

AMENDMENT 11-3
to the
BURLINGTON COUNTY
DISTRICT SOLID WASTE MANAGEMENT PLAN

ESTABLISHING SOLID WASTE FLOW CONTROL

I. PURPOSE AND AUTHORITY

The New Jersey Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.) (the "Act"), enacted as P.L. 1970, chapter 39, and amended a number of times since then, 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, N.J.S.A. 13:1E-2, and required that each District develop a comprehensive plan for waste management within its boundary.

On December 13, 1979 the New Jersey Department of Environmental Protection ("NJDEP") approved, with modifications, the Burlington County District Solid Waste Management Plan. Major modifications to the Plan were adopted in 1980, 1982 and 1986. In 2009 the Burlington County Board of Chosen Freeholders ("County" or "Board") updated the District Plan (hereafter, the "Plan" or "District Plan"); DEP's Commissioner approved the Plan by certification dated February 2, 2009.

Amendment 11-3 (the "Amendment") proposes to revise the solid waste disposal strategy set forth in the Plan by eliminating the market participant strategy and instituting a system of waste flow control in Burlington County. This Amendment is authorized by N.J.S.A. 13:1E-21 and -23 and by regulations promulgated by the NJDEP.

II. BACKGROUND

In accordance with the Act and the County's Plan the County planned for, constructed and now operates a solid waste management system for the disposal or other disposition of solid waste, sludge, household hazardous waste and recyclable materials

for all residents and businesses within the County. The cornerstone of the County's solid waste management system is the 522-acre Resource Recovery Complex (the "Complex"), which contains the majority of facilities comprising the system.

In developing its solid waste management system in the late 1970's and early 1980's, the County relied on its authority under the Act to direct solid waste generated within Burlington County to the Complex. On May 1, 1997, the United States Court of Appeals for the Third Circuit affirmed a New Jersey District Court ruling, which found that New Jersey's waste flow control system was unconstitutional insofar as it discriminated against interstate commerce [Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, 112 F.3d 652 (3d Cir.1997) (Atlantic Coast II), cert. denied sub nom., Essex County Utilities Authority v. Atlantic Coast Demolition & Recycling, Inc., --- U.S. ----, 118 S.Ct. 412, 139 L.Ed.2d 316, and cert. denied sub nom., Shinn v. Atlantic Coast Demolition & Recycling, Inc., --- U.S. ----, 118 S.Ct. 413, 139 L.Ed.2d 316 (1997), and opinion amended by 135 F.3d 891 (3d Cir.1998)]

In anticipation of the invalidation of New Jersey's waste flow regulations, the Board adopted Amendment 97-1 to the Plan on September 24, 1997. Amendment 97-1 sets forth a system of flow control predicated upon execution of service contracts with voluntary participants, including municipalities, solid waste haulers and waste generators. By certification dated November 10, 1997, NJDEP Commissioner Robert C. Shinn, Jr. approved the County's market participant strategy, which provides for voluntary service contracts.

In late 1997 the County offered contracts to Burlington County municipalities for waste processing and disposal services provided at the Resource Recovery Complex and recycling collection services provided through the County's Regional Recycling Program. All forty municipalities in the County have continually executed annual Solid Waste Services Agreements with the Board.

At the same time County representatives met with the major solid waste haulers providing collection service within Burlington County to discuss terms and conditions of

a solid waste delivery agreement. Although the County prepared and distributed waste delivery agreements to all hauling firms known to conduct business within the County, none executed it.

On November 10, 1997, the United States Supreme Court declined to hear the State's appeal of lower court decisions which held New Jersey's system of solid waste flow control unconstitutional. [Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County et al, supra. The Supreme Court's denial of certification effectively rendered New Jersey's flow control regulations null and void as of the date of the ruling. Thus, as of November 10, 1997, solid waste haulers were no longer obligated by law, regulation or order to dispose of waste generated in Burlington County at the County's Resource Recovery Complex. Subsequent to the 1997 ruling, there has been a marked decrease in the quantity of solid waste delivered to the Resource Recovery Complex for disposal and a commensurate increase of solid waste exports to out-of-county disposal facilities. Exhibit A to this amendment is an analysis of the disposal trends of Burlington County's solid waste from 1998 to 2009.

In 1988 the Board authorized creation of a solid waste utility fund (the "Fund") for the purpose of maintaining the financial and accounting records related to implementation of the Plan. The Fund is required to be self-liquidating on an annual basis, meaning that cash receipts from fees, rents or other charges in a fiscal year are to be sufficient to meet operating and maintenance costs and interest and debt redemption charges payable or accruing in such year without recourse to general taxation.

Prior to 1997, the County was able to generate sufficient revenue to provide for the cost of operation, maintenance and debt service for the solid waste management system through solid waste disposal fees. The loss of waste evidenced over the past twelve years has resulted in a significant loss of revenue. In order to deliver a balanced utility budget, the County has endeavored to reduce operating expenses, has reduced or eliminated contributions to its self-insurance and equipment replacement funds, and has withdrawn funds from its sanitary landfill closure escrow. These measures collectively

have not been adequate and Burlington County, along with several other counties, has had to rely on financial assistance from the State for self-liquidating purposes. The County has received a subsidy for payment of stranded (pre-1997) solid waste utility debt every year since 2000. On receipt of financial assistance from the State in early 2011, the County was notified that due to the financial condition of the State of New Jersey this type of debt relief will not be available in the future.

In response to a solid waste crisis in the 1980's, the New York State Legislature created the Oneida Herkimer Solid Waste Management Authority and empowered it to collect, process and dispose of the solid waste generated in Oneida and Herkimer Counties. The Authority agreed to purchase and develop facilities for the processing and disposal of all solid waste and recyclables generated in the Counties. Private haulers were free to pick up citizens' trash at the curb, but the Authority was responsible for processing, sorting and arranging for disposal of the waste. In order to cover operating and maintenance costs for their facilities the Counties enacted flow control ordinances requiring that all solid waste generated within the Counties be delivered to the Authority's processing facilities.

In 1995, a group of solid waste management companies and solid waste haulers filed suit against the Oneida Herkimer Solid Waste Management Authority in District Court alleging that the flow control laws prohibited the export of waste and prevented waste haulers from using less expensive out-of-state facilities in violation of the Commerce Clause.

The U.S. Supreme Court, on April 30, 2007, upheld the ordinance, emphasizing that the favored waste disposal facilities were publicly owned and operated. The Supreme Court found that a waste flow control ordinance that directs waste to a public facility places only an incidental burden on interstate commerce, which is outweighed by the public purposes of providing publicly owned, environmentally sound solid waste disposal facilities. Under such circumstances, waste flow regulation is permissible under the Commerce Clause. United Haulers Association v. Oneida Herkimer Solid Waste

Management Authority, 550 U.S. 330, 346-347 (2007).

The Supreme Court's decision has allowed other counties, including several in New Jersey, to institute waste flow control to establish financial stability and continue to operate environmentally sound solid waste disposal systems. In view of the escalating loss of waste, unavailability of future financial assistance from the State and the public benefit realized by ensuring the long-term financial stability of the solid waste utility, the County is proposing to restore flow control based on economic necessity.

III. PLAN AMENDMENT

This amendment will replace Plan Section IV.D "Flow Control and Participation in the Burlington County Solid Waste Management System" and Section VIII.E.1 "Policy Related to Transfer Stations".

IV. SOLID WASTE MANAGEMENT STRATEGY

D. Flow Control and Participation in the Burlington County Solid Waste Management System

In accordance with the Solid Waste Management Act and the rules and regulations promulgated thereunder the County provided and maintains an environmentally sound solid waste management system for the benefit, safety and welfare of its residents. In response to economic necessity and in recognition of the 2007 U.S. Supreme Court decision United Haulers Association v. Oneida Herkimer Solid Waste Management Authority, supra, 550 U.S. 330 (2007), the County is instituting a system of regulatory flow control as set forth below.

1. Solid Waste

a. In-County Generated Waste

All NJDEP Waste Types 10, 23 and 25 generated by any residential, public, commercial, industrial or institutional establishment located within Burlington County shall be directed and transported to the Burlington County Resource Recovery Complex for processing and/or disposal. Waste will be accepted at the Complex in

accordance with the Rules and Regulations adopted by the Board, Solid Waste Facility Permits issued by NJDEP and the Permanent Tariff. The waste flow requirements set forth above shall not apply to Types 13, 13C and 27 waste. The County is currently landfilling in Phase IV of Landfill No. 2 and constructing Phase V, of Landfill No. 2, to create additional airspace. Because construction of Phase V has been delayed the County has misgivings of the availability of airspace in the near term; thus, at this time the County has determined to exclude Waste Types 13, 13C and 27 from the above flow requirements. The County may consider reinstating waste flow control of these waste types in the future. In the meantime, in the event that these waste types are processed at a material recovery facility, the residual waste attributable to Burlington County sources shall be disposed of at the Complex unless the County determines that such residue would be detrimental to worker safety on the landfill or operation of the Complex.

The waste flow requirements set forth above shall not apply to the collection, shipment, processing, storage and marketing of source-separated recyclable materials as prescribed by the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99, et seq. , and the rules promulgated thereunder, provided that such materials are directed to a facility that is permitted and authorized under all applicable State and federal laws, regulations, and local ordinances to engage in such recycling activities, and further provided that solid waste residue generated by such activities within Burlington County shall remain subject to the solid waste flow requirements set forth above.

b. Out-of-County Waste

The County believes that it is a legitimate purpose of government to provide for local and County-wide waste management needs for the benefit, safety and welfare of residents; that it has the legal right to participate in the solid waste disposal market and that it can legally exercise its right to benefit its own residents over others by preserving its landfill capacity for in-County generators of solid waste. The County intends to continue its policy of refusing to accept out-of-county waste for disposal at the

landfill. In the event that economic conditions or other circumstances warrant modification of the policy the County reserves the right to accept out-of-County waste from counties with an open market solid waste disposal strategy.

The County will not prohibit delivery of out-of-county waste to the recycling and co-composting facilities located at the Complex. The volume of waste delivered from these sources will be closely monitored to ensure that service to in-County generators is not compromised.

2. Sludge - unmodified

VIII. PROCEDURES, STANDARDS AND IMPLEMENTATION

E. General Policies of the Solid Waste Management District

1. *Policy Related to Transfer Stations*

Transfer stations shall dispose of solid waste generated within Burlington County at the Complex. Transfer stations receiving waste from one or more generators located in Burlington County shall keep a record of the type and amount (in tons) of solid waste received from each generator and, for each generator, shall distribute an equal type and amount of solid waste to the Complex for disposal. Solid Waste Facility Monthly Disposal and Materials Recovery Reports, with weights reported in tons, shall be transmitted electronically to Burlington County on a monthly basis and wastes received and disposed in kind shall be reconciled no less than quarterly.

As noted above, transfer stations receiving waste generated from outside of Burlington County as well as waste generated within Burlington County shall dispose of residual waste at the Complex landfill in the proportion that Burlington County waste bears to the total amount of waste processed at the facility.

This policy was previously approved by the Department in its Certification issued 4/18/83.

IV. IMPLEMENTATION, COMPLIANCE AND ENFORCEMENT

A. Notification

The County shall notify all municipalities and solid waste haulers doing business in Burlington County of the amendment to the solid waste disposal strategy and a date for implementation on certification of Amendment 11-3 by the DEP.

B. Contracts

Any contract renewal or new contract for solid waste collection or disposal which is inconsistent with Amendment 11-3 and which was executed prior to the certification of this amendment and subsequent to the effective date of the Act (July 29, 1977), shall be renegotiated within ninety (90) days in order to bring same into conformance with the terms and provisions herein set forth. Any solid waste collection operation, resource recovery or disposal facility shall be deemed to be in violation of this Amendment and the District Plan if such renegotiation is not completed within ninety (90) days of the effective date of this Amendment.

C. Enforcement

Enforcement responsibilities will be shared by the Burlington County Health Department, municipalities, commercial and institutional establishments and the DEP.

D. Penalties

Any solid waste facility operators and transporters registered with DEP and operating within Burlington County who fail to comply with the solid waste disposal strategy contained in Amendment 11-3 shall be deemed to be in violation of N.J.S.A. 13:1E-1 et seq., N.J.A.C. 7:26-1 et seq. and shall be subject to the provisions and penalties set forth therein and in all other applicable laws and regulations.

V. SCOPE

This Amendment is intended to modify only those portions of the approved Plan specifically addressed herein. All previously approved provisions which are not inconsistent with this Amendment shall remain in full force and effect.

ADOPTED BY THE BURLINGTON COUNTY BOARD OF CHOSEN FREEHOLDERS

DATE: DECEMBER 14, 2011

RESOLUTION No. 2011-00819

Exhibit A
Trends in Solid Waste Disposal
In-County versus Out-of-County
1998 - 2009

Year	Total Solid Waste Disposed	Solid Waste Disposed at Burlington County Landfill	Solid Waste Transported out of County	% of Total Waste Exported
1998	345,479	309,444	36,035	10%
1999	401,894	305,787	96,107	24%
2000	427,491	326,051	101,440	24%
2001	435,652	366,140	70,512	16%
2002	440,935	331,753	109,182	25%
2003	470,679	375,999	94,680	20%
2004	498,287	392,182	106,105	21%
2005	503,300	395,536	107,764	21%
2006	502,517	338,434	170,854	34%
2007	463,701	310,310	153,391	33%
2008	451,444	292,496	158,651	35%
2009	454,373	271,189	183,184	40%