



UNION COUNTY BOARD OF CHOSEN FREEHOLDERS

ORDINANCE NUMBER: *753-2013*
 DATE OF INTRODUCTION: *9/19/13*
 DATE OF ADOPTION: *10/10/13*

9/19/2013

AN ORDINANCE TO AMEND TO THE UNION COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN TO 1) REAFFIRM THE PRIOR INCLUSION OF THE NEW JERSEY MEADOWLANDS COMMISSION LANDFILL AND DISPOSAL FACILITIES IN KEARNY, NEW JERSEY, AS THE COUNTY'S DESIGNATED FACILITIES TO WHICH SOLID WASTE TYPES 13, 13C, 23 AND 27 ARE DIRECTED, 2) INCORPORATE THE SOLID WASTE DISPOSAL SERVICES AGREEMENT BY AND BETWEEN THE UNION COUNTY UTILITIES AUTHORITY AND THE NEW JERSEY MEADOWLANDS COMMISSION FOR THE DISPOSAL OF SOLID WASTE TYPES 13, 13C, 23 AND 27 DISPOSAL SERVICES, AND 3) DIRECT ALL SOLID WASTE TYPES 13, 13C, 23 AND 27 TO THE NEW JERSEY MEADOWLANDS COMMISSION LANDFILL AND DISPOSAL FACILITIES IN KEARNY, NEW JERSEY FOR DISPOSAL, PURSUANT TO REGULATORY WASTE FLOW CONTROL

WHEREAS, pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the County of Union is designated as a Solid Waste Management District and by law did develop and prepare a District Solid Waste Management Plan ("County Plan") that was adopted by the Union County Board of Chosen Freeholders on June 7, 1979, pursuant to and in accordance with the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; and

WHEREAS, the County Plan was approved, with modifications, by the Department of Environmental Protection ("NJDEP") on August 13, 1980, and has since been amended and modified from time to time; and

**NO SUFFICIENCY
OF FUNDS REQUIRED**

*Julie Orighiata
9/19/13*

Continued...

INTRODUCTION								RECORD OF VOTE								FINAL ADOPTION									
FREEHOLDER	Aye	Nay	Abs	Pass	Ord.	Sec	NP	FREEHOLDER	Aye	Nay	Abs	Pass	Ord.	Sec	NP	FREEHOLDER	Aye	Nay	Abs	Pass	Ord.	Sec	NP		
BERGEN	X							BERGEN	X							BERGEN	X								
ESTRADA	X							ESTRADA	X							ESTRADA	X								
JALLOH	X							JALLOH	X							JALLOH	X								
KOWALSKI	X					X		KOWALSKI	X							KOWALSKI	X								
MIRABELLA	X							MIRABELLA	X						X	MIRABELLA	X								
SULLIVAN								GRANADOS SULLIVAN	X							SULLIVAN	X								
WRIGHT	X							WRIGHT	X							WRIGHT	X								
HUDAK VICE CHAIRMAN	X				X			HUDAK VICE CHAIRMAN	X					X		HUDAK VICE CHAIRMAN	X					X			
CARTER CHAIRMAN	X							CARTER CHAIRMAN	X							CARTER CHAIRMAN	X								

APPROVED AS TO FORM

 COUNTY ATTORNEY

I hereby certify the above is an original ordinance adopted by the Board of Chosen Freeholders of the County of Union on the aforementioned date.

 CLERK

I hereby certify this is a true copy of a ordinance adopted by the Board of Chosen Freeholders of the County of Union on the aforementioned date.

 CLERK

WHEREAS, on December 11, 1986, the Union County Board of Chosen Freeholders designated the Union County Utilities Authority (“UCUA”) as the agency responsible for the implementation of the County Plan, as amended from time to time, and the UCUA is empowered to plan, acquire, construct, maintain and operate facilities for the processing, disposal and/or recycling of solid waste generated in the County, and

WHEREAS, the UCUA has formulated a Plan Amendment, and recommends that this Board set a public hearing for the purpose of taking public testimony on the proposed plan amendment, and review and enact said amendment that is now on file with the Clerk of this Board and available for public inspection and is made a part hereof by reference, and

WHEREAS, the subject amendment is summarized as follows

This Plan Amendment is prepared as a result of a determination by the UCUA to

1) REAFFIRM THE PRIOR INCLUSION OF THE NEW JERSEY MEADOWLANDS COMMISSION LANDFILL AND DISPOSAL FACILITIES IN KEARNY, NEW JERSEY, AS THE COUNTY’S DESIGNATED FACILITIES TO WHICH SOLID WASTE TYPES 13, 13C, 23 AND 27 ARE DIRECTED, 2) INCORPORATE THE SOLID WASTE DISPOSAL SERVICES AGREEMENT BY AND BETWEEN THE UNION COUNTY UTILITIES AUTHORITY AND THE NEW JERSEY MEADOWLANDS COMMISSION FOR THE DISPOSAL OF SOLID WASTE TYPES 13, 13C, 23 AND 27 DISPOSAL SERVICES, AND 3) DIRECT ALL SOLID WASTE TYPES 13, 13C, 23 AND 27 TO THE NEW JERSEY MEADOWLANDS COMMISSION LANDFILL AND DISPOSAL FACILITIES IN KEARNY, NEW JERSEY FOR DISPOSAL, PURSUANT TO REGULATORY WASTE FLOW CONTROL

WHEREAS, pursuant to the Solid Waste Management Act, the County's Solid Waste Advisory Committee (“SWAC”) must be consulted with respect to amendment to the County Plan, and

WHEREAS, by Resolution No 57-2013, duly adopted September 18, 2013, the UCUA approved the Plan Amendment and recommended that the Plan Amendment be approved by the Board of Chosen Freeholders of the County, after public hearing in accordance with the Solid Waste Management Act, and

WHEREAS, pursuant to and in accordance with the provisions of the Solid Waste Management Act, the Plan Amendment was presented to SWAC

NOW, THEREFORE, BE IT ORDAINED, by the Board of Chosen Freeholders of the County of Union, that

- 1 The aforesaid recitals are incorporated herein as though fully set forth at length
- 2 The Plan Amendment, as prepared and recommended by the Union County Utilities Authority, is hereby adopted as an Amendment to the Union County District Solid Waste Management Plan
- 3 Any provision of the County Plan that is inconsistent with the Plan Amendment is hereby repealed to the extent of said inconsistency and the provisions of the Plan Amendment shall be fully effective and shall control
- 4 A certified copy of this Ordinance, as finally adopted, together with the Plan Amendment, shall be forwarded to the New Jersey Department of Environmental Protection, the County Clerk of the County of Union, and the Union County Utilities Authority
- 5 The Clerk of this Board shall publish and disseminate notice of this Ordinance as provided by law
- 6 The aforesaid Plan Amendment and a copy of the transcript of the public hearing to

be held at such time as may be scheduled by said Board of Chosen Freeholders, and the necessary deliberations shall be submitted to the Commissioner of the New Jersey Department of Environmental Protection

- 7 This Ordinance shall take effect in the manner prescribed by law

AMENDMENT TO THE UNION COUNTY
DISTRICT SOLID WASTE MANAGEMENT PLAN

**Recommended by the
Union County Utilities Authority
September 18, 2013**

AMENDMENT TO THE UNION COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN TO 1) REAFFIRM THE PRIOR INCLUSION OF THE NEW JERSEY MEADOWLANDS COMMISSION LANDFILL AND DISPOSAL FACILITIES IN KEARNY, NEW JERSEY, AS THE COUNTY'S DESIGNATED FACILITIES TO WHICH SOLID WASTE TYPES 13, 13C, 23 AND 27 ARE DIRECTED, 2) INCLUDE THE SOLID WASTE DISPOSAL SERVICES AGREEMENT BY AND BETWEEN THE UNION COUNTY UTILITIES AUTHORITY AND THE NEW JERSEY MEADOWLANDS COMMISSION FOR THE DISPOSAL OF SOLID WASTE TYPES 13, 13C, 23 AND 27 DISPOSAL SERVICES, AND 3) TO DIRECT ALL SOLID WASTE TYPES 13, 13C, 23 AND 27 TO THE NEW JERSEY MEADOWLANDS COMMISSION LANDFILL AND DISPOSAL FACILITIES IN KEARNY, NEW JERSEY FOR DISPOSAL, PURSUANT TO REGULATORY WASTE FLOW CONTROL

I. INTRODUCTION

The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., in pertinent part, designates each of the State's twenty-one (21) counties and the Hackensack Meadowlands Development Commission (now known as the New Jersey Meadowlands Commission) as a solid waste management district and further requires that each solid waste management district (including the County of Union) develop a solid waste management plan setting forth the solid waste disposal strategy to be applied in the district. The Union County District Solid Waste Management Plan (the "County Plan") was approved, with modifications, by the Department of Environmental Protection ("NJDEP") on August 13, 1980, and has since been amended and modified from time to time, including the designation of the Union County Utilities Authority ("UCUA") as the implementing agency for the County Plan.

The County Plan was amended on December 18, 1997, in response to Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, et al., 112 F.3d 652 (3d Cir. 1997), cert. den. 522 U.S. 966 (1997) ("Atlantic Coast") to, among other things define the County's new disposal strategy, based upon voluntary contracts, as to Solid Waste Types 10 and 25 ("Contract Waste"), and including the lease by the UCUA to Ogden Martin Systems of Union, Inc. (now known as Covanta Union, Inc.) of the Union County Resource Recovery Facility (the "UCRRF") and the real property and improvements upon which the UCRRF is constructed (collectively, the "System Restructuring"), and re-affirm the County's disposal strategy, based upon regulatory flow control, as to Solid Waste Types 13, 13C, 23 and 27.

The December 18, 1997 Plan Amendment was approved in part (as the System Restructuring), modified in part (as to the re-establishment of regulatory flow control as to Solid Waste Types 13, 13C, 23 and 27), and remanded in part (as to certain matters relating to the EIC), by the NJDEP's Certification dated April 30, 1998. The Certification rejected the

County's re-establishment of regulatory flow control as to Types 13, 13C, 23 and 27 on the grounds that the procurement process resulting in the initial selection of the J&J Facilities and Linden Landfill had not met all of the requirements for re-establishing regulatory waste flow pursuant to Atlantic Coast (i.e., that it was open, competitive and did not discriminate against interstate commerce).

The County Plan was amended and clarified on March 11, 1999 and June 16, 1999, respectively, and approved by the NJDEP on June 1, 1999 and June 29, 1999, to, in pertinent part, direct all solid waste Types 13, 13C, 23 and 27 generated in the County of Union, to the Hackensack Meadowlands Development Commission's ("HMDC") Solid Waste Transfer Station and Materials Recovery Facility, located at 100 Baler Boulevard, North Arlington, New Jersey for recycling and to the HMDC 1-E North Area Landfill, located at 100 Baler Boulevard, North Arlington, New Jersey for the disposal of residue remaining after such recycling of solid waste Types 13, 13C, 23 and 27 Solid Waste generated within Union County, all pursuant to a non-discriminatory procurement in accordance with Atlantic Coast.

The County Plan was subsequently amended on June 17, 2004, and approved by NJDEP on October 25, 2004, to direct all solid waste Types 13, 13C, 23 and 27 generated in the County of Union, to the Waste Management of New Jersey, Inc. ("Waste Management") transfer stations, located in Elizabeth and Linden, New Jersey, for recycling and disposal of residue remaining after such recycling of solid waste Types 13, 13C, 23 and 27 Solid Waste generated within Union County, all pursuant to a non-discriminatory procurement in accordance with Atlantic Coast.

As a result of the UCUA's non-discriminatory procurement of solid waste disposal services with regard to the Non-Processible Waste, the County Plan was amended on February 15, 2007 to designate the transfer station owned and operated by the Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railway Inc. ("Canadian Pacific") in the City of Newark as the facility to which Solid Waste Types 13, 13C, 23 and 27 generated within the County of Union ("Non-Processible Waste") were to be directed for recycling and disposal pursuant to regulatory waste flow as a result of the procurement of the disposal facilities in an open, competitive, non-discriminatory and constitutionally-permissible manner, consistent with Atlantic Coast.

Subsequently, a complaint was filed on December 26, 2006 by Waste Management in the Superior Court of New Jersey, Law Division, Union County (Waste Management of New Jersey, Inc. v. Union County Utilities Authority, et als., Docket No. UNN-L-4449-06), challenging the contract award by the UCUA to Canadian Pacific. The Honorable Marianne Espinosa, J.S.C., issued a decision on May 25, 2007 permanently enjoining the UCUA from implementing its contract award to Canadian Pacific. An appeal of the decision was filed with the Superior Court of New Jersey, Appellate Division, and on April 7, 2008, the Appellate Division rendered a decision, vacating the permanent injunction and remanding the matter back to the Superior Court, Law Division for further proceedings. In the Superior Court, the

parties to the proceeding agreed that procedurally the next step was to give NJDEP the opportunity to consider the Canadian Pacific contract and plan amendment. NJDEP approved the February 2007 Plan Amendment by Certification issued on September 18, 2008, and the UCUA awarded a contract to and entered into an agreement with Canadian Pacific for Non-Processible Waste disposal services effective January 1, 2009 and continuing through December 31, 2013 (the "CP Disposal Services Agreement").

Authorized agents and operators of the Facility, TransLoad America, Inc. and TLA Newark, LLC (collectively "TLA"), notified the UCUA on Friday, June 15, 2012, for the first time that TLA could not accept any solid waste for processing under the CP Disposal Services Agreement and that it had "shut the gates" to the Canadian Pacific Facility. During communications with General Counsel for the UCUA, TLA advised the UCUA that it had filed for Chapter 7 Bankruptcy on June 19, 2012 in the United States Bankruptcy Court for the District of New Jersey, Case No.: 12-25683. In subsequent communications with the UCUA, Canadian Pacific acknowledged that TLA was its sole operator of the Facility, that TLA was apparently insolvent, and that at this time DHRC had no means by which to re-commence performance of the CP Disposal Services Agreement.

The failure of Canadian Pacific and TLA to perform the services required under the CP Disposal Services Agreement constituted a material breach of the agreement, and the breach of the agreement compelled the UCUA to take immediate, interim action to make available to solid waste haulers in the County appropriate solid waste facilities due to the closure of Contractor's Facility in order to preserve the public health, safety and welfare. The UCUA expeditiously engaged in negotiations with the New Jersey Meadowlands Commission ("NJMC") as to the terms for a possible emergent interim agreement for the provision of disposal services for Non-Processible Waste, for a period not exceeding 12-months commencing no earlier than June 21, 2012, at the rate of \$52 per ton, which together with the UCUA's current rate component of \$29.12, equals a total tipping fee of \$81.12 per ton ("Interim NJMC Agreement"). After a subsequent approval of the Interim NJMC Agreement by the UCUA, on July 26, 2012 the Freeholders formally adopted an amendment to the County Plan to incorporate the Interim NJMC Agreement. The Interim NJMC Agreement and its inclusion in the County Plan enabled the UCUA to ensure adequate flow control over Non-Processible Waste on an interim basis and provide for uninterrupted disposal of such waste generated within the County while the UCUA undertook a public, non-discriminatory procurement of long-term disposal services for Non-Processible Waste. Pursuant to the Interim NJMC Agreement and NJDEP's Certification of an amendment to the County Plan, all Non-Processible Waste is directed to the NJMC Keegan Landfill and disposal facilities.

The Plan Amendment reaffirmed the prior inclusion in the County Plan of the landfill and disposal facilities owned and operated by the NJMC in Kearny, New Jersey, as the facilities to which Non-Processible Waste are directed for recycling and disposal pursuant to regulatory waste flow, consistent with the holdings of the United States Supreme Court in Atlantic Coast and United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste

Management Authority, 550 U.S. 330, 127 S. Ct. 1786, 1797 (2007) ("Oneida-Herkimer"), and a Solid Waste Services Agreement entered into between the UCUA and the NJMC pursuant to and in accordance with the Local Public Contracts Law. The NJDEP issued a Certification of the July 2012 Plan Amendment on December 12, 2012, approving both the Agreement with NJMC and inclusion in the County Plan of the NJMC Keegan Landfill.

On May 3, 2013, the UCUA issued Bid Specifications for the provision of disposal services for Non-Processible Waste and, in response, received bids on June 7, 2013, from the following companies involved in the solid waste disposal industry: Advanced Environmental Recycling, Inc. and Waste Management of New Jersey, Inc. In an effort to obtain the most cost-efficient and effective services for the disposal of Non-Processible Waste, entered into negotiations with the NJMC and obtained the following per ton pricing: Year 1 - \$57.00; Year 2 - \$59.00; and Year 3 - \$60.00. The pricing negotiated with NJMC is more than \$10 per ton less expensive in each year than the bids received from Advanced Environmental Recycling, Inc. and Waste Management of New Jersey, Inc. The UCUA also determined that utilization of NJMC for disposal services will provide continuity of such services within the County system since June 2012.

As described below, this Plan Amendment is intended to supplement the prior plan amendments that have been adopted since the decision of the federal court in Atlantic Coast. The purpose of this Plan Amendment is to reaffirm the designation of the landfill and disposal facilities owned and operated by NJMC in Kearny, New Jersey, as the facilities to which Non-Processible Waste is to be directed for recycling and disposal pursuant to regulatory waste flow control as a result of the open, competitive, non-discriminatory and constitutionally-permissible procurement conducted by the UCUA, consistent with Atlantic Coast, and a Solid Waste Disposal Services Agreement entered into by the UCUA and NJMC, pursuant to and in accordance with the Local Public Contracts Law and Oneida-Herkimer, at a price significantly lower than any price bid in the non-discriminatory procurement.

II. THE CONTINUATION OF REGULATORY FLOW CONTROL OVER NON-PROCESSIBLE WASTE AS A RESULT OF A CONSTITUTIONALLY ACCEPTABLE, PUBLIC, NON-DISCRIMINATORY PROCUREMENT IN ACCORDANCE WITH THE SOLID WASTE MANAGEMENT ACT AND ATLANTIC COAST, AND THE EXECUTION OF A SOLID WASTE DISPOSAL SERVICES AGREEMENT WITH THE NEW JERSEY MEADOWLANDS COMMISSION CONSISTENT WITH THE LOCAL PUBLIC CONTRACTS LAW AND ONEIDA-HERKIMER

Through this Plan Amendment, the County intends to reaffirm the designation of the NJMC landfill and disposal facilities as the facilities to which all such NonProcessible Waste will be directed for recycling and disposal. Having issued Bid Specifications for the Provision of Disposal Services for Types 13, 13C, 23 and 27 Solid Waste Generated in Union County on May 3, 2013, and, in response to the Bid Specifications, received bids on June 7, 2013, and

having advertised the solicitation of bids locally in The Local Source, throughout the State of New Jersey utilizing The Star Ledger, and nationally utilizing Waste Recycling News, a trade magazine circulated to solid waste industries and related entities throughout the country, the procurement was open to all bidders, regardless of geographical location, and was, in the County's view, consistent with the requirements set forth in Atlantic Coast.

Following the receipt of bids from the non-discriminatory procurement, the UCUA engaged in negotiations with NJMC in order to ensure that price for the disposal of Non-Processible Waste through the County System was the most cost-efficient available. Having obtained significantly lower per ton pricing from NJMC than the per ton prices bid in the public, non-discriminatory procurement, a contract was awarded to NJMC for the provision of solid waste disposal services for Non-Processible Waste in accordance with the Local Public Contracts Law. As a result of the terms of the Solid Waste Disposal Services Agreement being essentially identical to the disposal services that were the subject of the non-discriminatory procurement, and the disposal price is lower than the best pricing obtained through the procurement, the County is entitled to continue to exercise regulatory flow control over Non-Processible Waste in accordance with the requirements of Atlantic Coast and Oneida-Herkimer.

The award of a contract to NJMC complies with the Local Public Contracts Law as it is awarded to a governmental entity of the State of New Jersey. Having been awarded after the completion of an open, non-discriminatory procurement of solid waste disposal services by the UCUA in its role as the implementing agency for the County Plan, at a rate more favorable to the citizens of Union County than obtained in the non-discriminatory procurement, the County intends to direct all Non-Processible Waste to the NJMC facilities for disposal. The implementation of the contract is necessary to ensure the continuous provision of solid waste disposal services in Union County at the lowest possible cost and is, therefore, in the best interests of the citizens of Union County.

Accordingly, based upon the terms and provisions of the public, non-discriminatory procurement, and the subsequent negotiations between the UCUA and NJMC leading to the authorization to execute the Solid Waste Disposal Services Agreement at pricing below the lowest prices bid in the public, non-discriminatory procurement, the County shall redirect Non-Processible Waste for disposal to the NJMC landfill and facilities, pursuant to the terms of the Solid Waste Services Agreement, as more fully described in Section III of this Plan Amendment.

III. INCLUSION OF SOLID WASTE DISPOSAL SERVICES AGREEMENT AWARDED BY UCUA TO NJMC AND THE REAFFIRMATION OF THE PRIOR INCLUSION OF LANDFILL AND DISPOSAL FACILITIES OF NJMC INTO THE COUNTY PLAN AND REDIRECTION OF NON-PROCESSIBLE WASTE

In order to ensure continuous Non-Processible Waste disposal services to the citizens of Union County and also provide for effective waste flow control over Non-Processible Waste, the UCUA conducted an open, competitive, non-discriminatory and constitutionally-permissible procurement, consistent with the requirements of Atlantic Coast, and engaged in negotiations with the NJMC for the terms for an agreement for the provision of disposal services for Non-Processible Waste, for a period of three years commencing as of July 18, 2013, at the rate of \$57.00 per ton. The implementation of the terms of the negotiations with NJMC is necessary to ensure the continuous provision of solid waste disposal services in Union County at the lowest possible cost and is, therefore, in the best interests of the citizens of Union County.

Therefore, the Solid Waste Disposal Services Agreement by and between the UCUA and NJMC for Non-Processible Waste disposal services is hereby included in the County Plan. The inclusion of the landfill and solid waste disposal facilities of NJMC, in accordance with the terms of the Solid Waste Disposal Services Agreement awarded by the UCUA, is hereby reaffirmed consistent with the prior Plan Amendment of the County, as the County's designated disposal facility for Non-Processible Waste.

IV. SCOPE OF PLAN AMENDMENT

This Plan Amendment incorporates by reference, as if set forth herein at length, the Union County District Solid Waste Management Plan, as certified by the NJDEP on August 13, 1980, and all subsequent Plan Amendments so certified, to the extent that they are not inconsistent with this Plan Amendment. A copy of the Union County District Solid Waste Management Plan, along with all subsequent Amendments and NJDEP Plan Certifications, is available for review at the offices of the Union County Utilities Authority, 1499 Routes 1&9 North, Rahway, New Jersey, during normal business hours, for public review and inspection. Copies of the County Plan, Plan Amendments and NJDEP Plan Certifications are available in accordance with the UCUA's policy with respect to photocopying and at the offices of the Clerk of the Union County Board of Chosen Freeholders.

If any clause, provision, subsection, section or article of this Plan Amendment shall be ruled invalid by any court of competent jurisdiction, or administrative agency, the invalidity of such clause, provision, subsection, section or article, shall not affect any of the remaining provisions, unless such ruling adversely impacts the purpose and effect of the remaining portions of this Plan Amendment.

V. EFFECTIVE DATE

This Plan Amendment shall become effective upon adoption by the Board of Chosen Freeholders of the County of Union, and certification by the Commissioner of the New Jersey Department of Environmental Protection.