



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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CERTIFICATION OF THE APRIL 11, 2013 AMENDMENT TO THE MERCER 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 July 31, 1980, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Mercer 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 Mercer County Board of Chosen Freeholders (County Freeholders) completed such a review and on April 11, 2013 adopted an amendment to its approved County Plan and approved by the County Executive on April 12, 2013.

The April 11, 2013 amendment proposes the County Plan inclusion of:

- The February 14, 2013 contract between Mercer County Improvement Authority (MCIA) and Waste Management of New Jersey, Inc. (Waste Management) for the transfer, transportation and disposal of solid waste generated within Mercer County, and;
- The direction (waste flow) of all solid waste generated within Mercer County to the MCIA Transfer Station to be disposed of at the Waste Management disposal facilities located in Falls Township and Tullytown, Pennsylvania.

The amendment was considered administratively complete for review by the Department on April 29, 2013 and copies were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed this amendment, and has determined that the amendment adopted by the County Freeholders on April 11, 2013 and approved by the Mercer County Executive on April 12, 2013 is approved, as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the April 11, 2013 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 with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the elements relative to the April 11, 2013 amendment that are included below.

Elements of the April 11, 2013 Amendment

Element: Facility History

On March 11, 1986, the Mercer County Board of Chosen Freeholders adopted an amendment to their County Plan and approved by the County Executive on March 12, 1986 to include the expansion of the Trenton-Ewing Transfer Station to be located on Block 13, Lot 17, in Ewing Township. This County Plan amendment was certified as approved by the Department on August 29, 1986.

On June 1, 2006, the MCI submitted to the Department a request for an administrative action proposing County Plan inclusion of increasing the daily permitted facility waste acceptance at the MCI Transfer Station from 1000 tons per day to 1099 tons per day. The request for administrative action to the County Plan was approved by the Department on June 27, 2006.

On September 25, 2008, the Mercer County Board of Chosen Freeholders adopted an amendment to their County Plan and approved by the County Executive on September 26, 2008 to include weekly averaging at the Mercer County Transfer Station, located in Ewing Township. The MCI Transfer Station facility is allowed to accept approximately 1,500 tons per day, with a weekly limit of 6,000 tons. The proposed plan amendment was approved as an administrative action by the Department on July 1, 2009.

Element: County Plan inclusion of Regulatory Flow Control over Solid Waste Generated in Mercer County

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)], on December 16, 1997, County Plan was amended to reflect the reaffirmation of the designation of the MCIA Transfer Station located in the Ewing Township as the sole facility to which all solid waste generated within Mercer County is directed.

On December 21, 2006, the Mercer County Board of Chosen Freeholders adopted an amendment to their County Plan to reaffirm the solid waste strategy in Mercer County that requires solid waste generated in Mercer County to be delivered to the MCIA Transfer Station for processing and out-of-state disposal. This amendment was certified as approved by the Department on May 25, 2007.

On July 30, 2007, the MCIA issued a bid request in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. The bid request was advertised in the August 6, 2007 edition of Waste News. On October 10, 2007, the MCIA entered into a contract for transfer, transportation and disposal services with Waste Management, Inc. Mercer County's solid waste disposal strategy involved a five-year contract with Waste Management of New Jersey, Inc. for transfer, transportation and disposal of solid waste ("Disposal Services") from the MCIA Transfer Station to disposal facilities in Pennsylvania. This contract was set to expire on November 30, 2012.

Element: Non-Discriminatory Procurement Process

On June 19, 2012 and June 26, 2012, the MCIA advertised the issuance of bid specifications calling for receipt of bids on August 21, 2012 for the combined transfer, transportation and disposal services for all acceptable waste generated in Mercer County in The Trenton Times, The Trentonian, The Star Ledger, and Waste News. The MCIA received three bids which were from Republic Services of New Jersey, LLC; Waste Management of New Jersey, Inc; and, Solid Waste Services, Inc d/b/a J.P. Mascaro & Sons. All three bids were deemed materially deficient and non-responsive and rejected by the MCIA on September 18, 2012.

On October 26, 2012, the MCIA advertised the second round of bid specifications calling for receipt of bids on December 17, 2012 for the combined transfer, transportation and disposal services for all acceptable waste generated in Mercer County in The Trenton Times, The Trentonian and The Star Ledger. The date of receipt of bids was then extended to January 23, 2013. The MCIA received bids from Republic Services of New Jersey, LLC and Waste Management of New Jersey, Inc.

No material deficiencies were found on either bid and Waste Management was determined to be the lowest responsible bidder on February 14, 2013. Therefore, on February 14, 2013, MCIA entered into a contract with Waste Management for transfer, transportation and disposal services for solid waste types 10, 13, 13C, 23, 25 and 27 generated in Mercer County.

The results are as follows:

Disposal Service Fees	
Year One	\$66.48 per ton
Year Two	\$67.14 per ton
Year Three	\$67.81 per ton
Year Four	\$69.17 per ton
Year Five	\$70.55 per ton

The April 11, 2013 amendment proposes County Plan inclusion of the February 14, 2013 contract for transfer, transportation and disposal services for solid waste generated within Mercer County. The contract is proposed to be for three years with two one-year options. Such disposal services include the operation of the MCIA Transfer Station, transportation of solid waste from transfer station to the Waste Management disposal facilities located in Falls Township and Tullytown, Pennsylvania.

Therefore, as a result of the non-discriminatory bidding process undertaken by the MCIA, it has been sufficiently demonstrated that the procurement of these combined services was consistent with the criteria set forth in the Atlantic Coast decision and the MCIA may direct the mandatory waste flow of all solid waste types 10, 13, 13C, 23, 25 and 27 generated within Mercer County to the Mercer County transfer station for the duration of the three year contract, and two year extensions, if so desired as per the February 14, 2013 contract.

Additional Elements of the Mercer County District Solid Waste Management Plan

Element: Municipal Solid Waste (MSW) Recycling in Mercer County

On December 21, 2006, the Mercer County Board of Chosen Freeholders adopted an amendment to the County Plan which, among other things, included specific strategies for achieving the State's statutorily-mandated minimum MSW recycling rate of 50%. This amendment to the County Plan was certified as approved by the Department on May 25, 2007.

The most recent recycling data compiled by the State shows that in 2011, 42% of Mercer County MSW was recycled. Using 2011 Department data, Mercer County will have to recycle an additional 34, 063 tons of MSW to reach a MSW recycling rate of 50%.

In this regard, the County is reminded that the Department adopted an Update to the Statewide Solid Waste Management Plan in 2006, which set forth, among other things, a framework for the counties in assessing various strategies to be employed to achieve the statutorily-mandated recycling goals and, although the state does not prescribe specific actions to be taken, the

Department strongly recommends that the County, at a minimum:

- 1) Assess compliance with the requirements of the County recycling plan within the institutional sector, including public and private schools, government buildings, recreational facilities and other public locations within the county. This assessment should include what specific actions the County will take if a school board or government body refuses to follow recycling mandates; and,
- 2) Coordinate with appropriate municipal authorities for increased compliance and enforcement inspections at commercial establishments, where quantities of designated recyclables (especially corrugated cardboard and various grades of paper) may be present; and,
- 3) Coordinate with each municipality in the County that in 2011 had an MSW recycling rate of 25% or less and develop strategies to increase their respective recycling rates by at least 25% by the end of the calendar year 2013, and prepare plans to implement those strategies.

It should also be noted that, relative to the above, the Department is available to assist the County in developing recycling compliance and other strategies to achieve mandated recycling goals. Finally, in order to assess progress by the County in achieving the state's mandated recycling goals, the County is directed to submit, beginning on January 1, 2014 and every six months thereafter, a report detailing actions taken, and specific results achieved, until such time as the Department determines that the County has achieved these goals.

C. Certification of the Mercer County District Solid Waste Management Plan Amendment

In accordance with N.J.S.A. 13:1E-1 et seq., specifically N.J.S.A. 13:1E-21, which establishes specific requirements regarding the contents of the county solid waste management plans, I have reviewed the April 11, 2013 amendment to the approved County Plan and certify to the County Freeholders that the April 11, 2013 amendment is approved as further specified below.

The April 11, 2013 amendment proposing the County Plan inclusion of:

- The February 14, 2013 contract between Mercer County Improvement Authority and Waste Management of New Jersey, Inc. for the transfer, transportation and disposal of solid waste generated within Mercer County, and;
- The direction (waste flow) of all solid waste generated within Mercer County to the MCIA Transfer Station to be disposed of at the Waste Management disposal facilities located in Falls Township and Tullytown, Pennsylvania is approved.

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

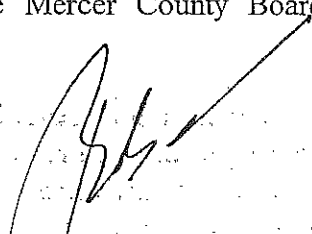
Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's 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 the amendment, as outlined in Section C. of this certification, to the Mercer County District Solid Waste Management Plan, which was adopted by the Mercer County Board of Chosen Freeholders on April 11, 2013.

Date

9/27/2013



Bob Martin, Commissioner
Department of Environmental Protection