

**Morris County  
Solid Waste Management Plan Amendment**

**June 2002**

**Disposal System Update**

**Prepared for:**

**Morris County Board of Chosen Freeholders  
and  
Morris County Solid Waste Advisory Council**

# MORRIS COUNTY BOARD OF CHOSEN FREEHOLDERS

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## **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 the respective Boards of Chosen Freeholders and the Hackensack Meadowlands Development Commission develop comprehensive plans for waste management in their respective districts. On January 29, 1981, the New Jersey Department of Environmental Protection (NJDEP) approved, with modifications, the Morris County District Solid Waste Management Plan (Plan). The Act further requires that all new solid waste facilities be approved for plan inclusion or if facilities are already included in the Plan, that the Plan be consistent with permits and/or approvals issued by the NJDEP.

This document has been prepared as an amendment to the Morris County Solid Waste Management Plan which updates the Plan with respect to the operation of the two Morris County Municipal Utilities Authority (MCMUA) transfer stations and the disposal of solid waste delivered to each transfer station. This Plan amendment incorporates the terms and conditions contained in an April 2, 2002 proposal submitted by Waste Management of New Jersey, Inc. (WM), as adopted by resolution on April 9, 2002 by the MCMUA. The WM bid was submitted in response to a request for bids issued by the MCMUA on January 11, 2002 entitled, "Operating the Two Morris County Solid Waste Transfer Stations, Located in Parsippany-Troy Hills Township and Mount Olive Township, Including Providing Transportation to Disposal Facilities and Disposal of County Solid Waste." Finally, this Plan amendment updates and/or deletes existing elements to the Plan, which are superceded by the implementation of the abovementioned transfer station operations, transportation and disposal proposal by WM.

## **BACKGROUND**

### **Out-of State Landfill Easement**

On October 19, 1992 the MCMUA prepared and issued a request for proposals (RFP) setting forth in detail the requirements to be satisfied in submitting a proposal for the sale to the MCMUA of an undivided interest in real property, consisting of certain easement rights to use up to 4,500,000 tons of landfill space in one or more sanitary landfills located outside the geographic boundaries of the County of Morris, New Jersey.

In accordance with the provisions of the RFP, the landfill easement would be for a term of 10 years, with a five (5) year option which could be exercised by the Authority at its sole option. Detailed proposals in response to the RFP were submitted by five firms on November 16, 1992. Based on the results of the evaluation of technical, cost and contractual proposals, the MCMUA, consultants and counsel recommended the MCMUA accept the proposal submitted by Waste Management of Pennsylvania, Inc. The MCMUA and Waste Management of Pennsylvania, Inc. executed the easement agreement on January 6, 1993 and delivered a check in the amount of \$1 million to Waste Management of Pennsylvania, Inc. representing

the base purchase price as set forth in the easement agreement.

### **In-County Solid Waste Management System Facilities**

In a March 10, 1993 amendment to the Morris County Solid Waste Management Plan, as certified by the NJDEP on August 25, 1993, the County of Morris provided a detailed plan for the management of waste generated in Morris County. This Plan amendment was in response to the "The Emergency Solid Waste Assessment Task Force: Final Report" to Governor Florio dated August 6, 1990.

Amongst other issues, this March 10, 1993 Plan amendment presented the County's:

- Intention to develop an in-County solid waste management system facilities consisting of a bulky waste processing facility, a mixed waste processing facility, a solid waste composting facility and potentially, a recycling facility to supplement the County's source separation activities, and;
- Reliance on out-of-state landfilling to manage the remaining waste that needed to be landfilled after being processed by the in-County solid waste management system mentioned above.

In its August 25, 1993 certification of the March 10, 1993 Plan amendment, the NJDEP modified the Plan amendment relating to the utilization of the landfill easement. The certification required Morris County to submit more detail strategy regarding the implementation of the in-county solid waste management system facilities and/or entering into regional agreements for the shared use of existing or planned in-state disposal capacity. The NJDEP advised Morris County that the strategy would be considered by NJDEP in its review of the out-of-state easement agreement.

As a result of the provisions of the August 25, 1993 certification the MCMUA proceeded with the procurement of the in-county solid waste management facility components. The MCMUA received five proposals from firms interested in constructing the in-county solid waste management system facilities.

### **Essex County Waste-To-Energy Facility Memorandum of Understanding**

At approximately the same time the MCMUA received proposals for the construction of the in-county solid waste management systems facilities, Morris County and the MCMUA received a proposal from the Essex County Utilities Authority (ECUA) with respect to the potential use of the Essex County waste-to-energy facility located in Newark, NJ (Essex Facility).

As a result of higher than expected costs related to the implementation of the in-county solid waste management facilities, together with increased concern regarding the long-term reliability and viability of mixed municipal solid waste composting technology, Morris County and the MCMUA continued discussion with the ECUA regarding the use of the Essex Facility.

On August 23, 1994 the ECUA and the MCMUA entered into a memorandum of understanding (MOU) detailing the terms of the MCMUA's use of the Essex Facility. On November 24, 1994 Morris County adopted an amendment to the Plan that incorporated the use of the Essex Facility with the associated use of the MCMUA transfer stations and responded to outstanding issues from the March 10, 1993 Task Force Report plan amendment. This November 24, 1994 plan amendment was certified by NJDEP on May 11, 1995.

The MOU never became operative, because the conditions precedent to commencement of operations were not satisfied or waived.

### **1997 Waste Flow Control Administrative Action**

On January 9, 1998, NJDEP Commissioner Robert G. Shinn approved Morris County's solid waste management system as an administrative action, pursuant to N.J.A.C. 7:26-6.11(f), after finding that the MCMUA had sufficiently demonstrated that the procurement process for the out-of-state landfill capacity and the operation of the two transfer stations and the transportation to the out-of-state landfill were consistent with the criteria set forth in Atlantic Coast Demolition and Recycling, Inc. v. Board of Chose Freeholders of Atlantic County et al. (112F.3d 652 (3<sup>rd</sup> Cir. 1997), cert. Den., November 10, 1997).

### **Ref-Fuel Legal Challenge to the Easement Agreement**

On April 17, 1998 American Ref-Fuel of Essex County (Ref-Fuel) filed a complaint in lieu of prerogative writ challenging the MCMUA's 1993 landfill easement procurement. On October 16, 1998 Judge Reginald Stanton, A.J.S.C., dismissed Ref-Fuel's challenge to the 1993 landfill easement because it was concluded that the Easement Agreement was essentially one establishing an interest in real property and was therefore exempt from the public bidding requirements under the Local Public Contracts Law (LPCL) N.J.S.A. 40A:11-1 et seq.

On July 23, 2001 the New Jersey Supreme Court ruled in American Ref-Fuel Company of Essex County v. Morris County Municipal Utilities Authority and Waste Management of Pennsylvania, Inc., 169 N.J. 135 (2001) (American Ref-Fuel). The Supreme Court ruled that the MCMUA's use of the real estate exemption to the LPCL utilized to purchase its landfill easement was not consistent with the LPCL. The Supreme Court remanded this matter back to the Law Division (Judge Stanton) to coordinate, without delay, the rebidding of Morris County's disposal services using the public bidding requirements of the LPCL.

### **Transfer Stations Operation, Transportation and Disposal Bid**

Pursuant to the decision of the New Jersey Supreme Court in American Ref-Fuel, the MCMUA on January 7, 2002, issued a Notice to Bidders seeking sealed competitive bids for the "Operating The Two Morris County Solid Waste Transfer Stations, Located In Parsippany-Troy Hills Township And Mount Olive Township, Including Providing Transportation And Disposal Of All County Solid Waste Received At The Transfer Stations." The Notices were published in Waste News, a national publication, as well as the Star Ledger and the Daily Record. This request for bids solicited proposals from firms to operate the two MCMUA

transfer stations, provide transportation from the transfer stations to the designated disposal facilities and to provide disposal capacity for solid waste accepted at the transfer stations for a period of five years.

On April 2, 2002, the Authority received sealed competitive bids in response to the Notice to Bidders from Transriver Marketing, L.P., BFI Transfer Systems of New Jersey, Inc., Onyx Waste Services, Inc., Solid Waste Services, Inc. d/b/a J. P. Mascaro & Sons and Waste Management of New Jersey, Inc. Being the apparent lowest bidder, Waste Management of New Jersey, Inc.'s bid was reviewed by the Authority's staff, its engineering consultant and legal counsel to determine compliance with the bid specifications in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq.

On April 9, 2002 the MCMUA adopted a resolution accepting the bid submitted by Waste Management of New Jersey, Inc. at the prices set forth in the bid proposal and in accordance with the terms and conditions contained in the request for proposals. Both the April 9, 2002 resolution adopted by the MCMUA and the January 7, 2002 request for bids issued by the MCMUA stated the performance of the contract is conditioned upon receipt of all applicable governmental approvals, including NJDEP approval of the Morris County Solid Waste Management Plan or amendments.

## **PLAN AMENDMENT**

Pursuant to N.J.S.A. 13:1E-1 et. seq. Morris County proposes to amend its Solid Waste Management Plan to delete several inapplicable provisions of the existing Plan as amended and incorporate the changes in the Plan that resulted from the acceptance of the proposal of Waste Management of New Jersey, Inc. dated April 9, 2002 in accordance to the Notice to Bidders issued by the MCMUA on January 7, 2002 entitled "Operating The Two Morris County Solid Waste Transfer Stations, Located In Parsippany-Troy Hills Township And Mount Olive Township, Including Providing Transportation And Disposal Of All County Solid Waste Received At The Transfer Stations." Specifically, this Plan amendment provides for the following changes to the Morris County Solid Waste Management Plan:

- The use of the Waste Management of Pennsylvania landfill easement by Morris County pursuant to the January 6, 1993 agreement is deleted from the Plan.
- The intended development of the in-County solid waste management facilities, as detailed in the March 10, 1993 Plan amendment is deleted from the Plan.
- The intended use of the Essex Facility for the disposal of Morris County solid waste pursuant to the August 23, 1994 MOU is deleted from the Plan.
- The terms and conditions of the bid of Waste Management of New Jersey, Inc. dated April 9, 2002, in accordance with the Notice to Bidders issued by the MCMUA on January 7, 2002 entitled "Operating The Two Morris County Solid Waste Transfer Stations, Located In Parsippany-Troy Hills Township And Mount Olive Township, Including Providing Transportation And Disposal Of All County Solid Waste Received At The

Transfer Stations is incorporated and made part of the Plan.

The bid of Waste Management of New Jersey, Inc. provides for the operation of the two MCMUA transfer stations located in Parsipanny-Troy Hills Township (Block 768; Lot 2.01 and Block 769; Lot 1) and Mount Olive Township (Block 4500; Lot 5) by Waste Management of New Jersey, Inc. In addition, Waste Management of New Jersey, Inc. and its transportation subcontractor will transport all the solid waste accepted at the two MCMUA transfer stations to the proposed disposal facilities. Finally, Waste Management of New Jersey, Inc. will provide for the disposal of the solid waste accepted at the transfer stations and transported to the following four disposal facilities (or such other additional disposal facilities which meet the criteria for approval set forth in the Contract for Transfer Station Operation, Transportation and Disposal of Morris County Solid Waste, (the "Contract"), subject to all applicable legal requirements):

- GROWS Landfill, Morrisville, PA
- Tullytown Resource Recovery Facility Landfill, Morrisville, PA
- Alliance Sanitary Landfill, Taylor, PA
- Wheelabrator Falls, Inc. Resource Recovery Facility, Morrisville, PA

The performance of the Contract shall commence after the execution of the Contract, the submission by Waste Management of New Jersey, Inc. and/or its subcontractors of the performance bond, insurance certificates in a form acceptable to the Risk Manager of Morris County, and any other documents required by the bid documents; and after the issuance of a notice to proceed signed by the MCMUA's Executive Director, which shall be issued after satisfaction of all the conditions set forth in the bid documents, and shall continue in force and effect for a period of five years thereafter, unless sooner terminated in accordance with the contract documents.

This proposed Plan amendment is in conformance with the approved Plan by providing for the management of solid wastes generated in Morris County. To insure the broadest possible participation by the general public in this Plan amendment process, the Morris County Board of Chosen Freeholders will conduct a public hearing. All County residents, public officials or organizations interested in this action are encouraged to attend the public meeting and offer testimony.

Inquiries and written comments or questions concerning this proposed plan amendment may be addressed to:

- Morris County Board of Chosen Freeholders  
P.O. Box 900  
Morristown, New Jersey 07963-0900
- Morris County Municipal Utilities Authority  
P.O. Box 370  
Mendham, New Jersey 07945-0370