

**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 AUGUST 9, 2007
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 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 which 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 August 9, 2007 adopted an amendment to its approved County Plan.

The August 9, 2007 amendment proposes County Plan inclusion of the County Plan Update in response to the updated Statewide Solid Waste Management Plan.

The amendment was considered administratively complete for review by the Department on September 21, 2007 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 August 9, 2007 is approved in part and rejected in part as provided in N.J.S.A. 13:1E-24.

On April 13, 2002, New Jersey Department of Environmental Protection Commissioner Bradley M. Campbell signed Administrative Order No. 2002-10, which requires, among other things, that the Department revise, update and readopt the Statewide Solid Waste Management Plan. On January 3, 2006, New Jersey Department of Environmental Protection Commissioner Lisa P. Jackson formally adopted the updated Statewide Solid Waste Management Plan

The updated Statewide Solid Waste Management Plan reaffirms the state's goal of recycling 50% of the MSW stream. The overall strategy for achieving this ambitious goal starts with a quantification, on a statewide basis, of the increased tonnage of recycled materials needed. This is further calculated on a per county basis, with an analysis of current MSW recycling tonnages by county, and the necessary increases required by each county. The statewide increase needed is also expressed in terms of increased recycling tonnage by material, such as newspaper, corrugated, food waste, etc. Additionally, the plan targets specific classes of generators (schools, multi-family housing complexes, small and medium-sized businesses) that need to be focused on in terms of expanded recycling opportunities for the materials identified.

The state, through this Solid Waste Management Plan update, establishes the overall policy objectives and goals for solid waste management in New Jersey. The counties and the NJMC shall have the responsibility for developing their respective district solid waste management plans consistent with the state's goals and objectives. Therefore, as noted in the State Plan, each district shall, within one year of the adoption of the updated Statewide Solid Waste Management Plan or January 3, 2007, adopt and submit to the Department, an updated district solid waste plan. This district plan update shall demonstrate consistency with the State Plan. Further, the district plans shall reiterate the district plan requirements contained in N.J.S.A. 13:1E-21. Specifically, revised district plan updates shall include, but not be limited to the following components:

- 1) Designation of the department, unit or committee of the county government (or district in the case of the NJMC) to supervise the implementation of the district plan;
- 2) An inventory of the quantity of solid waste generated within the district for the ten-year period commencing with the adoption of updated district solid waste management plan;
- 3) An inventory of all solid waste and recycling facilities (lot and block and street address) including approved waste types and amounts, hours of operation and approved truck routes;
- 4) An outline of the solid waste disposal strategy to be utilized by the district for a ten-year planning period;
- 5) A procedure for the processing of applications for inclusion of solid waste and recycling facilities within the district solid waste management plans. The procedure shall state the applicant requirements for inclusion into the district plan and the specific county review

process/procedures, including time frames for county approvals or rejections and subsequent submittals to the Department. **Note-** the criteria for inclusion shall **not** include a requirement that local zoning or planning board approval(s) be obtained as a condition for inclusion within the district solid waste management plan, nor shall such a requirement be made a condition for subsequent construction or operation of any facility; and

- 6) Identify the additional tonnage of recycled materials in the MSW stream (by material commodity types) required by each county to meet the mandated MSW recycling goal, a strategy for the attainment of the recycling goals as outlined above. The strategy shall include, as necessary:
 - a) the designation of the currently mandated recyclable materials and additional materials, if any, to be source separated in the residential, commercial and institutional sectors;
 - b) a listing of those entities providing recycling collection, processing and marketing services for each of the designated recyclable materials;
 - c) the communication program to be utilized to inform generators of their source separation and recycling responsibilities;
 - d) a comprehensive enforcement program that identifies the county and/or municipal entity(ies) responsible for enforcement of the recycling mandates, specifies the minimum number of recycling inspections that will be undertaken by these entities on an annual basis and details the penalties to be imposed for non-compliance with the municipal source-separation ordinance and county solid waste management plan. Additionally, the updated district plan shall include copies of each municipal source separation ordinance.

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 August 9, 2007 amendment to the District 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 August 9, 2007 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
 Solid and Hazardous Waste Management Program, DEP
 Green Acres Program, DEP
 Land Use Regulation Program, DEP

Office of Local Environmental Management, DEP
Office of Air Quality Management, DEP
Bureau of Solid Waste Compliance and Enforcement, DEP
Department of Community Affairs
Department of Transportation
Department of Agriculture
Department of Health and Senior Services
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
New Jersey Meadowlands Commission
U.S. Environmental Protection Agency

Elements of the August 9, 2007 Amendment

Element: Designation of County Plan Implementation Agency

The August 9, 2007 County Plan amendment reaffirms the designation of the Hudson County Improvement Authority (HCIA) as the County Plan implementation agency.

Element: Inventory of the Quantity of Solid Waste Generated Within The County for the Next Ten Years

Using the Department's waste generation data for 2004 and population projections provided by the Hudson County Department of Planning, the County Plan includes the total tonnages of solid waste types 10, 13, 23, 25, and 27 to be generated within Hudson County in 2007, 2012, 2015, 2020, and 2025 as 1,250,070, 1,274,963, 1,286,808, 1,315,314, and 1,342,415, respectively.

Element: Inventory of Solid Waste and Recycling Facilities

The below facilities are identified in the August 9, 2007 amendment to the County Plan as being included in the County Plan.

Solid Waste Facilities

- Allegro Sanitation Corporation Transfer Station/Materials Recovery Facility (TS/MRF) – This facility, located on Block 62, Lot 7.01 at 278 Secaucus Road in the Town of Secaucus, is included in the County Plan to accept up to 100 tons per day (tpd) of solid waste types 10, 13, and 13C. The August 9, 2007 amendment to the County Plan does not include operating hours for this or any other solid waste facility in the County Plan. The County is directed to address this issue as noted below in Section C. of this certification. The County is also reminded of the statutory authority granted it to establish truck routes to solid waste facilities.
- Cardella Trucking Company, Inc. TS/MRF – This facility, located on Block 55, Lots A.1 and A.2 at 2400-2515 Tonnelle Avenue in the Township of North Bergen, is included in the

County Plan to accept up to 400 tpd of solid waste types 13 and 13C.

- Clean Earth Technologies TS/MRF – This facility, located on Block 289, Lots 14 and 14A at 115 Jacobus Avenue in the Town of Kearny, is included in the County Plan to accept up to 250 tpd of solid waste types 10 (household hazardous waste only), 13, 13C, 27, and 27A.
- Eagle Recycling of NJ, Inc. TS/MRF – This facility, located on Block 91, Lot 1; Block 93, Lots A and B; Block 95, Lot 1; and Block 100, Lots 24-27 at 4711 Dell Avenue in the Township of North Bergen, is included in the County Plan to accept up to 1,000 tpd of solid waste types 10 (non-putrescible), 13, 13C, 23, and 27, with a peak daily capacity of 1,200 tons. The weekly maximum capacity included in the County Plan is 6,000 tons.
- I.W.S. Transfer Systems of NJ TS/MRF – This facility, located on Block 1627.1, Lot 2 at 375 Route 1 & 9 in the City of Jersey City, is included in the County Plan to accept up to 600 tpd of solid waste types 10, 13, 13C, 23, and 27, with a peak daily capacity of 700 tons. The weekly maximum capacity included in the County Plan is 3,600 tons.
- Nacirema Industries, Inc. TS/MRF – This facility, located on Block 301.1, Lots 1 and 6 at 211 West 5th Street in the City of Bayonne, is included in the County Plan to accept up to 100 tpd of solid waste type 13C. Nacirema Industries, Inc. has never been issued a Solid Waste Facility (SWF) Permit from the Department for this facility
- J. Pyskaty Disposal TS/MRF – This facility, located on Block 9, Lot 7 at 800 Castle Road in the Town of Secaucus, is included in the County Plan to accept up to 135 tpd of solid waste types 10, 13, 13C, and 27. The weekly maximum capacity included in the County Plan is 600 tons.
- Veolia ES Solid Waste of New Jersey TS/MRF – This facility, located on Block 1602, Lots 11-26 and Block 1603, Lots 37-59 at 240 Broadway in the City of Jersey City, is included in the County Plan to accept up to 375 tpd of solid waste types 10, 13, 13C, 23, and 27.

Recycling Centers

Class A Recycling Centers

- All-American Recycling Class A Recycling Center – This facility, located on Block 742, Lots 2-6, 23, 25, 26, and 29-31 and Block 740, Lots 14-18 in the City of Jersey City and Block 23, Lot 1 and Block 9, Lot 6 in the City of Hoboken, is included in the County Plan to accept up to 700 tpd of newspaper, cardboard, office paper, and mixed paper. The August 9, 2007 amendment to the County Plan does not include operating hours for this facility or any other recycling center in the County Plan. The County is directed to address this issue as noted below in Section C. of this certification.
- Galaxy Recycling, Inc. Class A Recycling Center – This facility, located on Block 712, Lot A.11 at 3 New York Avenue in the City of Jersey City, is included in the County Plan to accept up to 640 tpd of paper, corrugated cardboard, and metal.
- IESI NJ Corp. Class A Recycling Center – This facility, located on Block 1507, Lot 2L-6 at Foot of Linden Avenue in the City of Jersey City, is included in the County Plan to accept up to 1,160 tpd of paper, corrugated and other cardboard, plastic, and metal.
- I.W.S. Transfer Systems of NJ Class A Recycling Center – This facility, located on Block 1627.1, Lot 2 at 375 Route 1 & 9 in the City of Jersey City, is included in the County Plan to accept up to 350 tpd of paper, corrugated cardboard, plastic, glass, and metal.

- Reliable Paper, Inc. (Pacific Ave.) Class A Recycling Center – This facility, located on Block 2031, Lot A at 200 Pacific Avenue in the City of Jersey City, is included in the County Plan to accept up to 255 tpd of paper and cardboard and 160 tons per week (tpw) of commingled recyclables (plastic, glass, and metal).
- Reliable Paper, Inc. (Caven Point Road) Class A & B Recycling Center – This facility, located on Block 1491, Lot 1.G4 at 1 Caven Point Road in the City of Jersey City, is included in the County Plan to accept up to 225 tpd of paper and cardboard, 75 tpw of white goods, 400 tpd of wood waste and 50 tpd of leaves.
- Simsmetal East, LLC (Jersey Ave.) Class A Recycling Center – This facility, located on Block 1507, Lots 10A, 5, and 6 at One Jersey Avenue in the City of Jersey City, is included in the County Plan to accept up to 350 tpd of commingled recyclables.
- Simsmetal East, LLC (Linden Ave.) – This facility, located on Block 1507, Lots 7, 10B, 10C, and 18 at One Linden Avenue in the City of Jersey City, is included in the County Plan to accept up to 600 tpd of commingled recyclables.

Class B Recycling Centers

- Durable Bayonne, LLC Class B Recycling Center – This facility, located on Block 452, Lots 1 and 2 at 160 East 22nd Street in the City of Bayonne, is included in the County Plan to accept up to 1,320 tpd of clean stone, asphalt, concrete, brick, cinder block, brick bat, ceramic tile, and wood waste.
- I.W.S. Transfer Systems of NJ Class B Recycling Center – This facility, located on Block 1627.1, Lot 2 at 375 Route 1 & 9 in the City of Jersey City, is included in the County Plan to accept up to 725 tpd of asphalt, concrete, brick, and scrap metal.
- I.T.L. Concrete Recycling Corp. Class B Recycling Center – This facility, located on Block 1505, Lot C1 at 10 East Linden Avenue in the City of Jersey City, is included in the County Plan to accept up to 1,500 tpd of concrete, asphalt, brick, and soil.
- Nacirema Industries, Inc. Class B Recycling Center – This facility, located on Block 301.1, Lots 1 and 6 at 211 West 5th Street in the City of Bayonne, is included in the County Plan to accept up to 100 tpd of concrete, asphalt, brick, block, tree stumps, and tree branches and limbs. Nacirema Industries, Inc. has never been issued a General Approval from the Department for this facility.
- North Bergen Recycling Class B Recycling Center – This facility, located on Block 480, Lot 4 and Block 465, Lots 32-39 at 9505 95th Street in the Township of North Bergen, is included in the County Plan to accept up to 700 tpd of masonry, 200 tpd of wood, and 50 tpd of leaves; however, the current General Approval for this facility limits the total capacity to 500 tpd.
- Tilcon/Bedrock Stone Class B Recycling Center – This facility, located on Block 242, Lots 26-29 at 411 Bergen Avenue in the Town of Kearny, is included in the County Plan to accept up to 2,000 tpd of asphalt, concrete, stone, brick, block, dirt, wood, and tree parts, stumps, and trunks. The August 9, 2007 County Plan amendment notes that the Tilcon/Bedrock Stone Class B Recycling Center may accept “mixed C&D”; however, construction and demolition debris is a solid waste type (13C) and thus can not be accepted at this facility.

Element: Solid Waste Facilities and Recycling Centers to be Deleted From The County Plan

The August 9, 2007 District Plan amendment proposes County Plan deletion of:

- AGA Wood Recycling Corp. Class B Recycling Center;
- Integrated Tire of N.J., Inc. Recycling Class B Recycling Center;
- Keywell, LLC Class A Recycling Center;
- Rotundo Sanitation Company, Inc. TS/MRF;
- Edward Tempesta/Arrow Recycling Recycling Center and TS/MRF; and
- United Recycling Corporation Class A Recycling Center.

Element: Solid Waste Disposal Strategy to be Utilized by the County for the Next Ten Years

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 Board of Chosen Freeholders have adopted a solid waste disposal strategy of implementing regulatory flow control of solid waste based upon nondiscriminatory procurement processes.

On September 15, 2003, the HCIA issued bid specifications calling for receipt of bids for the provision of transfer, transportation, and disposal of processible waste (Alternate A) and non-processible waste (Alternate B). The request for bids was open to all bidders, regardless of geographical location. Under Alternate A, SWT&R was the low bidder for disposal for a 5-year span. Under Alternate B, the NJMC was the low bidder for disposal for a seventeen and one half-month-span.

As a result, on July 8, 2004, the Hudson County Board of Chosen Freeholders adopted an amendment to the County Plan which included in the County Plan 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 the County are directed. The amendment also included the NJMC Erie Landfill as the designated facility for disposal of all solid waste types 13, 13C, 23, 27, 27A, and grits and screenings generated within the County. This amendment was certified as approved by the Department on January 30, 2005.

On September 24, 2004, the HCIA issued bid specifications calling for receipt of bids for the provision of transfer, transportation, and disposal of non-processible waste. The request for bids was open to all bidders, regardless of geographical location. The NJMC was the lowest qualified bidder, bidding for a twelve-month-span.

As a result, on February 24, 2005, the Hudson County Board of Chosen Freeholders adopted an amendment to the County Plan, which included regulatory flow control over solid waste types 13, 13C, 23, and 27 pursuant to a non-discriminatory procurement, and to include the NJMC Erie Landfill as the designated facility for disposal of all solid waste types 13, 13C, 23, and 27 generated within the County. This amendment was certified as approved by the Department on September 12, 2005.

Lastly, on July 12, 2005, the HCIA and NJMC executed a modification agreement to extend the term of the January 19, 2005 Disposal Agreement for non-processible waste for a period of at least three years starting no later than January 1, 2006.

In summary, the current agreement between SWT&R and the HCIA for the disposal of solid waste types 10 and 25 generated within the County will terminate on July 19, 2009 and the current agreement between the NJMC and the HCIA for the disposal of solid waste types 13, 13C, 23, and 27 generated within the County will terminate on January 1, 2009. The August 9, 2007 County Plan amendment includes the continuance of a strategy of regulatory flow control over solid waste types 10, 13, 13C, 23, 25, and 27 pursuant to the above noted non-discriminatory bid agreements.

The August 9, 2007 County Plan amendment also includes in the County Plan an exemption for the receipt of waste types 13, 13C, 23, and 27 at existing, fully-permitted materials recovery facilities for recycling and delivery of the residue to the designated disposal facility subject to the execution of an agreement with the HCIA containing certain terms and conditions.

Element: County Plan Inclusion Process

The August 9, 2007 County Plan amendment seeks to include the County's process to review and act on all requests for inclusion into the County Plan.

First, the applicant must complete a copy of the HCIA's standardized Application for Inclusion of a Solid Waste Facility or Recycling Center in the Hudson County Solid Waste Management Plan. Within 30 days of the receipt of the Application and other standard technical information, the HCIA will notify the applicant of any deficiencies or any additional information that is necessary to evaluate the application. Once the HCIA is satisfied with the final submittal by the applicant, a meeting of the County Solid Waste Advisory Council (SWAC) is convened for a presentation by the applicant. Any concerns raised by SWAC and/or the specific host municipality about the facility are either addressed during this meeting or through a later response by the applicant. Once these issues are addressed, the application is considered complete.

Once considered complete, the application is presented in detail to the Board of the Authority at their next regular meeting and a vote taken to either approve or deny the inclusion of the proposed facility/operation. If approved, the application is then recommended to the County Freeholders for their consideration. The County Freeholders will act in accordance with the required steps regarding advertising, introduction, and public hearing as stipulated at N.J.A.C.

7:26-6.10.

The August 9, 2007 County Plan amendment also includes the County's process for inclusion of those County Plan amendments which the HCIA deems can be accomplished via an administrative action pursuant to N.J.A.C. 7:26A-6.11.

As per page A-7 of the updated Statewide Solid Waste Management Plan, each County Plan must identify and include "the applicant requirements for inclusion into the district plan and the specific county review process/procedures, including time frames for county approvals or rejections and subsequent submittals to the Department". As the August 9, 2007 amendment to the County Plan does not provide specific timelines for the County Plan inclusion process, the County is directed to address this issue as noted below in Section C. of this certification.

On page 17 of the August 9, 2007 amendment to the County Plan, under the heading "Criteria for Recycling Centers" it reads that "the Authority reserves the discretion to deny a request to recommend the inclusion and/or modify inclusion in the Plan if the proposed facility would be in competition with a facility or proposed facility that is operated by, or for which bonds have been issued by, the Authority, in accordance with N.J.S.A. 13:1E-22". The subject statutory citation refers to potential competition with a solid waste facility operated by, or for which bonds have been issued, by a public authority as opposed to a recycling center. This criteria for plan inclusion or modification of a recycling center is thus rejected.

Lastly, on page 35 of the August 9, 2007 amendment to the County Plan, it reads that an applicant for County Plan inclusion shall "provide proof that the proposed recycling facility has obtained...a letter support [sic] from the appropriate municipal official of the host municipality that the proposed Solid Waste Facility is consistent with the municipal Master Plan and zoning". As case law has consistently upheld that the Department preempts local zoning and land use concerning solid waste and recycling facilities, the County can not prevent an application from moving forward in the plan inclusion process due to the lack of the issuance of a letter expressing municipal support or consistency with municipal zoning to the applicant. All references to this requirement in the County Plan are thus rejected.

Element: Recycling

In 2003, Hudson County recycled 16.9% of its municipal solid waste (MSW) and 47.4% of its total solid waste (TSW). Using 2003 Department data, Hudson County will have to recycle an additional 174,000 tons of MSW to reach a MSW recycling rate of 50%. Since the release of the updated Statewide Solid Waste Management Plan in early 2006, the Department has determined MSW recycling rates of 27.0% and 22.6% and TSW recycling rates of 51.1% and 51.3% for Hudson County in 2004 and 2005, respectively.

The August 9, 2007 County Plan amendment proposes County Plan inclusion of updates to several sections of the County's recycling strategy, including updated programs, recycling initiatives, source reduction strategies, and enforcement.

Designated Recyclable Materials – the following is a listing of the designated recyclable materials included in the County Plan for the residential sector.

Aluminum cans	Motor oil filters
Antifreeze	Newsprint
Brush/tree parts	Non-ferrous and other aluminum scrap
Concrete and asphalt masonry/paving materials	Other paper/magazines/junk mail
Corrugated cardboard	Plastic containers (#1 and #2)
Glass containers	Rechargeable batteries
Grass clippings	Steel cans
Heavy iron	Tires
Household batteries	Used motor oil
Lead-acid batteries	White goods and light iron
Leaves	Wood scraps
Mixed office and computer paper	

The following is a listing of the designated recyclable materials for the commercial, industrial, and institutional sectors included in the County Plan:

Aluminum cans	Mixed office and computer paper
Antifreeze	Motor oil filters
Brush/tree parts/stumps	Newsprint
Computers and peripherals	Non-ferrous and other aluminum scrap
Concrete and asphalt masonry/paving materials	Other paper/magazines/junk mail
Corrugated cardboard	Plastic containers (#1 and #2)
Electronics	Plastic films (for warehouses, retail establishments, and supermarkets with more than 25 employees)
Fluorescent bulbs	Rechargeable batteries
Food waste	Steel cans
Glass containers	Tires
Grass clippings	Used motor oil
Heavy iron	White goods and light iron
Household batteries	Wood scraps
Lead-acid batteries	
Leaves	

Updated Programs – The County through the August 9, 2007 County Plan amendment proposes County Plan inclusion of several programs. These include recycling programs aimed at increasing the recycling of less traditional recyclables, including, but not limited to, household hazardous waste, consumer electronics, used motor oil, motor oil filters, antifreeze, and tires.

Recycling Initiatives – The County through the August 9, 2007 County Plan amendment proposes County Plan inclusion of its strategy to attain a recycling rate of 50% MSW. The County's strategy to attain a recycling rate of 50% MSW is to increase the amount of recycling of designated recyclables through increased education in the residential and institutional sectors and improving the reporting of recycling activity from generators and haulers to municipal

recycling coordinators.

Source Reduction Strategies – the County through the August 9, 2007 County Plan amendment proposes County Plan inclusion of the County’s development and/or revival of programs for the source reduction of several different reuseable materials.

Enforcement – The County through the August 9, 2007 County Plan amendment proposes County Plan inclusion of the Hudson Regional Health Commission (HRHC) to enforce and administer the provisions of the County Plan. In addition, the August 9, 2007 County Plan amendment proposes County Plan inclusion of a graduated penalty schedule for recycling violations.

The Department’s Division of County Environmental and Waste Enforcement (DCEWE) submitted comments regarding the proposed enforcement component of the August 9, 2007 County Plan amendment. The DCEWE’s comments specifically read that the County Plan does not identify how training needs and coordination with municipal solid waste officials will be achieved and that training can be provided through a County website, meetings, and/or training seminars. The DCEWE also notes that under the heading “Recycling Enforcement Protocol”, the HCIA must align their enforcement protocol with the Department’s and that clarification is needed as to why the County Plan cites language about second violations occurring “within two years of the previous violation” shall cause an NOV/OS. The County is directed to address these deficiencies as noted below in Section C. of this certification.

Although the Department does not question the County’s commitment to recycling, the Department’s data indicates that Hudson County’s MSW recycling rate is well below the statewide average and the statutory minimum. As a planning aid to the counties, the State constructed and published in the Statewide Solid Waste Management Plan, Table B-1, which highlights the additional tonnage of material each county must recycle in order to reach a MSW recycling rate of 50%. However, the August 9, 2007 amendment to the County Plan does not identify the specific means by which the County will recycle the additional 174,000 tons of material, cited in Table B-1, required for the County to reach a 50% MSW recycling rate going forward. The County is therefore directed to address this issue as noted below in Section C. of this certification.

Also, although the Department is committed to the future of recycling of food waste generated within our state, the County Plan inclusion of food waste as a designated recyclable is remanded back to the County for further consideration as markets for this material are currently very limited. If the County still wishes to designate food waste as a recyclable in the County Plan, it shall submit an administrative action to the Department, pursuant to N.J.A.C. 7:26-6.11, specifying markets for material.

The County Plan inclusion of the penalty schedule for violations of the Solid Waste Management Act (Act) is rejected. The Department has recently been advised by the Office of the Attorney General that the Department should not approve county plan inclusions of penalty schedules for violations of the Act. The Act gives sole authorization for the development of civil administrative penalty schedules to the Department. However, the “County Environmental

Health Act” provides a mechanism (through the adoption of “environmental health ordinances”) for the adoption of penalty schedules at the county level. Additionally, the “Uniform Shared Services and Consolidation Act” allows for the delegation of enforcement authority (for municipal mandatory recycling ordinances) from the municipality to the county. Therefore, the County can employ the current civil administrative penalty schedule as given at N.J.A.C. 7:26-5.4 and 5.5, or the County can adopt penalty provisions through environmental health ordinances, and employ the provisions of the “Uniform Shared Services and Consolidation Act” to further augment their enforcement capabilities.

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 August 9, 2007 amendment to the approved County Plan and certify to the County Freeholders that the August 9, 2007 amendment is approved in part and rejected in part as further specified below.

The County Plan inclusion of the August 9, 2007 County Plan Update in response to the updated Statewide Solid Waste Management Plan is approved with the exception of the fee schedule for violators of certain recycling requirements of the County Plan and certain criteria for the plan inclusion or modification of recycling centers. These portions of the August 9, 2007 amendment to the County Plan are rejected.

The County must submit a County Plan amendment to address the deficiencies noted in Section B. of this certification within 180 days of the date of this approval.

- operating hours of solid waste and recycling facilities in the County Plan;
- specific timelines for applicants seeking inclusion in the County Plan;
- identify how training needs and coordination with municipal solid waste officials will be achieved;
- alignment of the County’s enforcement protocol with the Department’s and clarification as to why the County Plan cites language about second violations occurring “within two years of the previous violation” shall cause an NOV/OS; and
- identify the specific means by which the County will recycle the additional 174,000 tons of material, cited in Table B-1, required for the County to reach a 50% MSW recycling rate going forward.

The County may submit the required amendment as an administrative action, pursuant to N.J.A.C. 7:26-6.11 et seq. Please note that the Department is requiring the County to meld the submissions in response to the requirements contained in the State Plan update, as identified above, into one unified document for the purpose of general circulation.

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 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 August 9, 2007.

February 4, 2008

Date

Lisa P. Jackson, Commissioner
Department of Environmental Protection