditions in this Agreement shall constitute grounds for the removal of the facility from the County Plan pursuant to the "procedures set forth in the Act and the regulations of the Authority". This language is remanded as it is inconsistent with provisions of the New Jersey Solid Waste Management Act and the regulations at N.J.A.C. 7:26 that indicate that a solid waste facility that is operating as per a valid Solid Waste Facility (SWF) Permit issued by the Department can not be deleted from a district's solid waste management plan until that SWF Permit is revoked by the Department pursuant to regulations found at N.J.A.C. 7:26-2.6. The Department remands this Section of the Agreement for the County to revise this language to reflect enforcement actions available to the County (and State) that are provided for in statute and/or regulation, including, but not necessarily limited to, those at N.J.A.C. 7:26-5.1 et seq.

Additionally, the subject Agreement goes on to read that "[T]he parties hereby agree that in the event problems with the operation of the Facility are encountered during any of the trial periods cited above after any increase in the daily tonnage capacity, and such problems cannot be fully resolved to the satisfaction of the Authority, the City, and Veolia, then the daily tonnage capacity of the Facility shall be reduced to [the] previous daily tonnage capacity, but in no event less than 375 TPD until the problems are fully addressed..." This language is also remanded as the authority to modify a SWF Permit rests solely with the Department.

Upon the issuance of this certification, the Department will contact the County, the HCIA, the City of Jersey City, and Veolia to address these concerns and assist the parties in rewording the Agreement to meet the concerns of all stakeholders. Any Agreement resulting from this meeting or subsequent meetings can be included in the County Plan as a request for administrative action pursuant to N.J.A.C. 7:26-6.11.

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 September 14, 2010 amendment to the approved County Plan and certify to the County Freeholders that the September 14, 2010 amendment is approved in part and remanded in part as further specified below.

The County Plan inclusion of a capacity increase at the Veolia TS/MRF, located on Block 1602, Lots 11-26 and Block 1603, Lots 37-59 at 264 Broadway in the City of Jersey City, from 375 tpd to 900 tpd of solid waste types 10, 13, 13C, 23, and 27 is approved, as is the concept that, subject to the requirements for modification of an existing SWF Permit, increases in daily capacity shall be staged as per the intent of the parties to the Agreement by and between the HCIA and Veolia.

However, the subject enabling Agreement is remanded to the County due to concerns about language contained within the Agreement regarding removal of the Veolia TS/MRF from the County Plan if Veolia fails to fulfill all of the terms and conditions of the subject Agreement and the County's authority to regulate operations at a solid waste facility that are in conflict with a Department-issued SWF Permit.

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. 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 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 in part and remand in part the amendment, 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 September 8, 2010 and approved by the Hudson County Executive on September 14, 2010.

April 6, 2011

Date

Bob Martin, Commissioner
Department of Environmental Protection