

AMENDMENT TO THE UNION COUNTY
DISTRICT SOLID WASTE MANAGEMENT PLAN

**Recommended by the
Union County Utilities Authority
February 13, 2024**

AMENDMENT TO THE UNION COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN TO 1) INCLUDE THE WASTE MANAGEMENT OF NEW JERSEY, INC. FACILITIES IN ELIZABETH, NEW JERSEY, AS THE COUNTY'S DESIGNATED FACILITIES TO WHICH SOLID WASTE TYPES 13, 13C, 23 AND 27 ARE TO BE DIRECTED FOR DISPOSAL, 2) INCORPORATE THE SOLID WASTE DISPOSAL SERVICES AGREEMENT BY AND BETWEEN THE UNION COUNTY UTILITIES AUTHORITY AND WASTE MANAGEMENT OF NEW JERSEY, INC. FOR THE PROVISION OF DISPOSAL SERVICES FOR SOLID WASTE TYPES 13, 13C, 23 AND 27, AND 3) DIRECT ALL SOLID WASTE TYPES 13, 13C, 23 AND 27 TO THE WASTE MANAGEMENT OF NEW JERSEY, INC. FACILITIES IN ELIZABETH, 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 (subsequently known as the New Jersey Meadowlands Commission, and now known as the New Jersey Sports and Exposition Authority) as a solid waste management district and further requires that each solid waste management district, including the County of Union (the "County"), 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, 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 to 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 generated within the County of Union ("Non-Processible Waste"), 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 Non-Processible Waste 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 Non-Processible Waste 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 Non-Processible 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 Non-Processible Waste to the Waste Management of New Jersey, Inc. ("WMI") transfer stations, located in Elizabeth and Linden, New Jersey, for recycling and disposal of residue remaining after such recycling of Non-Processible Waste, 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 Non-Processible Waste was 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 WMI in the Superior Court of New Jersey, Law Division, Union County (Waste Management of New Jersey, Inc. v. Union County Utilities Authority, 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 UCUA approval of the Interim NJMC Agreement, 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 (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 WMI. 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 was more than \$10 per ton less expensive in each year than the bids received from Advanced Environmental Recycling, Inc. and WMI. UCUA also determined that utilization of NJMC for disposal services will provide continuity of such services within the County system since June 2012.

The County formally adopted an amendment to the County Plan on December 5, 2013 to incorporate the Solid Waste Disposal Agreement with NJMC. The NJMC Agreement and its inclusion in the County Plan enabled UCUA to ensure adequate flow control over Non-Processible Waste and provide for uninterrupted disposal of such waste generated within the County. 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 Oneida-Herkimer, and the Agreement entered into between the UCUA and the NJMC. Pursuant to the NJMC Agreement and NJDEP's March 26, 2014 Certification of Plan Amendment, all Non-Processible Waste is directed to the NJMC Keegan Landfill and disposal facilities through June 19, 2016.

In anticipation of the closure of the NJMC disposal facilities in June 2016, UCUA issued Bid Specifications on November 15, 2015 for the provision of disposal services for Non-Processible Waste. UCUA received a single bid from WMI on December 10, 2015 in response to Bid Specifications. By resolution duly adopted on December 16, 2015, UCUA awarded a contract for a period of three years to WMI, as the lowest, complying and responsible bidder, for the provision of disposal services for Non-Processible Waste. Under the Solid Waste Disposal Services Agreement, all Non-Processible Waste was directed to the WMI disposal facilities on Julia Street, Elizabeth, New Jersey.

In anticipation of the expiration of a contract with WMI on June 20, 2019, UCUA issued Bid Specifications on November 15, 2018 for the provision of disposal services for Non-Processible Waste and, on December 10, 2018, received a single bid from WMI. By resolution duly adopted on January 3, 2019, UCUA awarded a contract for a period of five (5) years to WMI, as the lowest, complying and responsible bidder, for the provision of disposal services for Non-Processible Waste (the "2018 Solid Waste Disposal Services Agreement"). Under the 2018 Solid Waste Disposal Services Agreement, all Non-Processible Waste is directed to the WMI disposal facilities in Elizabeth, New Jersey.

Due to the anticipated expiration of the 2018 Solid Waste Disposal Agreement with WMI on June 20, 2024, the UCUA issued Bid Specifications on December 29, 2023 for the provision of disposal services for Non-Processible Waste and, on January 30, 2024, the UCUA received a single bid from WMI. By resolution duly adopted on February 13, 2024, UCUA awarded a contract for a period of three (3) years to WMI, as the lowest, complying and responsible bidder, for the provision of disposal services for Non-Processible Waste (the “2024 Solid Waste Disposal Services Agreement”). The 2024 Solid Waste Disposal Services Agreement between UCUA and WMI is necessary for the health, safety and welfare of the citizens of the County and the efficient operation of UCUA and provides that all Non-Processible Waste will be directed to the WMI disposal facilities (transfer station) on Front Street in Elizabeth, New Jersey.

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 include the disposal facilities owned and operated by WMI in Elizabeth, New Jersey, as the facilities to which all 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 WMI, pursuant to and in accordance with the Local Public Contracts Law.

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 WASTE MANAGEMENT OF NEW JERSEY, INC. CONSISTENT WITH THE LOCAL PUBLIC CONTRACTS LAW

Through this Plan Amendment, the County intends to include the WMI disposal facilities (transfer station) on Front Street in Elizabeth, New Jersey, as the facilities to which all such Non-Processible Waste will be directed for recycling and disposal. Having issued Bid Specifications for the provision of disposal services for Non-Processible Waste on December 29, 2023, and, in response to the Bid Specifications, received a bid from WMI on January 30, 2024, and having advertised the solicitation of bids locally and throughout the State of New Jersey utilizing The Star Ledger, and more broadly via the UCUA’s website, 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.

The award of a contract to WMI complies with the Local Public Contracts Law as it is awarded to the lowest, complying and responsible bidder as a result of a public, non-

discriminatory procurement of solid waste disposal services, in accordance with the requirements of the Solid Waste Management Act and Atlantic Coast. Having been awarded by the UCUA in its role as the implementing agency for the County Plan, the County intends to direct all Non-Processible Waste to the WMI facilities (transfer station) on Front Street in Elizabeth, New Jersey, 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 by the UCUA of solid waste disposal services, the award of a contract and authorization to execute the Solid Waste Disposal Services Agreement with WMI, the County shall direct Non-Processible Waste for disposal to the WMI disposal facilities, pursuant to the terms of the Solid Waste Services Agreement, as more fully described in Section IV of this Plan Amendment.

III. INCLUSION OF SOLID WASTE DISPOSAL SERVICES AGREEMENT AWARDED BY UCUA TO WMI AND THE WMI DISPOSAL FACILITIES IN ELIZABETH, NEW JERSEY, INTO THE COUNTY PLAN FOR THE DISPOSAL 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 all Non-Processible Waste, the UCUA conducted an open, competitive, non-discriminatory and constitutionally-permissible procurement, consistent with the requirements of Atlantic Coast, and awarded a contract to WMI as the lowest, complying and responsible bidder for the provision of disposal services for Non-Processible Waste, for a period of three (3) years commencing on June 20, 2024. The implementation of the terms of the Solid Waste Disposal Services Agreement with WMI 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 WMI for Non-Processible Waste disposal services is hereby included in the County Plan. The inclusion of the WMI disposal facilities (transfer station) on Front Street in Elizabeth, New Jersey, in accordance with the terms of the Solid Waste Disposal Services Agreement awarded by the UCUA is hereby authorized as the County's designated disposal facility for Non-Processible Waste.

IV. WASTE FLOW DIRECTIVES

As a result of non-discriminatory procurement previously undertaken by the UCUA with respect to solid waste disposal services for all Non-Processible Waste as set forth herein

decision consistent with the Local Public Contracts Law, the Solid Waste Management Act, and Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, the County will continue to exert regulatory waste flow control over all Non-Processible Waste generated with Union County, as follows:

As of June 20, 2024, all Non-Processible Waste generated in Union County is hereby directed to the WMI disposal facilities on Front Street in Elizabeth, New Jersey, for processing, recycling, and disposal.

V. 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 County Commissioners.

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.

VI. EFFECTIVE DATE

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