



## State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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### CERTIFICATION OF THE DECEMBER 14, 2011 AMENDMENT TO THE BURLINGTON 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 October 30, 1980, the Department of Environmental Protection (Department or DEP) approved, the Burlington 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 Burlington County Board of Chosen Freeholders (County Freeholders) completed such a review and on December 14, 2011 adopted an amendment to its approved County Plan.

The December 14, 2011 Plan amendment proposes County Plan inclusion of the Burlington County Resource Recovery Complex (Complex) located in Florence Township and in Mansfield Township, as the designated solid waste disposal facility for solid waste types 10, 23 and 25 generated by any residential, public, commercial, industrial or institutional establishment located within Burlington County.

The amendment was considered administratively complete for review by the Department on January 17, 2012 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 December 14, 2011 is approved, as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the December 14, 2011 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 December 14, 2011 amendment which are included below.

**Elements of the December 14, 2011 Amendment**

**Element: Solid Waste Flow Control**

The December 14, 2011 Plan amendment proposes County Plan inclusion of the Burlington County Resource Recovery Complex (Complex) located in Florence Township and Mansfield Township, as the designated solid waste (flow control) disposal facility for solid waste types 10, 23 and 25 generated by any residential, public, commercial, industrial or institutional establishment located within Burlington County. The waste flow control requirements do not include solid waste types 13, 13C and 27 wastes. As noted in the amendment, the loss of statewide waste flow control as a result of the "Atlantic Coast" decision in 1997 has resulted in a significant decrease in waste being brought to the Burlington County landfill. The amendment further states that, "In order to deliver a balanced utility budget, the County has endeavored to reduce operating expenses, ... but 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." It is anticipated, by the County and the Department, that instituting waste flow control as provided for in the December 14, 2011 amendment will return the utility to a self-liquidating status, meaning that solid waste revenues will be adequate to cover Burlington County's expenses to operate its comprehensive solid waste management plan.

The waste flow requirements set forth above shall not apply to the collection, shipment, 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. However, as the plan amendment notes, in the event that Burlington County generated waste types 10, 23, and 25 are processed at a material recovery facility (MRF), the residual waste attributable to Burlington County sources shall be disposed of at the Complex.

Transfer stations shall dispose of solid waste types 10, 23, and 25 generated from within Burlington County at the Complex. Transfer stations receiving waste generated from outside of Burlington County as well as waste generated from within Burlington County shall dispose of residual waste (after any processing) at the Complex landfill in the proportion that Burlington County waste bears to the total amount of waste processed at the facility, or at any other disposal facility which may be designated by the County, after completion of the study as directed below.

As noted above, the waste flow control requirements do not include solid waste types 13, 13C

and 27 wastes. In this regard, the proposed amendment contained conflicting language with respect to the residue of these waste types after processing at a MRF. The amendment states "... in the event that these waste types (13, 13C and 27) are processed at a material recovery facility (MRF), the residual waste attributed to Burlington County sources shall be disposed 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 Department contacted the County for clarification of this issue. The county responded stating that the residue noted in this sentence is waste type 10 that may have been mixed with the other waste types. Therefore, the waste flow control requirements do not include solid waste types 13, 13C and 27 and any processing residue of these waste types at a MRF.

The proposed plan amendment also states that Burlington County intends to continue its policy of refusing to accept out-of-county waste for disposal at the Complex landfill. However, the County will not prohibit delivery of out-of-county recyclables to the recycling and co-composting facilities at the Complex.

The December 14, 2011 Solid Waste Management Plan Amendment is appropriate under the recent U.S. Supreme Court decision in United Haulers Association v. Oneida Herkimer Solid Waste Management Authority, 550 U.S. 330 (2007). In Oneida Herkimer, a group of haulers challenged county flow control ordinances under the Commerce Clause of the U.S. Constitution; the challenged ordinances directed waste to a facility run by a public authority. As in Oneida Herkimer, the direction of waste to a facility run by a public authority places only an incidental burden on interstate commerce that is outweighed by its public purpose and is thus permissible under the Commerce Clause. The ordinances upheld in Oneida Herkimer are similar in their effect to the proposed amendment to the Burlington County Solid Waste Management Plan.

#### **Element: Solid Waste Enforcement**

The proposed plan amendment states that enforcement responsibilities will be shared by the Burlington County Health Department, municipalities, commercial and institutional establishments and the DEP. The Department notes that DEP does not enforce waste flow provisions of County Plans but delegates that responsibility to the County Health Departments through the provisions of the County Environmental Health Act.

#### **Element: Regionalization**

Pursuant to its responsibilities under the Solid Waste Management Act, the Department has examined the possible impacts that instituting waste flow control as detailed in this amendment may have on, among other things, the remaining landfill capacity at the Complex, as well as operational efficiencies at other disposal facilities in the region. Furthermore, there may be opportunities to (i). ensure that the Complex's capacity is conserved, (ii). maximize recycling, and (iii). optimize use of disposal facilities in the region. In addition, examination of regional disposal options may identify opportunities for the County to retire its solid waste debt early.

Therefore, the County is directed to undertake a study that evaluates the following issues:

1. Current and projected public and private regional waste disposal capacity which may be underutilized, including, but not limited to, the following counties: Atlantic, Cumberland, Camden, Gloucester, Mercer and Salem (the "Regional Counties"); and,
2. The lowest possible disposal rate that could be obtained by Burlington County with each of the Regional Counties.

Furthermore, the County is directed to perform a cost/benefit analysis to determine: (i). whether the County could realize cost savings by utilizing disposal facilities in Regional Counties, taking into consideration the County's cost to operate its solid waste disposal facility, and the value of long-term preservation of landfill space at the Complex, and (ii). the feasibility of applying any such savings to early retirement of the County's solid waste debt.

To assist the County in this study, the Department will be scheduling a meeting between the County and Department staff, prior to the County conducting the above-noted study, to determine the parameters of this study and provide information in the Department's possession which may be useful to the County in conducting this study. The County is hereby directed to submit a report to the Department setting forth the results of its study by October 1, 2012, which report shall contain the County's recommendations. The Department will review the report within 60 days of its receipt, and meet with the County to discuss the results.

#### **Element: Recycling Mandate**

New Jersey's Statewide Solid Waste Management Plan calls for, among other things, a framework for the counties to assess strategies to achieve the statutorily-mandated recycling targets of 50% of the municipal solid waste (MSW) stream and 60% of the total solid waste stream (N.J.S.A. 13:1E-99.13). In response, Burlington County adopted an amendment to its solid waste management plan to, among other things, identify the means that it would take to achieve these targets. The Department is appreciative of these efforts to increase recycling, but more work needs to be done for New Jersey to achieve the mandatory recycling goals and to prudently manage our existing disposal capacity.

Recycling reduces our use of natural resources, extends the life of our existing disposal facilities, reduces greenhouse gas emissions, puts valuable commodities back in to the economy, and creates more jobs than does waste disposal. These environmental and economic outcomes improve the quality of life for all New Jersey residents and are priorities of this Administration.

Pursuant to the requirements of N.J.S.A. 13:1E-99.13 that the county develop, adopt and implement a recycling plan that achieves the recycling targets above, the County is reminded of the commitment contained in the July 23, 2008 Amendment to the Burlington County District Solid Waste Management Plan to achieve the statutory recycling mandates for MSW and total solid waste stream recycling by 2012. Therefore, the County is hereby directed to submit to the Department, beginning on September 1, 2012 and every six months thereafter, a report detailing:

1. Actions taken to implement the recycling strategies contained in the County's adopted and approved recycling plan.,
2. The specific results achieved; and,
3. Geographic areas or economic sectors where recycling needs improvement, and strategies to increase recycling in those areas or sectors.

These reports shall be due until such time as the Department determines that the County has achieved the above noted recycling targets. These reports will assist the Department in evaluating the county's progress in achieving the mandatory recycling rates and in identifying issues that may be preventing the county from achieving these mandates.

**C. Certification of the Burlington 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 December 14, 2011 amendment to the approved County Plan and certify to the County Freeholders that the December 14, 2011 amendment is approved, as further specified below.

The December 14, 2011 Plan amendment proposing County Plan inclusion of Burlington County Resource Recovery Complex located in Florence Township and in Mansfield Township, as the designated disposal facility for solid waste types 10, 23 and 25 generated by any residential, public, commercial, industrial or institutional establishment located within Burlington County is approved.

As noted in Section B of this document, Burlington County shall undertake the regionalization analysis and recycling initiative in the above noted timeframe provided.

**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.

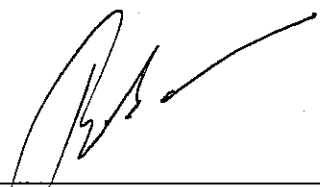
**6. Reservation of Authority**

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 Burlington County District Solid Waste Management Plan, which was adopted by the Burlington County Board of Chosen Freeholders on December 14, 2011.

6/15/2012  
Date

  
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Bob Martin, Commissioner  
Department of Environmental Protection