



UNION COUNTY BOARD OF CHOSEN FREEHOLDERS

ORDINANCE NUMBER: 717-2011
 DATE OF INTRODUCTION: Jan. 27, 2011
 DATE OF ADOPTION: 2/24/2011

1/27/2011

**AN ORDINANCE TO AMEND THE
 UNION COUNTY DISTRICT SOLID WASTE
 MANAGEMENT PLAN**

1) INCORPORATE EXTENSIONS OF AND MODIFICATIONS TO THE TERMS AND PROVISIONS OF THE FACILITY LEASE AGREEMENT AND THE AMENDED AND RESTATED WASTE DISPOSAL AGREEMENT WITH COVANTA UNION, INC. FOR THE OPERATION OF THE UNION COUNTY RESOURCE RECOVERY FACILITY, 2) INCORPORATE EXTENSIONS OF AND MODIFICATIONS TO THE TERMS AND PROVISIONS OF TO THE LOCAL WASTE AGREEMENTS WITH THE COUNTY OF UNION AND CERTAIN MUNICIPALITIES THEREIN AS PART OF THE UNION COUNTY SOLID WASTE SYSTEM, AND 3) REAFFIRM IMPLEMENTATION AND ENFORCEMENT OF REGULATORY WASTE FLOW CONTROL FOR PROCESSIBLE WASTE GENERATED IN UNION COUNTY

NO SUFFICIENCY OF FUNDS REQUIRED
Frank W. Padua Continued...
 1-26-2011

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

AS RECOMMENDED
BY THE UNION COUNTY UTILITIES AUTHORITY

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

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 extend and modify the terms of the existing Amended and Restated Waste Disposal Agreement and the Facility Lease Agreement governing the operation by Covanta Union, Inc. of the UCUA's 1,540 tons-per-day resource recovery facility ("UCRRF") located in the City of Rahway, New Jersey. The proposed modifications are projected to result in benefits in excess of \$250 million from Covanta and the refinancing of existing debt that will be shared by all citizens of the County.

The purpose of this Plan Amendment is to incorporate the extensions of and modifications to the terms and provisions of the Facility Lease Agreement and the Amended and Restated Waste Disposal Agreement into the County Plan; incorporate the extensions of and modifications to the Local Waste Agreements with the County of Union and certain municipalities into the County Plan as part of the County Solid Waste System; and to reaffirm the implementation and enforcement of regulatory waste flow control for processible waste generated in the County.

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. 76-2011, duly adopted January 19, 2011, 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
January 19, 2011**

AMENDMENT TO THE UNION COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN TO INCORPORATE EXTENSIONS OF AND MODIFICATIONS TO THE TERMS AND PROVISIONS OF THE FACILITY LEASE AGREEMENT AND THE AMENDED AND RESTATED WASTE DISPOSAL AGREEMENT WITH COVANTA UNION, INC. FOR THE OPERATION OF THE UNION COUNTY RESOURCE RECOVERY FACILITY AND TO THE LOCAL WASTE AGREEMENTS WITH THE COUNTY OF UNION AND CERTAIN MUNICIPALITIES THEREIN AS PART OF THE UNION COUNTY SOLID WASTE SYSTEM, AND TO REAFFIRM IMPLEMENTATION AND ENFORCEMENT OF REGULATORY WASTE FLOW CONTROL FOR PROCESSIBLE WASTE GENERATED IN UNION COUNTY

I. INTRODUCTION

The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. (“Act”), 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 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 (“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.

A solid waste management plan must, by law, provide for the safe and efficient disposal of all solid waste generated in the district. N.J.S.A. 13:1E-21(b). The Act requires counties to designate a local agency to oversee implementation of the district’s plan. N.J.S.A. 13:1E-21(b)1. Accordingly, in 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, pursuant to and in accordance with the provisions of the Act. The UCUA is empowered pursuant to the Municipal and Utilities Authorities Law, N.J.S.A. 40:14B-1 et seq. to plan, acquire, construct, maintain and operate facilities for the processing, disposal and/or recycling of solid waste generated in Union County (“County”). By Preliminary Order of the Board of Public Utilities, dated December 31, 1987, as thereafter amended by order of NJDEP, dated December 16, 1991, the UCUA was granted, pursuant to N.J.S.A. 48:13A-5, the exclusive right to control and provide for the disposal of solid waste generated within the geographic boundaries of the County, including all Solid Waste Types 10, 13, 23 and 27.

The centerpiece of the Union County solid waste system (“County System”) is the Union County Resource Recovery Facility (“UCRRF” or “Facility”), a waste-to-energy facility utilizing mass-burn technology and capable of processing up to 1,540 tons per day. Owned by the UCUA, the UCRRF was designed and constructed by Ogden Martin Systems of Union, Inc. (now known as Covanta Union, Inc., “Covanta”). The UCRRF was included in the County Plan by a Plan Amendment adopted by the County on April 5, 1984 and certified by NJDEP on October 5, 1984, as

supplemented by a subsequent Plan Amendment adopted on September 15, 1988, which was certified by NJDEP on April 3, 1989. Commercial operation of the UCRRF commenced on or about July 1, 1994 under the operation of Covanta, pursuant to a Service Agreement approved in accordance with the requirements of Chapter 38 of the Pamphlet Laws of 1985 of the State of New Jersey and the acts amendatory thereof and supplemental thereto (N.J.S.A. 13:1E-136 et seq., commonly referred to as the “McEnroe Act”).

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, revise, in part, the then-existing County Plan in order to bring it into compliance with Atlantic Coast while enabling the UCUA to continue to meet its financial obligations, including debt service on its outstanding bond indebtedness which at the time was approximately \$294 million. In pertinent part, the December 18, 1997 Plan Amendment set forth the County’s new disposal strategy, which was comprised of (i) the lease of the Facility to Covanta for a term of 25 years; (ii) UCUA’s guarantee, pursuant to a Waste Disposal Agreement (“Disposal Agreement”), to deliver 250,000 tons of Solid Waste Types 10 and 25 (“Processible Waste”) annually to the UCRRF, with Covanta being responsible for securing, negotiating and executing contracts or making other arrangements as to the remaining UCRRF capacity; and (iii) UCUA offering voluntary contracts to County municipalities for the disposal of Processible Waste at the UCRRF pursuant to Local Waste Agreements, as a means of satisfying UCUA’s delivery obligations to Covanta under the Disposal Agreement. Approximately 195,000 tons (the “Contract Waste”) of the 250,000 tons of annual capacity contracted for under the Disposal Agreement was to be delivered to the UCRRF pursuant to the Local Waste Agreements.

The UCUA took several other aggressive steps to restructure and reduce its stranded debt. Specifically, it refinanced the debt to take advantage of favorable interest rates and to amortize it over a longer period; it applied funds on-hand, including debt service reserve funds and unspent bond proceeds, to the existing debt; and, in conformance with its restructured relationship with Covanta and to cut costs going forward, it reorganized its workforce, eliminated twenty-three (23) full-time positions and transferred the recycling program and solid waste enforcement functions to the County. Through all of these steps, the County’s stranded debt was ultimately reduced to roughly \$80 million.

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 aspects of a proposed Environmental Investment Charge (“EIC”) as a means to raise revenue and to pay off the remaining County System stranded debt), by the Certification, dated April 30, 1998, issued by the Commissioner of NJDEP. On May 21, 1998, the County adopted a supplemental Plan Amendment, responding to the issues identified by NJDEP in its April Certification. Among other things, the May 1998 Plan Amendment further identified and quantified certain cost components of the EIC. NJDEP substantially approved the supplemental Plan Amendment on July 20, 1998. In December 1998, the County adopted another Plan Amendment, eliminating the in-County weighing requirement

previously approved by NJDEP. Under this Amendment, the County proposed to utilize solid waste records required to be maintained under NJDEP's regulations (O&D forms) to assess the EIC upon actual tons of in-County generated solid waste types 10 and 25 delivered to solid waste facilities other than County designated facilities. NJDEP approved the County's alternative assessment mechanism by Certification dated May 12, 1999.

On June 22, 2000, the New Jersey Supreme Court, in IMO Passaic Co. Utilities Authority Petition Requesting Determinations of Financial Difficulty and Application for Refinancing Approval (A-19-99), determined that the imposition of an EIC was not statutorily authorized and further found that the EIC was consistent with the State's waste flow regulations that the Circuit Court in Atlantic Coast held as unconstitutional to the extent they discriminated against interstate commerce, hence the EIC was unconstitutional as well. Once again, the UCUA's financial plan was thrown into immediate jeopardy. Faced with the clear prospect of defaulting on its bonds, the UCUA immediately created a Contingency Planning Ad Hoc Committee comprised of County and UCUA representatives and financial and legal consultants to develop an appropriate Plan Amendment to address the impact of the New Jersey Supreme Court decision.

To solve for the loss of revenue anticipated by the assessment of the EIC, the UCUA and the County ultimately determined to impose regulatory flow control over the Processible Waste generated in the County, not otherwise disposed pursuant to voluntary contract with the UCUA ("Non-Contract Waste"), pursuant to a non-discriminatory procurement in accordance with Atlantic Coast. As a result, on February 13, 2002, the County Plan was amended, among other things, to reflect the inclusion of the Waste Management of New Jersey, Inc. ("Waste Management") and Automated Modular Systems, Inc. ("AMS") transfer stations, located in Elizabeth and Linden, New Jersey. Non-Contract Waste from certain designated municipalities in the County was directed to the UCRRF, and the transfer station operated by Waste Management and AMS. In a Certification issued on June 13, 2003, the Commissioner of NJDEP approved the re-establishment of regulatory flow control over Non-Contract Waste and the direction of this waste to certain designated facilities.

In anticipation of the expiration of the arrangement with Waste Management and AMS, the UCUA undertook a non-discriminatory procurement of solid waste disposal services with regard to the Non-Contract Waste. On November 8, 2007, the County Plan was amended to designate the UCRRF as the facility to which all Non-Contract Waste (Types 10 and 25) generated within the County was to be directed for disposal to Covanta, pursuant to regulatory waste flow as a result of the procurement of the disposal facility in an open, competitive, non-discriminatory and constitutionally-permissible manner, consistent with Atlantic Coast. The Commissioner of NJDEP issued a Certification on April 25, 2008, approving the November 8, 2007 amendment to the County Plan and the exercise of regulatory flow control for all Non-Contract Waste generated within the County.

As described below, this Plan Amendment is intended to supplement the prior plan amendments that have been adopted since the decision of the United States Court of Appeals for the Third Circuit in Atlantic Coast. The purpose of this Plan Amendment is two-fold: 1) to incorporate

the terms and provisions for extensions of, and modifications to, the Facility Lease Agreement (“Facility Lease”) and the Disposal Agreement by and between the UCUA and Covanta governing the occupancy and operation of the UCRRF as well as to the Local Waste Agreements between the UCUA and the County of Union and Union County certain municipalities as part of the Union County solid waste system (“County System”), and 2) to reaffirm the exercise and enforcement of regulatory waste flow control for the disposal of all Processible Waste generated with the County to the UCRRF consistent with the holding of the United States Supreme Court in United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Management Authority, 550 U.S. 330, 127 S. Ct. 1786, 1797 (2007), that provides for a distinction between public and privately-owned disposal facilities.

II. INCORPORATION OF EXTENSIONS OF, AND MODIFICATIONS TO, THE TERMS AND PROVISIONS OF THE FACILITY LEASE AND DISPOSAL AGREEMENT BETWEEN THE UCUA AND COVANTA FOR THE OPERATION OF THE UCRRF, PURSUANT TO AND IN ACCORDANCE WITH THE MCENROE ACT, AS PART OF THE COUNTY SYSTEM

Through this Plan Amendment, the County intends to incorporate into the County Plan amendments to the Facility Lease and Disposal Agreement that, among other things as described below, effectively extend the terms of these agreements for an additional twenty-two and one-half years. Both agreements were scheduled to expire on June 14, 2023 and will be extended out through December 31, 2045, with Covanta maintaining the unilateral option to extend the terms of the agreements for an additional period of five (5) additional years through December 31, 2050. In exchange for the extension of the terms of the Facility Lease and Disposal Agreement, the UCUA will be entitled to an annual payment of \$4.0 million, starting in 2011 and continuing through December 31, 2045. Starting in 2029, the UCUA will receive ten percent (10%) of the revenues generated through the sale of energy produced at the Facility. The energy revenue sharing will continue through the extended term of the Facility Lease, including the additional five-year period at Covanta’s option. Should Covanta elect to exercise its sole option to further extend the terms of the agreements, the terms and conditions of the agreements will remain effective, including the current formula for a sharing of Facility revenue, and including the sharing of energy revenue. Also, beginning in 2011, Covanta will pay to the UCUA the sum of \$125,000 per year through the extended term of the Facility Lease to offset the cost of solid waste flow control enforcement.

To support its waste delivery obligations under the amendment to the Disposal Agreement, the UCUA has entered into valid, binding and enforceable amendments to Local Waste Agreements, such that each amended Local Waste Agreement has a term extending at least to the final maturity of the 2011 Refunding Bonds and obligates those County municipalities to deliver Acceptable Waste to the Facility and to pay the UCUA disposal fees on a “put or pay” basis. The amendments of the Local Waste Agreements and the continued direction of Non-Contract waste to the Facility are reasonable and necessary to satisfy the UCUA’s waste delivery obligations and enable it to pay all Service Charges and other amounts due to Covanta under the amended Disposal Agreement in order to achieve the savings described herein.

Covanta presently leases and operates the Facility in accordance with the Facility Lease, and also pays, through lease payments made to the UCUA, debt service on bonds issued by the UCUA in 1998 that will mature in 2023. Simultaneous with the implementation of the proposed extensions to the Facility Lease and Waste Disposal Agreement, UCUA intends to refinance through the issuance of up to \$150 million aggregate principal amount of Solid Waste Facility Lease Revenue Bonds ("2011 Refunding Bonds") the remaining project debt over the extension period. Covanta will continue to make rental payments to the UCUA under the Facility Lease equal to the annual debt service and any relevant bond administration fees such as trustee fees for the extended term of the project debt.

UCUA and Covanta have further agreed to cooperatively review alternatives to sell steam, hot water, or electricity to third parties situated in the City of Rahway ("Rahway"). In addition, Covanta sells Class II Renewable Energy Certificates ("RECs") (as defined in N.J.A.C. 12.8-1.2 and 2.2), generated by the Facility, but agrees that if the energy generated by the Facility becomes eligible to receive Class I RECs (as defined in N.J.A.C. 12.8-1.2 and 2.2), then the UCUA and Covanta shall each own fifty percent (50%) of the Class I RECs generated by the Facility. Covanta will market UCUA's Class I RECs generated by the Facility based upon a marketing plan to be agreed upon by the UCUA, which shall include a minimum agreed price for the UCUA Class I RECs and any other contract requirements to be included in any agreement for sale of UCUA Class I RECs.

In addition to the revenues Rahway receives pursuant to the Host Agreement with the UCUA, Covanta will pay to Rahway through the extended term of the Facility Lease a fixed annual payment of \$1,000,000 and extend to Rahway a \$1 per ton discount on disposal fees. The UCUA and Rahway have agreed to publicly support and cooperate with Covanta to obtain a permit and any other regulatory approvals necessary for the addition of a fourth boiler at the Facility. Any issues related to financing, pricing, revenue sharing, delivery commitments, host fees and tipping fees fourth boiler will be negotiated by the parties and memorialized in a subsequent amendment to the Host Agreement.

As part of the consideration for the extensions of the Lease Agreement and Waste Disposal Agreement, the UCUA has promised to deliver, based upon a put-or-pay arrangement, 430,000 tons of Processible Waste annually to the Facility. Satisfaction of this obligation will be met through the delivery of 330,000 tons of Contract Waste from solid waste generators in the County pursuant to Local Waste Agreements and regulatory waste flow control, and the remaining 100,000 tons pursuant to an interlocal agreement with a governmental entity outside of the County. Covanta will be obligated to utilize reasonable commercial efforts to mitigate any delivery shortfalls and the amount of any shortfall payments by the UCUA to Covanta shall be calculated in accordance with the formula in the current Disposal Agreement. Until 2013, Covanta will reduce mitigation shortfall payment obligations by fifty percent (50%).

In accordance with the amendments to the Facility Lease and Disposal Agreement, Covanta will process and dispose of *all* municipal and commercial waste deliveries made during 2011 in

fulfillment of the UCUA's delivery obligation of 250,000 tons annually at the rate of \$65.72 per ton and adjusted annually as per the escalation formula set forth in the current Disposal Agreement. The balance of the Non-Contract Waste delivered to the Facility pursuant to regulatory flow control will be processed in 2011 at the rate of \$72.09, as adjusted in accordance with Covanta's public bid for the waste, until the termination of the contract in July 2013. Thereafter, all Processible Waste generated in the County and delivered to the Facility will be processed at the rate of \$61.00 per ton in 2010 dollars, resulting in immediate, additional savings to County rate payers.

An independent engineering review of information from Covanta was performed by R. W. Beck, Inc. ("Beck") to establish its remaining useful life of the Facility and to support the extension of the Facility Lease, and to review Covanta's plan of capital improvements associated with the Facility's useful life. Information verified from the review was used by Beck in the preparation of a report that has been submitted to Covanta and the UCUA. All expenses associated with the study were required to be paid by Covanta and the UCUA was required to cooperate at all times with Covanta and Beck during the performance of the study, including, but not limited to, the timely furnishing documents, records and data, as well as responding to any other reasonable inquiry related to the study.

The report prepared by Beck ("Report") relied upon historical data for the operation of the Facility from 2005 through 2009, including annual waste throughput, electricity generation, revenues from tipping fees and electrical sales, operation and maintenance expenses, waste processing and energy generating capabilities, plant availability and capital expenditures. Also reviewed as part of the study was Covanta's estimate of additional capital expenditures that it believes are necessary for the Facility to operate through the extension period, in addition to projections by Covanta of future operating results through the period of the extension to the Facility Lease and Disposal Agreement. The Report confirmed that the Facility is capable of operating through the extension period provided that it is properly operated and maintained and capital improvements are implemented in a timely manner, and determined that sufficient financial incentives exist and funds will be available to Covanta to properly operate and maintain the Facility and make capital investments when needed. The Report concluded that, among other things, based upon its review of the operating data and the contractual extension provisions, should Covanta operate and maintain the Facility, and make all necessary capital improvements in a timely manner, it is reasonable for the Facility to have a useful life through the extension period under the Facility Lease and Disposal Agreement.

The proposed modifications to the Waste Disposal Agreement satisfy the mandatory provisions for a contract for resource recovery services under Section 29 of the McEnroe Act. The Facility has been in operation for almost twenty years, so many of these requirements are no longer applicable (i.e. allocation of risks of financing and constructing the Facility). In addition, many of these requirements have previously been addressed and approved by the McEnroe Review Agencies and are not affected by the modifications proposed herein by the parties for approval.

The allocation of risks associated with the delivery of solid waste for processing at the Facility and the rates to be charged for disposal services will change. In exchange for a greater responsibility to arrange for the delivery of Processible Waste to the Facility, the UCUA has obtained significant pricing concessions from Covanta that will inure to the benefit of the generators of the waste within the County. Moreover, the UCUA has secured an additional Facility Lease extension payment of \$4.0 million annually starting in 2011 and continuing through the term of the extension and the UCUA will also share in revenues from sales of energy produced at the Facility. Rahway, as the host municipality for the Facility, will receive increased host benefit fees and will share in the revenues associated with the sale of steam, hot water or electricity to third parties in Rahway, consistent with the provisions of the Fourth Amendment to the Host Municipality Agreement.

The State of New Jersey has adopted a policy aimed at producing efficiencies and cost savings for governmental units through the consolidation of services offered by counties and municipalities. Declaring that the large number of local government jurisdictions in New Jersey contributed to the high property tax burden suffered by New Jersey residents, the Legislature has enacted laws streamlining the process for consolidating municipalities. More directly applicable to the area of solid waste, the Solid Waste Management Act encourages regionalized solutions to solid waste collection and disposal in an effort to avoid piecemeal solutions that are costly and fail to implement coordinated approaches that effectively protect the health, safety and welfare of the citizens of the State and the environment.

In renegotiating the Facility Lease and Waste Disposal Agreement, the UCUA specifically considered and addressed issues of regionalized planning by accepting greater solid waste delivery obligations and responsibility for fashioning a disposal arrangement with another public entity, potentially another New Jersey county. An interlocal agreement will provide for the delivery to the Facility of 100,000 tons annually of Processible Waste, potentially reducing the need for additional transfer and/or disposal facilities in a second county while, at the same time, maximizing the effectiveness of the Facility. The citizens of the County and possibly another New Jersey county or public entity will benefit from the regionalized program as a result of the lower costs of disposal that could only be achieved through the coordinated and cooperative efforts of all parties involved in the negotiations.

The modifications to the Facility Lease and Disposal Agreement will produce substantial savings to the UCUA, the County and its respective municipalities, while placing the Facility in an improved economic and competitive position. These benefits will be achieved without any diminution of the strict requirements previously mandated in the Service Agreement and the Disposal Agreement concerning adherence to environmental and other regulatory requirements.

The proposed modifications to the Facility Lease and the Disposal Agreement, in light of the opinion of Beck in the Report concerning the useful life of the Facility, and the prior findings and approvals of the McEnroe Review Agencies, are compliant with the requirements of the McEnroe Act, consistent with State policy, and in the best interests of the citizens of not only the County, but also a second public entity through a cooperative arrangement on a regional basis. Therefore, the

Facility Lease and the Disposal Agreement, as amended, as well as the conforming modifications to the Local Waste Agreements are hereby included in the County Plan.

III. WASTE FLOW DIRECTIVES

As a result of non-discriminatory procurements previously undertaken by the UCUA with respect to the disposal of Processible Waste generated within the County, as certified by NJDEP, the modifications to the Facility Lease and Disposal Agreement satisfy the mandatory provisions for a contract for resource recovery services under Section 29 of the McEnroe Act, and consistent with the holding of the United States Supreme Court in United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Management Authority, the County will continue to exert regulatory waste flow control over all Processible Waste generated within the County, as follows:

All Processible Waste generated in the County is hereby directed to the UCRRF in Rahway, New Jersey, for processing and disposal.

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 Authority'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.

PUBLIC NOTICE
 Ordinance 717-2011
 First Reading 1/27/2011
 PLEASE TAKE NOTICE a Public Hearing will be held by the Union County Board of Chosen Freeholders on Thursday, February 24, 2011, at 7:00 p.m. at the Union County Administration Building, Freeholders Meeting Room, Administration Building, 6th Floor, 10 Elizabethtown Plaza, Elizabeth, New Jersey or at such other time as may be scheduled by said Board of Chosen Freeholders for the purpose of hearing persons interested in, or who are affected by, the adoption of an Amendment to the Solid Waste Management Plan of the Union County Solid Waste Management District. The Union County Utilities Authority is located at 1499 Routes 1&9 North, Rahway, NJ. The Plan Amendment that is the subject of the Hearing has been prepared in accordance with the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.) for the purpose of providing that:

AN ORDINANCE AMENDING THE UNION COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN

1) INCORPORATE EXTENSIONS OF AND MODIFICATIONS TO THE TERMS AND PROVISIONS OF THE FACILITY LEASE AGREEMENT AND THE AMENDED AND RESTATED WASTE DISPOSAL AGREEMENT WITH COVANTA UNION, INC. FOR THE OPERATION OF THE UNION COUNTY RESOURCE RECOVERY FACILITY, 2) INCORPORATE EXTENSIONS OF AND MODIFICATIONS TO THE TERMS AND PROVISIONS OF TO THE LOCAL WASTE AGREEMENTS WITH THE COUNTY OF UNION AND CERTAIN MUNICIPALITIES THEREIN AS PART OF THE UNION COUNTY SOLID WASTE SYSTEM, AND 3) REAFFIRM IMPLEMENTATION AND ENFORCEMENT OF REGULATORY WASTE FLOW CONTROL FOR PROCESSIBLE WASTE GENERATED IN UNION COUNTY AS RECOMMENDED BY THE UNION COUNTY UTILITIES AUTHORITY

You may appear in person, or by agent, or by attorney, and present comments relative to the Plan Amendment. A copy of the Plan Amendment is available for public inspection at the offices of each Municipal Clerk in the County of Union, at the office of the Clerk of the Board of Chosen Freeholders of Union County, at the address stated above, during regular business hours and at the Offices of the Union County Utilities Authority, 1499 Routes 1 & 9 North, Rahway, New Jersey during regular business hours.

Nicole L. DiRado, CMC,
 MPA, Clerk of the Board,
 Union County Board of
 Chosen Freeholders \$111.36

STATE OF NEW JERSEY } SS
 COUNTY OF ESSEX

Lauren Kinca

Being duly sworn, according to law, on his/her
 he/she is CLERK

Star-Ledger, in said County of Essex, and th
 which the attached is a copy, was published
 on the 7th day of Febr
 and continued therein for _____

successively, at least once in each _____
 for 1 day

Lauren Kinca

Sworn to and subscribed
 before me this 18th
 day of February, 2011

Medinah Y. Jones
 NOTARY PUBLIC of NEW JERSEY

