

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

**CERTIFICATION
OF THE JULY 8, 2004
AMENDMENT TO THE HUDSON 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 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 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 Hudson County Board of Chosen Freeholders (County Freeholders) completed such a review and on July 8, 2004 adopted an amendment to its approved County Plan. The July 8, 2004 amendment proposes County Plan inclusion of the Solid Waste Transfer and Recycling (SWT&R) Transfer Station (TS), located at 442 Frelinghuysen Avenue in the City of Newark, Essex County, as the County's designated facility to which all solid waste types 10 and 25 generated within Hudson County are directed. The amendment also proposes County Plan inclusion of the NJMC Erie Landfill, located in the Borough of North Arlington, Bergen County, as the designated facility for disposal of all solid

waste types 13, 23, and 27 (including 27A) and grits and screenings generated within Hudson County.

The amendment was considered administratively complete for review by the Department on October 28, 2004 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 July 8, 2004 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 July 8, 2004 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 of the July 8, 2004 amendment, which are included below.

In conjunction with the review of the amendment, the Department circulated copies to seventeen 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
New Jersey Meadowlands Commission

Elements of the July 8, 2004 Amendment

Element: History of County Plan Inclusion of Regulatory Flow Control

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 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 the following waste flows based upon the completion of non-discriminatory bid contracts.

- 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, Bergen County;
- 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.

On September 15, 2003, the Hudson County Improvement Authority (HCIA) issued bid specifications calling for receipt of bids on October 24, 2003 for the provision of transfer, transportation, and disposal of processible waste (Alternate A) and non-processible waste (Alternate B). The request for bids was advertised locally in The Bergen Record, throughout New Jersey through The Star Ledger, and nationally in Waste News. Therefore, this procurement process was open to all bidders, regardless of geographical location. Under Alternate A, the HCIA received two bids. SWT&R was the low bidder, bidding \$ 78.00, \$80.00, \$82.00, \$83.00, and \$84.00 per ton, respectively for disposal for a 5-year span. Under Alternate B, the HCIA received three bids. The NJMC was the low bidder, bidding \$69.00 per ton for disposal for a seventeen and one half-month span.

As a result of the non-discriminatory procurement process, the July 8, 2004 amendment proposes 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, located at 442 Frelinghuysen Avenue in the City of Newark, Essex County, as the County's designated facility to which all solid waste types 10 and 25 generated within Hudson County are directed. The amendment also proposes County Plan inclusion of the NJMC Erie Landfill, located in the Borough of North Arlington, Bergen County, as the designated facility for disposal of all solid waste types 13, 23, and 27 (including 27A) and grits and screenings generated within Hudson County.

Element: Disposal of Solid Waste Type 27A

During the review phase of the planning process, the NJMC submitted comments regarding the proposed designated facilities and waste flows. The NJMC's comments noted that the Erie 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 operating permit from the Department allowing the acceptance of type 27A waste or other non-discriminatory procurement processes are undertaken by the County and approved by the Department.

Element: Long-Term Disposal of County's Solid Waste

The agreement between the NJMC and the HCIA will terminate on December 31, 2005. 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.

As this amendment proposes the inclusion of a contract for disposal with a period substantially less than ten years from the date of this certification, the County will soon again have to negotiate for the disposal of the solid waste types subject of this amendment. Therefore, Hudson County shall submit to the Department a plan amendment specifying the arrangements the County has made for the long-term disposal of solid waste types 13, 23, and 27 no later than 180 days from the date of this certification.

The agreement between SWT&R and the HCIA will terminate on July 19, 2009. Therefore, the County shall submit to the Department a plan amendment specifying the arrangements the County has made for the long-term disposal of solid waste types 10 and 25 no later than one year prior to the expiration of the current agreement.

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 July 8, 2004 amendment to the approved County Plan and certify to the County Freeholders that the July 8, 2004 amendment is approved, with modification.

The County Plan inclusion of the Solid Waste Transfer and Recycling (SWT&R) Transfer Station (TS), located at 442 Frelinghuysen Avenue in the City of Newark, Essex County, as the County's designated facility to which all solid waste types 10 and 25 generated within Hudson County are directed is approved.

The County Plan inclusion of the NJMC Erie Landfill, located in the Borough of North Arlington, Bergen County, as the designated facility for disposal of all solid waste types 13, 23, and 27 and grits and screenings generated within Hudson County is also approved; however, all references within the amendment to disposal of solid waste type 27A are hereby eliminated.

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 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 July 8, 2004.

January 30, 2005

Date

Bradley M. Campbell, Commissioner
Department of Environmental Protection