



## State of New Jersey

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

**CERTIFICATION  
OF THE JULY 24, 2002  
AMENDMENT TO THE MORRIS 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 (HMDC) develop comprehensive plans for waste management in their respective districts. On January 29, 1981, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Morris 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 Morris County Board of Chosen Freeholders (County Freeholders) completed such a review and on July 24, 2002, adopted an amendment to its approved County Plan.

The amendment proposes:

1. County Plan deletion of the Morris County landfill easement agreement with Waste Management of Pennsylvania dated January 6, 1993;
2. County Plan deletion of the intended development of certain in-county solid waste and recycling facilities, as contained in the March 10, 1993 County Plan amendment;
3. County Plan deletion of the intended use of the Essex County Resource Recovery Facility for the disposal of Morris County solid waste pursuant to the August 23, 1994 Memorandum of Understanding (MOU); and,
4. County Plan inclusion of the terms and conditions of the ~~Waste Management of New Jersey, Inc.~~, bid dated April 9, 2002, which provides for the operation of the two Morris County Municipal Utilities Authority (MCMUA) transfer stations, transportation, and disposal of the solid waste to the proposed out-of-state disposal facilities.

The amendment was considered administratively complete for review by the Department on August 20, 2002 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 Morris County Board of Chosen Freeholders on July 24, 2002 is approved in part and remanded in part as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the July 24, 2002 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 this plan amendment is consistent in part and inconsistent in part with the Statewide Solid Waste Management Plan. In this regard, the Morris County Freeholders are notified of the issues of concern relative to the July 24, 2002 amendment, which are included below.

In conjunction with the review of the amendment, the Department circulated copies to fifteen 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  
 Division of Compliance and Enforcement, DEP  
 Division of Solid and Hazardous Waste, DEP  
 Office of Air Quality, DEP  
 Green Acres Program, DEP  
 Land Use Regulation Element, DEP  
 New Jersey Turnpike Authority

New Jersey Advisory Council on Solid Waste Management  
Department of Agriculture  
Department of Health and Senior Services  
Department of Transportation  
Department of Community Affairs  
U.S. Environmental Protection Agency

**Elements of the July 24, 2002 Amendment**

**County Plan Deletion of the Development of the In-County Facilities as Proposed in the March 10, 1993 Plan Amendment**

The March 10, 1993 Morris County Plan amendment, certified by the Department on August 25, 1993, proposed the county development of a solid waste management system which would include: a bulky waste processing facility; a mixed waste processing facility; a solid waste composting facility; and, a recycling facility to process, consolidate, and market recyclable materials. The intended purpose of these facilities as stated in the March 10, 1993 amendment was to reach and surpass the county's 60% recycling goal. Pursuant to Administrative Order 2002-10, the Department's Division of Solid and Hazardous Waste has been directed to update the Statewide Solid Waste Management Plan (State Plan). The updated State Plan may require certain actions by the counties. Therefore, until it has been determined what actions by the counties may be required by the updated State Plan, Section C., of this certification remands to the county the deletion of the proposed in-county solid waste and recycling facilities.

**County Plan Deletion of the Intended Use of the Essex County Resource Recovery Facility**

The November 22, 1994 County Plan amendment, certified by the Department on May 11, 1995, included within the Morris County Plan the August 23, 1994 MOU between the MCMUA and the Essex County Utilities Authority (ECUA). According to the provisions of the MOU, the MCMUA was authorized to deliver 225,000 tons annually of processible waste to the Essex County Resource Recovery Facility for a 25-year period commencing January 1, 1995.

The MOU never became operative and Morris County undertook a non-discriminatory procurement process for the out-of-state disposal and the operation of the two MCMUA transfer stations which the Department approved on January 9, 1998. Therefore, as a result of the revised solid waste management system developed by Morris County and approved by the Department, Section C. approves the County Plan deletion of the August 23, 1994 MOU between the MCMUA and the ECUA.

**County Plan Deletion of the Use of the January 6, 1993 Waste Management of Pennsylvania, Inc. Landfill Easement by Morris County**

On January 6, 1993, the MCMUA and Waste Management of Pennsylvania, Inc. executed an easement agreement for the use of 4,500,000 tons of landfill capacity for a term of 10 years, with a five (5) year option for the extension of the agreement. On April 17, 1998, American Ref-Fuel of Essex County (Ref-Fuel) filed a complaint on lieu prerogative writ challenging the MCMUA's 1993 landfill easement procurement. On October 16, 1998, the Superior Court of the State of New Jersey dismissed Ref-Fuel's challenge to the 1993 easement concluding 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 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). The New Jersey Supreme Court ruled that MCMUA's use of the real estate exemption to the Local Public Contracts Law utilized to purchase its landfill easement was not consistent with the Local Public Contracts Law. The Supreme Court remanded the matter to the Superior Court to coordinate the rebidding of Morris County's disposal services using the public bidding requirements of the Local Public Contracts Law.

Therefore, as noted in Section C., the use of the January 6, 1993 Waste Management of Pennsylvania, Inc. landfill easement agreement by Morris County is deleted from the County Plan.

**County Plan Inclusion of the Terms and Conditions of the April 9, 2002 Bid by Waste Management of New Jersey, Inc.**

Pursuant to the decision of the New Jersey Supreme Court noted above, the MCMUA on January 7, 2002, issued a Notice to Bidders seeking competitive bids for the operation of the two Morris County solid waste transfer stations, including providing transportation and disposal capacity for all county solid waste received at the transfer stations for a period of five years. On April 9, 2002 the MCMUA adopted a resolution accepting the bid by Waste Management of New Jersey which will provide for the operation of the two transfer stations, transportation, and disposal of the solid waste to the following four disposal facilities (or additional facilities as set forth in the contract):

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

As noted in Section C., the strategy for the utilization of the Waste Management of New Jersey bid for the operation of the two transfer stations, transportation, and disposal of the Morris



County generated solid waste is approved. However, the Department is unable to specifically include the Waste Management of New Jersey contract within the County Plan because it was not submitted as a part of the County Plan amendment document for Departmental review.

### **Transfer Station Capacity Issue**

The Department's Divisions of Solid and Hazardous Waste and Compliance and Enforcement commented that the two Morris County transfer stations have received several notices of violation for accepting solid waste in excess of their approved capacities as contained in the facilities' permits to operate. The issuance of a penalty order is currently being addressed by the Division of Compliance and Enforcement. It should be noted that, based on solid waste disposal data generated by the operator of the transfer stations reflecting specifically the month of June, 2002, the Mt. Olive transfer station received on average, approximately 700 tons per day, whereas the permitted capacity of the facility is only 650 tons per day. Additionally, the Parsippany-Troy Hills transfer station, for the same period, received approximately 960 tons per day with a permitted capacity of 1150 tons per day.

It should also be pointed out that on December 9, 1997 the Morris County Municipal Utilities Authority submitted a request to the Department for approval of an administrative action to "reaffirm without modification the solid waste system which has been in effect in Morris County for a number of years". That system included, among other things, the assigned flow of solid waste from specific municipalities in Morris County to one of the two transfer stations within the system. This administrative action request was approved by the Commissioner on January 9, 1998.

Given the fact that notices of violation have been issued for the receipt of waste beyond permitted capacities, and that the most current solid waste facility data available to the Department would suggest that this may become an ongoing problem, the County is directed to respond to the Department in writing regarding this situation within sixty (60) days of the date of this certification. In its response, the County should detail what measures it will take in a subsequent Plan amendment to address the solid waste disposal capacity needs of the Morris County solid waste district, or demonstrate why an amendment would not be required.

### **C. Certification of the Morris 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 district solid waste management plans, I have reviewed the July 24, 2002 amendment to the approved County Plan and certify to the County Freeholders that the July 24, 2002 amendment is approved in part and remanded in part as further specified below.

1. County Plan deletion of the Morris County landfill easement agreement with Waste Management of Pennsylvania dated January 6, 1993 is approved.
2. County Plan deletion of the intended development of certain in-county solid waste and recycling facilities, as contained in the March 10, 1993 County Plan amendment is remanded to

the county. The County Plan deletion of the solid waste facilities will be reevaluated upon the completion of the State Plan as noted in Section B.

3. County Plan deletion of the intended use of the Essex County Resource Recovery Facility for the disposal of Morris County solid waste pursuant to the August 23, 1994 Memorandum of Understanding is approved.
4. County Plan inclusion of the terms and conditions of the Waste Management of New Jersey, Inc., bid dated April 9, 2002, which provides for the operation of the two Morris County Municipal Utilities Authority transfer stations, transportation, and disposal of the solid waste to the proposed out-of-state disposal facilities is approved as a solid waste disposal strategy for solid waste generated within Morris County. The Department is unable to critically evaluate the specifics of the Waste Management of New Jersey contract because it was not submitted as a part of the County Plan amendment document for Departmental review.

#### **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 District 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 DEP to the County Freeholders and pursuant to N.J.S.A. 13:1E-24c. and f., the County shall proceed with the implementation of the approved 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 the Amendment**

The approved 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 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 in part and remand in part the amendment, as outlined in Section C. of this certification, to the Morris County District Solid Waste Management Plan which was adopted by the Morris County Board of Chosen Freeholders on July 24, 2002.

December 20 2002  
Date

Bradley M. Campbell  
Bradley M. Campbell, Commissioner  
Department of Environmental Protection