



State of New Jersey

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**CERTIFICATION
OF THE SEPTEMBER 16, 2014
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 (formerly known as the New Jersey Meadowlands Commission, now known as New Jersey Sports and Exposition Authority, or NJSEA) 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 11, 2014 adopted an amendment to its approved County Plan. Said amendment was approved by the Hudson County Executive on September 16, 2014.

The September 16, 2014 amendment proposes County Plan inclusion of the following modifications to Hudson County Waste Flow strategy:

- Contract between the Hudson County Improvement Authority (HCIA) and Advance Enterprises Recycling, Inc. (AERI) designating AERI Transfer Station and Material Recovery Facility (TS/MRF), located at 540 Doremus Avenue, Newark, Essex County, for disposal of all solid waste types 10 and 25 generated within the County. This agreement expires on July 2, 2017;
- The Shared Solid Waste Disposal Services Agreement by and between the HCIA and NJSEA designating NJSEA Keegan Landfill, located in the Town of Kearny, Hudson County for the disposal of all grits and screenings and solid waste types 13, 13C, 23, 27, and 27A generated within the County. This agreement expires on June 30, 2016.

The September 16, 2014 amendment also proposes modifications of the terms for the inclusion of I.W.S Transfer Systems of NJ, Inc. (IWS) TS/MRF and Class A & B Recycling Center located on Routes 1 & 9 in Jersey City in the County Plan:

- Increase of the capacity of IWS TS/MRF and Class A & B Recycling Center located on Block 1627.1, Lot 1H, 375 Routes 1&9, Jersey City, Hudson County, from 1,425 tons per day (tpd) to 1,725 tpd and a maximum capacity of 9,450 tons per week (tpw) (Monday through Friday) and to include the ability to accept solid waste type 25;

The September 16, 2014 amendment further proposes modifications of the terms for the inclusion of (IWS) TS/MRF located at 264 Broadway, Jersey City in the County Plan:

- Reduction of the permitted daily tonnage for IWS TS/MRF located on Block 9001, Lots 2-4, 264 Broadway, Jersey City, Hudson County, from 900 tpd to 600 tpd and to include the ability to accept solid waste type 25.

The amendment was considered administratively complete for review by the Department on November 17, 2014 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 11, 2014 and approved by the Hudson County Executive on September 16, 2014 is approved in part and rejected 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 16, 2014 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 16, 2014 amendment which are included below.

Elements of the September 16, 2014 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 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 Solid Waste Transfer and Recycling (SWT&R) Transfer Station (TS), located in the City of Newark.

On February 11, 1998, the County Freeholders adopted an amendment to their County Plan to propose a strategy of implementing regulatory flow control based upon the completion of nondiscriminatory procured solid waste disposal services. This amendment was certified as approved by the Department on May 27, 1998, which directed the flow of all solid waste generated within Hudson County to the SWT&R TS.

On March 11, 1999, the County Freeholders adopted an amendment to their County Plan, to propose 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 NJSEA 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.

This amendment was certified as approved by the Department on June 8, 1999.

On July 8, 2004, the County Freeholders adopted an amendment to the County Plan to propose 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 NJSEA 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 with the exception of the disposal of solid waste type 27A to the NJSEA Erie Landfill on January 30, 2005.

On April 28, 2009, the County Freeholders adopted an amendment to the County Plan to propose County Plan inclusion of regulatory waste flow for solid waste types 10 and 25 pursuant to a non-discriminatory procurement and to include AERI TS/MRF, located at Block 5070, Lots 41, 43, 25 (part), 540 Doremus Avenue, Newark, New Jersey, as the 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 NJSEA 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. This amendment was certified as approved by the Department with the exception of the disposal of grits and screenings and solid waste type 27A and to the NJSEA Keegan Landfill on July 15, 2009.

On September 11, 2014 the County Freeholders adopted an amendment to the County Plan and which was approved by the County Executive on September 16, 2014, proposed County Plan inclusion of:

- Contract between the Hudson County Improvement Authority (HCIA) and Advance Enterprises Recycling, Inc. (AERI) designating AERI Transfer Station and Material Recovery Facility (TS/MRF), located at 540 Doremus Avenue, Newark, Essex County, for disposal of all solid waste types 10 and 25 generated within the County. This agreement expires on July 2, 2017;
- The Shared Solid Waste Disposal Services Agreement by and between the HCIA and NJSEA designating NJSEA Keegan Landfill, located in the Town of Kearny, for the disposal of all grits and screenings and solid waste types 13, 13C, 23, 27, and 27A generated within the County. This agreement expires on June 30, 2016.

Element: Facilities' Histories – Waste Flow

Advanced Enterprises Recovery, Inc. TS/MRF

On October 2, 2002, the Essex County Board of Chosen Freeholders adopted an amendment to their County Plan proposing County Plan inclusion of the AERI TS/MRF to be 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.

On March 21, 2013, the Essex County Utilities Authority submitted to the Department a request for an administrative action to the proposing County Plan inclusion of solid waste type 25 as an acceptable solid waste type for receipt, processing, and transfer at the AERI TS/MRF, located at 540 Doremus Avenue in the City of Newark. This administrative action was approved by the Department on April 2, 2013.

Keegan Landfill

On May 27, 1992, the Commissioners of the Hackensack Meadowlands Development Commission (formerly known as the New Jersey Meadowlands Commission, and now known as NJSEA) adopted an amendment to their District Solid Waste Management Plan (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 NJSEA 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 1, 2008, the Commissioners of the NJSEA submitted to the Department a request for administrative action to the District Plan proposing 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. The request for administrative action to the County Plan was approved by the Department on October 6, 2008.

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

The NJSEA 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 NJSEA, 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 NJSEA is the entity responsible for the operation of the Keegan Landfill, through a Solid Waste Facility Permit issued by the Department. The subject Shared Solid Waste Services Agreement by and between the HCIA and NJSEA is for a 30-month term beginning on January 1, 2014 and expiring on June 30, 2016. It provides for the direction of all grits and screenings and solid waste types 13, 13C, 23, 27 and 27A 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, which 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 County identifies a facility permitted to accept solid waste type 27A or the NJSEA receives a modification to its Solid Waste Facility Permit from the Department allowing the acceptance of solid waste type 27A.

Element: Non-Discriminatory Procurement Process

On August 27, 2013 the HCIA issued bid specifications calling for the provision of transfer, transportation, and/or disposal of solid waste types 10 and 25 (processable waste) generated

within Hudson County. The HCIA publicly issued a Notice of an Addendum to the Bid Specifications and Responses to Questions from Bidders on September 27, 2013 and copies of such Addendum and responsive documents were served upon all entities that had picked up a copy of the Bid Specifications from the HCIA. This procurement process was undertaken pursuant to and in accordance with the provisions of the Local Public Contracts Law, N.J.S.A. 40A:11-1et seq. and was open to all bidders, regardless of their geographical location. The HCIA received two bids on October 13, 2013 from IWS and AERI. HCIA determined AERI to be the lowest responsible bidder for the provision of solid waste disposal services for 400,000 tons of processible waste generated within the County annually, for a three-year term beginning on July 1, 2014 and ending on July 1, 2017, with HCIA maintaining an option to extend the contract for two additional one-year periods.

Element: I.W.S Transfer Systems of NJ, Inc. (IWS) Transfer Station/Materials Recovery Facility and Class A & B Recycling Center located at 375 Routes 1 & 9, Jersey City

On August 9, 2007, the Hudson County Freeholders adopted an amendment to the County Plan in response to the updated Statewide Solid Waste Management Plan. The IWS facility located on Block 1627.1, Lot 2 at 375 Route 1 & 9 in the City of Jersey City was included in the County Plan as a TS/MRF accepting solid waste types 10, 13, 13C, 23, and 27 with a peak daily capacity of 700 ton and a weekly maximum of 3600 ton; a Class A Recycling facility accepting 350 tpd of paper, corrugated cardboard, plastic, glass, and metal; and as a Class B Recycling facility accepting up to 725 tpd of asphalt, concrete, brick, and scrap metal.

On January 31, 2008, the HCIA submitted a request for an administrative action to the County Plan proposing County Plan inclusion of a modification to the daily capacity of the IWS TS/MRF, located on Block 1627.1, Lot 2 at 375 Routes 1 & 9 South in the City of Jersey City. Specifically, the facility can accept any combination of solid waste types 10, 13, 13C, 23, and 27 and Class B recyclables up to a daily maximum of 1,425 tons (weekly maximum of 7,950 tons). The request for this administrative action to the County Plan was approved by the Department on February 2, 2008.

On September 11, 2014 the County Freeholders adopted an amendment to the County Plan, which was approved by the County Executive on September 16, 2014, proposing the modification of the terms for the inclusion of I.W.S Transfer Systems of NJ, Inc. TS/MRF and Class A and B Recycling Center, Routes 1 & 9 facility in the County Plan:

Increase of the capacity of IWS TS/MRF and Class A and B Recycling Center located on Block 1627.1, Lot 1H, 375 Routes 1&9, Jersey City, Hudson County, from 1,425 tons per day (tpd) to 1,725 tpd and a maximum capacity of 9,450 tons per week (tpw) (Monday through Friday) and with the ability to accept solid waste type 25.

Element: I.W.S Transfer Systems of NJ, Inc. Transfer Station/Materials Recovery Facility located at 264 Broadway, Jersey City

On March 28, 2013, the HCIA submitted to the Department a request for an administrative action proposing the transfer of ownership of the facility located at Block 9001, Lots 2-4, 264

Broadway, Jersey City, New Jersey (Broadway facility) owned and operated by Veolia ES Solid Waste of New Jersey, Inc. (Veolia) to the ownership of ADS Solid Waste of New Jersey, Inc. (ADS). The request for this administrative action to the County Plan was approved by the Department on April 16, 2013.

On June 13, 2014, the HCIA submitted to the Department a request for an administrative action proposing the transfer of ownership of the Broadway facility from ADS to IWS, a subsidiary of Action Environmental Group, Inc. The request for this administrative action to the County Plan was approved by the Department on July 31, 2014.

On September 11, 2014, the County Freeholders adopted an amendment to the County Plan, which was approved by the County Executive on September 16, 2014, proposing the modification of the terms for the inclusion of I.W.S Transfer Systems of NJ, Inc. (IWS) TS/MRF 264 Broadway facility in the County Plan to reduce the permitted daily tonnage for IWS TS/MRF located on Block 9001, Lots 2-4, 264 Broadway, Jersey City, Hudson County, from 900 tpd to 600 tpd and to include the ability to accept solid waste type 25.

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 16, 2014 amendment to the approved County Plan and certify to the County Freeholders that the September 16, 2014 amendment is approved in part and rejected in part as further specified below.

The September 16, 2014 amendment proposing County Plan inclusions regarding Hudson County Waste Flow is approved in part for:

- Contract by and between the HCIA and AERI for the disposal of solid waste types 10 and 25 generated within the County;
- AERI TS/MRF, located in the City of Newark, as the designated disposal facility for solid waste types 10 and 25 generated within the County;
- The Shared Solid Waste Disposal Services Agreement by and between the HCIA and NJSEA for the disposal of all grits and screenings and solid waste types 13, 13C, 23, and 27 generated within the County; and,
- NJSEA 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, and 27 generated within the County.

The September 16, 2014 amendment proposing County Plan inclusions regarding Hudson County Waste Flow is rejected in part for:

- The Shared Solid Waste Disposal Services Agreement by and between the HCIA and NJSEA for the disposal of solid waste type 27A generated within the County; and,

- NJSEA Keegan Landfill, located in the Town of Kearny, as the designated disposal facility for solid waste type 27A generated within the County.

The September 16, 2014 amendment proposing County Plan inclusions for the modifications of the terms for the inclusion of IWS TS/MRF and Class A Recycling Center in the County Plan are approved as follows:

- Increase of the capacity of IWS TS/MRF and Class A Recycling Center located on Block 1627.1, Lot 1H, 375 Routes 1&9, Jersey City, Hudson County from 1,425 tpd to 1,725 tpd and a maximum capacity of 9,450 tpw (Monday through Friday) and with the ability to accept solid waste type 25 pending approval of the solid waste permit modification; and,
- Reduction of the permitted daily tonnage for the IWS TS/MRF located on Block 9001, Lots 2-4, 264 Broadway, Jersey City, Hudson County, from 900 tpd to 600 tpd and to include the ability to accept solid waste type 25 pending approval of the solid waste permit modification.

Please be advised that NJSEA's solid waste permit and lease agreement with the Town of Kearny expire on June 20, 2016. Further, Keegan may attain its permitted capacity prior to renewal of the permit. Hudson County is advised that entering into a long-term contract or agreement with NJSEA is at their own risk should the permit not be renewed or if Keegan Landfill attains capacity prior to permit renewal.

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 District 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 District 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

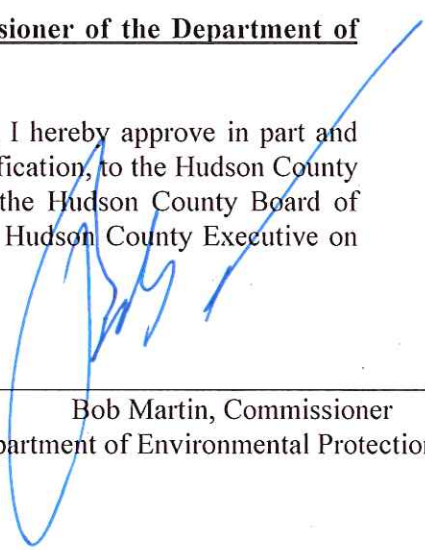
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform to the Statewide Solid Waste Management Plan, with appendices, which includes the Department's 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 reject 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 11, 2014 and approved by the Hudson County Executive on September 16, 2014.

Date

4/14/2015



Bob Martin, Commissioner
Department of Environmental Protection