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CERTIFICATION OF THE APRIL 12, 2018 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 (formerly known as the New Jersey Meadowlands Commission, now known as the New Jersey Sports and Exposition Authority or NJSEA) 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 12, 2018 adopted an amendment to its approved County Plan and approved by the Mercer County Executive on May 1, 2018.

The April 12, 2018 Amendment (Amendment) proposes County Plan inclusion of:

- The contract by and between the Mercer County Improvement Authority (MCIA) and Waste Management of New Jersey, Inc. (WMNJ) for the transfer, transportation, and disposal services for all acceptable waste generated within Mercer County, for a period of five years beginning on November 1, 2018, based on an open and non-discriminatory procurement; 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 May 10, 2018 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 12, 2018 and approved by the Mercer County Executive on May 1, 2018 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 12, 2018 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 12, 2018 Amendment that are included below.

Elements of the April 12, 2018 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 27, 2006, the Department approved a June 1, 2006 request for Administrative Action to the County Plan. The subject request for Administrative Action to the County Plan proposed County Plan inclusion of increasing the daily permitted facility waste acceptance at the MCIA Transfer Station from 1000 tons per day to 1099 tons per day.

On July 1, 2009, the Department approved a September 25, 2008 request for Administrative Action to the County Plan. The subject request for Administrative Action to the County Plan proposed County Plan inclusion to include weekly tonnage averaging at the Mercer County Transfer Station, located in Ewing Township. The transfer station facility will be allowed to accept approximately 1,500 tons per day, with a weekly limit of 6,000 tons.

Lastly, on November 8, 2010, the Department approved a September 30, 2010 request for Administrative Action to the County Plan. The subject request for Administrative Action to the County Plan which proposed County Plan inclusion of the acceptance of waste type 271 (waste material consisting of incinerator ash or ash containing waste) at the MCIA Solid Waste Transfer Station.

Element: County Plan Inclusion of Regulatory Flow Control over all 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, the 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 WMNJ. Mercer County's solid waste disposal strategy involved a five-year contract with WMNJ for transfer, transportation and disposal of solid waste ("Disposal Services") from the MCIA Transfer Station to disposal facilities in Pennsylvania. The contract expired on November 30, 2012.

Lastly, 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; WMNJ; 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 WMNJ.

No material deficiencies were found on either bid and WMNJ was determined to be the lowest responsible bidder on February 14, 2013. Therefore, on February 14, 2013, MCIA entered into a contract with WMNJ for transfer, transportation and disposal services for solid waste types 10, 13, 13C, 23, 25 and 27 generated in Mercer County. The contract is set to expire October 31, 2018.

Element: Non-Discriminatory Procurement Process

On December 22, 2017, the MCIA advertised the issuance of bid specifications calling for receipt of bids for the provision of transfer, transportation, and disposal of all acceptable waste generated within Mercer County in the Trentonian and the The Times of Trenton. The bids were issued in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. The MCIA received one bid on February 21, 2018. WMNJ was determined by the MCIA to be the lowest bidder in compliance with the bid specifications, bidding \$71.60, \$72.67, \$73.75, \$74.85, and \$75.97 per ton for each year of the five-years of the disposal contract (3 years with two 1-year optional extensions), scheduled to begin on November 1, 2018.

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 control of all solid waste types 10, 13, 13C, 23, 25, 27, 27A, and 27I generated within Mercer County to the Mercer County Transfer Station for the duration of the three year contract, and the two one-year extensions, if so desired as per the contract.

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 12, 2018 Amendment to the approved County Plan and certify to the Freeholders that the April 12, 2018 Amendment is approved as specified below.

The April 12, 2018 Amendment (Amendment) proposes County Plan inclusion of:

- The contract by and between the Mercer County Improvement Authority (MCIA) and WMNJ for the transfer, transportation, and disposal services for all acceptable waste generated within Mercer County, for a period of five years beginning on November 1, 2018, based on an open and non-discriminatory procurement; 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 elements 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 includes the compilation of individual County 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 12, 2018 and approved by the Mercer County Executive on May 1, 2018.

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Date



Catherine R. McCabe