

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

**CERTIFICATION
OF THE NOVEMBER 20, 2007
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 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 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 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 November 20, 2007, adopted an amendment to its approved County Plan.

The November 20, 2007 amendment proposed County Plan inclusion of the new contract for transfer, transportation and disposal services for solid waste generated within Mercer County.

The amendment was considered administratively complete for review by the Department on November 21, 2007 and copies had been 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 November 20, 2007 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 November 20, 2007 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 issues of concern relative to the November 20, 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
- Office of Local Environmental Management, DEP
- Office of Air Quality Management, DEP
- Green Acres Program, DEP
- Land Use Regulation Program, DEP
- Bureau of Solid Waste Compliance and Enforcement, DEP
- New Jersey Turnpike Authority
- New Jersey Advisory Council on Solid Waste Management
- Pinelands Commission
- Department of Agriculture
- Department of Health and Senior Services
- Department of Transportation
- Department of Community Affairs
- U.S. Environmental Protection Agency

Background: Mercer County Improvement Authority (MCIA) Contract

In November, 2002, the MCIA procured a transfer station operation, 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 Mercer County Transfer Station to disposal facilities in Pennsylvania. This contract expires on November 30, 2007.

Element: Mercer County Procurement Process

The MCIA issued the bid request on July 30, 2007 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. Waste Management of New Jersey, Inc. submitted the lowest responsible bid for the operation of the MCIA transfer station, transportation of the solid waste to the disposal facility and the disposal fee. The bid consists of the following:

	Transfer \$/ton	Transportati on \$/ton	Disposal \$/ton	Total
Year One	3.57	7.00	65.91	76.48
Year Two	3.68	7.21	67.89	78.78
Year Three	3.85	7.55	72.04	83.44
Year Four (optional)	3.85	7.55	72.04	83.44
Year Five (optional)	3.85	7.55	72.04	83.44

The November 20, 2007 amendment proposed County Plan inclusion of the new 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.

Therefore, as a result of the non-discriminatory bidding process undertaken by the MCIA, it has been sufficiently demonstrated that the procurement of transfer and transportation 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, 23 and 27 generated within Mercer County to the Mercer County transfer station for the duration of the three year contract and possibly two one-year extensions.

Element: MCIA Contract Provisions

Provisions of the MCIA/Waste Management of New Jersey, Inc. contract (Page 10: Article II (b)) states that during the operation of the MCIA Transfer Station Facilities the contractor shall

be responsible for payment of "all penalties, fines or assessments imposed by the DEP....., unless such failure shall result solely and exclusively from acts and omission of MCIA".

The Department notes that the MCIA is holder of the Solid Waste Facility Permit issued for the MCIA Transfer Station. As such, the MCIA is the responsible party for any Notice of Violations (NOV's), Administrative Orders or other enforcement action issued or taken by the Department. Further, any settlement of the above noted enforcement actions will require payment by the MCIA and not the contractor. If Mercer County and/or MCIA wishes to have the contractor as the responsible party for all enforcement actions/penalties incurred due to the contractor's operation of the facility, then there must be a separate "Operations Agreement" that identifies the responsibilities (and to which party DEP will issue enforcement actions) of all of the involved parties.

Also, as MCIA is the holder of the Solid Waste Facility Permit, they are the responsible party for payment of all assessments (i.e. annual registration fees, compliance and enforcement monitoring fees, Certificate of Public Convenience Necessity fees) since these assessments are billed to the holder of the Solid Waste Facility Permit. The contractor (in this case-Waste Management) is not responsible for those assessments.

The Department further notes that provisions of the MCIA/Waste Management of New Jersey, Inc. contract (Page 10: Article II(c)) states under the "Permits" article the contractor "... shall be responsible for maintaining and/or renewing said Permits ..if necessary during the term of the Agreement."

However, since MCIA is the holder of the Solid Waste Facility Permit issued for the MCIA Transfer Station, the MCIA is the responsible party for ensuring that all permits are renewed for the facility. The party issued the Solid Waste Facility Permit is the holder of all permits issued for a facility and not the contractor and/or operator of the facility.

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 19, 2006 amendment to the approved County Plan and certify to the County Freeholders that the April 19, 2006 amendment is approved as further specified below.

The November 20, 2007 amendment proposing County Plan inclusion of the new contract for the operation of the MCIA transfer station, transportation of the solid waste to the disposal facility and the disposal of the solid waste generated within Mercer County is approved. However, as noted in Section B. of this certification document, if Mercer County and/or MCIA wishes to have the contractor as the responsible party for all enforcement actions/penalties incurred due to said contractor's operation of the facility, then there must be a separate "Operations Agreement" that identifies the responsibilities (and to which party DEP will issue enforcement actions) of all of the involved parties.

This certification shall not be construed as an expression of the Department's intent to issue a solid waste facility permit or permit modification for any proposed facility or operation.

The construction or operation of any solid waste facility shall be preceded by the acquisition of all necessary permits and approvals pursuant to N.J.S.A. 13:1E-1 et seq., and all other applicable laws. The issuance of operating permits pursuant to the Solid Waste Management Act is limited to those applicants found by the DEP and the Attorney General of the State of New Jersey to be deserving of licensing under the provisions of N.J.S.A. 13:E-126.

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, 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 November 20, 2007.

Date

Lisa P. Jackson, Commissioner
Department of Environmental Protection