



CLERK OF THE BOARD OF CHOSEN FREEHOLDERS
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Elaine A. Morgan
Clerk of the Board

County of Sussex

September 10, 2009

Mr. Ross Hull
New Jersey Department of Environmental Protection
Division of Solid and Hazardous Waste
Bureau of Recycling and Planning
P.O. Box 414
Trenton, NJ 08625-0414

RESOLUTION RE: SOLID WASTE DISTRICT PLAN AMENDMENT TO REINSTITUTE
SOLID WASTE FLOW CONTROL

Dear Mr. Hull:

The above-captioned Resolution was finally adopted by the Sussex County Board of Chosen Freeholders on September 9, 2009.

Please find enclosed twenty (20) copies of the Resolution and Proposed Plan Amendment finally adopted September 9, 2009, one (1) copy of the Public Hearing transcript that was held on June 24, 2009, and one (1) copy of the Public Notice accompanied by an affidavit of publication issued by the publishing newspaper for the June 24, 2009 Public Hearing.

If you need anything further, please do not hesitate to contact me.

Sincerely,


A handwritten signature in cursive script that reads "Elaine A. Morgan".

Elaine A. Morgan
Clerk of the Board
/eam

cc: Sussex County Solid Waste Advisory Council
Sussex County Municipal Utilities Authority
Sussex County Department of Environmental and Public Health Services
Sussex County Solid Waste Coordinator
County Recycling Coordinator

STATEMENT

The Resolution published herewith has been finally adopted on September 9, 2009.


Elaine A. Morgan, Clerk
Board of Chosen Freeholders

NOTE: The above Statement must be completed and published together with the full text of the Resolution after Final Adoption.



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

JON S. CORZINE
Governor

PO Box 402
Trenton, NJ 08625-0402
Tel. # (609) 292-2885
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MARK N. MAURIELLO
Acting Commissioner

CERTIFICATION
OF THE SEPTEMBER 9, 2009
AMENDMENT TO THE SUSSEX 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 (now known as the New Jersey Meadowlands Commission) develop comprehensive plans for waste management in their respective districts. On June 1, 1981, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Sussex County District Solid Waste Management Plan (County Plan).

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 Sussex County Board of Chosen Freeholders (County Freeholders) completed such a review and on September 9, 2009 adopted an amendment to its approved County Plan.

The September 9, 2009 amendment proposes County Plan inclusion of the Sussex County Municipal Utilities Authority (SCMUA) Landfill, located at 34 Route 94 South in Lafayette Township, as the designated disposal facility for all solid waste types 10, 13, 13C, 23, 25, 27, 27A, and 27I generated within the County and the designation of the SCMUA as a County enforcement agent, as per a shared services agreement, in the realm of solid waste management.

The amendment was considered administratively complete for review by the Department on September 15, 2009 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 County Freeholders on September 9, 2009 is approved, with modification, as provided in N.J.S.A. 13:1E-24.

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

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the September 9, 2009 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 the amendment is consistent in part and inconsistent in part with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the elements relative to the September 9, 2009 amendment which are included below.

Elements of the September 9, 2009 Amendment

Element: Solid Waste Flow Control

The September 9, 2009 amendment proposes County Plan inclusion of the Sussex County Municipal Utilities Authority (SCMUA) Landfill, located at 34 Route 94 South in Lafayette Township, as the designated disposal facility for all solid waste types 10, 13, 13C, 23, 25, 27, 27A, and 27I generated within the County.

The proposed Solid Waste Management Plan Amendment is appropriate under the recent U.S. Supreme Court decision in United Haulers Association v. Oneida Herkimer Solid Waste Management Authority, 550 U.S. 330 (2007). In Oneida Herkimer, a group of haulers challenged county flow control ordinances under the Commerce Clause of the U.S. Constitution; the challenged ordinances directed waste to a facility run by a public authority. As in Oneida Herkimer, the direction of waste to a facility run by a public authority places only an incidental burden on interstate commerce that is outweighed by its public purpose and is thus permissible under the Commerce Clause. The ordinances upheld in Oneida Herkimer are similar in their effect to the proposed amendment to the County Plan.

Element: Agreement By and Between the County, SCMUA, and Grinnell Recycling, Inc.

The Solid Waste Agreement entered into by SCMUA, Grinnell Recycling, Inc. ("GRI") and Sussex County on or about July 13, 2005, (hereinafter "GRI Agreement") provides that GRI may accept C & D material generated within Sussex County for recycling, so long as they return an equal amount of C & D residual to the SCMUA Landfill on a monthly basis. DEP previously approved this Agreement for inclusion in the County Plan on October 24, 2005. By its terms, the GRI Agreement is in effect until December 31, 2013 or until such time as the SCMUA Landfill ceases to accept solid waste. The adoption of the September 9, 2009 amendment to the County Plan will have no bearing on the continued validity of the GRI Agreement. The GRI Agreement will continue to run according to its terms, and consistent with its prior inclusion in the County Plan.

Element: Solid Waste Enforcement

The September 9, 2009 amendment to the County Plan also proposes County Plan inclusion of the designation of the SCMUA as a County enforcement agent, as per a shared services agreement, in the realm of solid waste management.

The proposed amendment to the County Plan includes the designation of the SCMUA as an enforcement agent for the Sussex County Department of Environmental and Public Health Services (SCDE&PHS), the County's lead agency in enforcing State solid waste regulations. The amendment would authorize the execution of a shared services agreement to be entered into by Sussex County, SCDE&PHS and SCMUA to conduct delegated inspection and enforcement activities. It is the Department's position that the "Scope of Activities" for a proposed shared services agreement should not extend to, "the disposal of solid waste", as currently provided for. SCMUA is subject to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and all applicable regulations and it would be an inherent conflict of interest for it to enforce the rules and regulations for disposal of solid waste that apply to its own facility.

In addition, the Department's Division of County Environmental & Waste Enforcement (CEWE) commented as part of their review of the September 9, 2009 County Plan amendment that before the SCMUA can actually participate in the County Environmental Health Act (CEHA) Program of Sussex County, the County must, "first submit a revised CEHA solid waste work program that delineates responsibilities for solid waste inspections, investigations and enforcement between the lead agency, Sussex Co[unty] Health Dep[artmen]t, and the [SC]MUA". CEWE goes on to note that this work plan must describe how the lead agency will ensure that the relevant work is properly supervised and coordinated with the Department; how enforcement will be handled and overseen; and describe the qualifications and capabilities of SCMUA Staff who will do this work. Lastly, CEWE notes that approval of this component of the September 9, 2009 amendment to the County Plan shall not be construed to guarantee the Department's ultimate approval of the SCMUA in the Sussex County CEHA Program.

Element: Non-compliance of the SCMUA Landfill with Title V Requirements

The federal Clean Air Act mandates that every major source operate in compliance with a permit issued by the State under an approved Title V program. 42 U.S.C. Sec. 7661. Under the Clean Air Act, each State was called on to develop and submit to the EPA an operating permit program intended to meet the requirements of Title V of the Clean Air Act. Id. The EPA fully approved all provisions of the State's Title V program rules. N.J.A.C. 7:27-22, effective November 30, 2001, at 40 C.F.R. Part 70, App. A. Title V permits are subject to EPA review and are federally enforceable.

Under the Department's operating permit regulations, a facility needs an operating permit if it emits or has the potential to emit more than 100 tons per year of any air contaminant, except CO₂. An "air contaminant" is defined as: "any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases." N.J.A.C. 7:27-22.1. Methane is defined as "a colorless, odorless, flammable gas." N.J.A.C. 7:27-21.1. Moreover, methane is a greenhouse gas as defined in the Global Warming Response Act. N.J.S.A. 26:2C-30; N.J.A.C. 7:27-8.1. Therefore, methane is an air contaminant for purposes of determining whether a facility requires an operating permit pursuant to Subchapter 22.

On March 6, 2006, the Department issued an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA") to the SCMUA, for, among other things, operating a landfill without a valid operating permit. The SCMUA's submissions to DEP indicate that it has potential annual methane emissions of 9,804 tons per year; pursuant to N.J.A.C. 7:27-22.2(a)(2), facilities that have the potential to emit 100 tons per year of methane are subject to the requirements of Subchapter 22.

According to Air Permitting Staff, every landfill of similar size in the State of New Jersey is permitted under Subchapter 22 as a major operating source. The March 2006 AONOCAPA and other pending violations are currently being heard before a Judge in the Office of Administrative Law. In recent discussions, counsel for SCMUA, Mr. Thomas Hoff Prol of Scarinci & Hollenbeck, has stated in writing that SCMUA intends to submit a permit application under Subchapter 22 no later than February 26, 2010; however, SCMUA has not committed to entering into an administrative consent order, as is the typical practice in litigation of this nature.

It is the Department's expectation that SCMUA will come into compliance with the Air Pollution Control Act and enter into an administrative consent order acceptable to the Department no later than February 26, 2010, consistent with the representation made by SCMUA's counsel.

C. Certification of the Sussex 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 county solid waste management plans, I have reviewed the September 9, 2009 amendment to the approved County Plan and certify to the County Freeholders that the September 9, 2009 amendment is approved, with modification, as further specified below.

The County Plan inclusion of the SCMUA Landfill as the designated disposal facility for all solid waste types 10, 13, 13C, 23, 25, 27, 27A, and 27I generated within the County is approved. The County Plan inclusion of the designation of the SCMUA as a County enforcement agent, as per a shared services agreement, in the realm of solid waste management is approved, except that the phrase, "and the disposal of solid waste" is eliminated from the September 9, 2009 amendment to the County Plan due to reasons identified in Section B. of this certification.

D. Other Provisions Affecting the Plan Amendment

1. 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.

2. Certification to Proceed with Implementation of Amendment

This document shall serve as the certification of the Commissioner of the Department to the County Freeholders and pursuant to N.J.S.A. 13:1E-24c. and f., the County Freeholders shall proceed with the implementation of the approved components of the amendment certified herein.

3. 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.

4. Effective Date of Amendment

The approved components of the amendment to the County Plan contained herein shall take effect immediately.


5. 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 Approval 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, with modification, the amendment, as outlined in Section C. of this certification, to the Sussex County District Solid Waste Management Plan, which was adopted by the Sussex County Board of Chosen Freeholders on September 9, 2009.

1/15/10
Date


Mark N. Mauriello, Acting Commissioner
Department of Environmental Protection

**RESOLUTION RE: SOLID WASTE DISTRICT PLAN AMENDMENT TO
REINSTITUTE SOLID WASTE FLOW CONTROL**

WHEREAS, the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., (Act) established a comprehensive system for the management of solid waste in New Jersey. The Act designates all twenty-one counties, and the New Jersey Meadowlands Commission, as solid waste management districts and mandated that the Boards of Chosen Freeholders and the Hackensack Meadowlands Development Commission (now known as the NJ Meadowlands Commission) develop comprehensive plans for waste management in their respective districts. On June 1, 1981, the Department of Environmental Protection (DEP) approved, with modifications, the Sussex County District Solid Waste Management Plan (County Plan) and amended same from time to time, thereafter; and

WHEREAS, on November 12, 1986, the Sussex County Board of Chosen Freeholders, through a Solid Waste Plan Amendment, designated the Sussex County Municipal Utilities Authority (SCMUA) as the implementing agency for the acquisition, construction, maintenance and operation of facilities for the processing, recycling and disposal of solid waste generated within Sussex County; and

WHEREAS, in June 1988, the SCMUA issued \$46 million in Solid Waste Revenue Bonds to finance the Sussex County Solid Waste System, which were issued with County financial backing in the form of the 1987 Deficiency Agreement; and

WHEREAS, the Sussex County Solid Waste System was intended to be a financially self-sustaining system in which bonds issued to finance the System were to be repaid by charging "tip fees" to the Solid Waste System users; and

WHEREAS, prior to 1997, all solid waste generated in Sussex County was required by NJDEP regulations to be disposed of at the Sussex County Solid Waste Facilities; and

WHEREAS, in C&A Carbone, Inc. v. Clarkstown, the U.S. Supreme Court held that an Ordinance requiring haulers to deliver waste to a particular private facility discriminated against interstate commerce and, thereby, "deprived competitors, including out-of-state firms, of access to a local market." 511 U.S. 383, 386 (1994); and

WHEREAS, In 1997, in Atlantic Coast Demo. & Recycling, Inc. v. Bd. of Chosen Freeholders of Atlantic County, et al., the U.S. Court of Appeals for the Third Circuit, following the Carbone holding, issued an injunction against the State of New Jersey enjoining enforcement of the State's then-existing flow control regulatory scheme. 112 F. 3d 662 (1997); and

WHEREAS, subsequent to the Carbone and Atlantic Coast decisions, many N.J. Solid Waste Systems relying on flow control experienced significant financial difficulties in maintaining operations and providing sufficient revenues to pay debt service expenses; and

WHEREAS, since 1997, the SCMUA Solid Waste Facilities has depleted its surplus funds of approximately \$3.9 million and has relied on NJ State Solid Waste Debt Services Assistance in the amount of approximately \$11.7 million to finance the "stranded debt" and to prevent default on the Solid Waste Facilities' debt service payments to bond holders; and

WHEREAS, on April 30, 2007, the U.S. Supreme Court, in United Haulers Association Inc. v. Oneida-Herkimer Solid Waste Management Authority, clarified its 1994 Carbone decision, holding that local governments may direct solid waste flow to publicly-owned and operated disposal facilities. 127 S.Ct. 1786, 1795 (2007); and

WHEREAS, the State of New Jersey, in the Act, requires all solid waste management plans to contain a substantial recycling element, an issue to which the Chief Justice referred in the United Haulers decision; and

WHEREAS, the County amended the Plan by an Amendment dated July 27, 2007, certified January 11, 2008, incorporating increased provisions for recycling through greater education, source reduction and enforcement, expanding the list of materials to be recycled, updating the inventory of facilities to which recyclables may be directed along with the hours of operation and suggesting that flow control be considered in the future to better control the solid waste and recyclable streams; and

WHEREAS, final portions of the July 25, 2007 amendment were revised to meet the conditions of initial certification and finally certified July 10, 2008, designating the Sussex County Division of Planning as the Solid Waste Planning Agency and the agency responsible for recycling, the Sussex County Municipal Utilities Authority as the agency responsible for solid waste operations and the Sussex County Department of Environmental and Public Health Services (SCDEPHS) as the agency responsible for solid waste and recycling enforcement, materials to be recycled by residential generators were specified in greater detail, municipal ordinance requirements were clarified and enforcement by the SCDEPHS made more explicit; and

WHEREAS, on or about October 22, 2007, following the United Haulers decision, the NJDEP issued correspondence that stated, in pertinent part, "the Department will accept requests from Counties, in the form of District Solid Waste Management Plan Amendments, to restore reasonable flow control provisions based upon economic necessity..."; and

WHEREAS, the continuation of debt service-related financial assistance from the State is uncertain due to the current fiscal crisis and, additionally, that said assistance has been inadequate in the past to provide the funds necessary for the operations, maintenance, debt service and required reserves of the Solid Waste System; and

WHEREAS, other Solid Waste Facilities financial options, including, without limitation, debt restructuring, sale of the Solid Waste Facilities, acceptance of out-of-county waste and other solid waste program cutbacks appear unfeasible and/or insufficient to provide for financial self-sufficiency of the County's Solid Waste System; and

WHEREAS, in the event of a shortfall in the County Solid Waste System finances, the 1987 County Deficiency Agreement between the County of Sussex and SCMUA would be invoked, necessitating an increase in County property tax and/or diminution of services to County taxpayers; and

WHEREAS, after much discussion and deliberation at the Sussex County Solid Waste Advisory Council (SWAC) meetings of March 10, April 14 and May 12, 2009 and reviewing and evaluating various financial reports, tonnage reports and the "Report to the Sussex County Solid Waste Advisory Council on the Sussex County Solid Waste System Finances" dated May 5, 2009, which is incorporated herein by reference, SWAC found and determined that the re-establishment of solid waste flow control is in the best interest of its member constituents and did, by Resolution dated 5/12/09 (later edited for clarification 7/21/09), recommend adoption and institution of a solid waste flow control program by the Sussex County Board of Chosen Freeholders; and

WHEREAS, this Plan Amendment is intended to fully replace Section 6.7 of the County Plan as set forth in the proposed amendment and further adds a new section, section 6.13. Each of these amendments is intended to supersede any other provisions in the County Plan with which they may be in conflict; and

WHEREAS, a Public Hearing was held on the proposed Plan on June 24, 2009, pursuant to N.J.A.C. 7:26-6.10, at which time public comment was received on the Plan and minor revisions were made as a result of said Hearing; and

WHEREAS, the Board of Chosen Freeholders believe that the public should be provided an opportunity to be heard on the final version of the Plan Amendment.

NOW, THEREFORE, BE IT RESOLVED by the Board of Chosen Freeholders of the County of Sussex that the Sussex County Solid Waste Plan be amended as set forth in the attached Solid Waste Plan Amendment to reinstitute Solid Waste Flow Control with all solid waste generated in Sussex County in categories ID 10, 13, 23, 25 and 27 as specified in Section 2.1.1 of the Sussex County District Codified Solid Waste Management Plan, as well as ID 13C, 27A and 27I as described in the current SCMUA Solid Waste Facility Permit for Site 1E, be directed to the SCMUA Solid Waste Facilities; and

BE IT FURTHER RESOLVED that the Plan Amendment provides for a Solid Waste Flow Control Enforcement Program to be developed between the Sussex County Department of Environmental and Public Health Services and the Sussex County Municipal Utilities Authority as provided for under the County Environmental Health Act (CEHA) and the Uniform Shared Services Act and that said agencies, together with County departments, staff and professionals, be directed and empowered to undertake any and all actions necessary to implement said Solid Waste Flow Control Enforcement Program; and

BE IT FURTHER RESOLVED that a Public Hearing be held on September 9, 2009 to provide final public input pursuant to the Notice of Pending Resolution attached hereto prior to Final Adoption of this Resolution; and

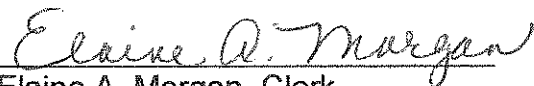
BE IT FURTHER RESOLVED that twenty copies of the Plan Amendment as attached hereto and made a part hereof and one copy of the Public Hearing transcript and the substantive comments submitted to the County, one copy of the Public Notice accompanied by an affidavit of publication issued by the publishing newspaper be forwarded to the New Jersey Department of Environmental Protection, Division of Solid and Hazardous Waste, Bureau of Recycling and Planning, PO Box 414, Trenton, NJ 08625-0414; copies of this Resolution shall be distributed to the Sussex County Solid Waste Advisory Council; Sussex County Municipal Utilities Authority, 34 South Route 94, Lafayette, NJ 07848; Sussex County Department of Environmental and Public Health Services; the County Solid Waste Coordinator; and the County Recycling Coordinator.

Certified as a true copy of the Resolution adopted by the Board of Chosen Freeholders on the 19th day of August, 2009.

Certified as a true copy of the Resolution Finally Adopted by the Board of Chosen Freeholders on the 9th day of September, 2009.



Diane S. Eakman, Deputy Clerk
Board of Chosen Freeholders
County of Sussex



Elaine A. Morgan, Clerk
Board of Chosen Freeholders
County of Sussex

RECORD OF VOTE						
FREEHOLDER	AYE	NAY	N.V.	ABS	MOVE	SEC
Crabb	✓				✓	
Parrott	✓					✓
Vetrano	✓					
Wirths	✓					
Zellman	✓					

N.V. - Not Voting
MOVE - Resolution Moved

SEC - Resolution Seconded
ABS - Absent

SUSSEX COUNTY SWMP PROPOSED AMENDMENT

Section 6.7 WASTE FLOW of the Sussex County Solid Waste Management Plan shall be amended to read as follows:

6.7 WASTE FLOW

A strong Solid Waste Enforcement Program is critical to any Solid Waste District. Waste Flow is important for the financial stability of any solid waste facility. The NJDEP has indicated a willingness to allow Counties to reinstitute flow control in order to properly operate county-wide solid waste facilities. The Sussex County Solid Waste Facility was designed and financed through revenue bonds issued based on a projected amount of waste to be received at the Facility.

The Facility that is currently operating in Lafayette Township, known as the Sussex County Solid Waste Facility, is hereby designated as the sole facility to which all Sussex County generated waste in categories ID 10, 13, 23, 25 and 27 as specified in Section 2.1.1 of the Sussex County District Codified Solid Waste Management Plan as well as ID 13C, 27A and 27I as described in the current SCMUA Solid Waste Facility Permit for Site 1E.

SECTION 6.13 SOLID WASTE ENFORCEMENT is hereby created and shall read as follows:

6.13 SOLID WASTE ENFORCEMENT

1. Authorization

Under the Act, N.J.S.A. 13:1E-1 et seq., each county within the State of New Jersey is designated as a solid waste management district with responsibility for the development of a solid waste management plan setting forth the solid waste disposal strategy to be applied in the District.

The Sussex County Board of Chosen Freeholders has adopted and amended the Plan from time to time. The County has designated the SCMUA as one of the entities responsible for implementing the County Plan.

Under the County Environmental Health Act (CEHA) N.J.S.A. 26:3A2-21 et seq., the Sussex County Department of Environmental and Public Health Services (SCDE&PHS) has been certified by the NJDEP to serve as the County's lead agency in enforcing State solid waste regulations.

As a means of enforcing the provisions of this Amendment, a shared services agreement can be entered into by the County of Sussex, SCDE&PHS and the SCMUA, with the SCMUA acting as an agent of the SCDE&PHS, authorized to conduct delegated inspection and enforcement activities.

2. Scope of Activities

Pursuant to a shared services agreement the SCMUA would be authorized to conduct inspection and enforcement activities in areas including, but not limited to, the District Solid Waste Management Plan, the regulations of transporters of solid waste, and the disposal of solid waste.

These activities may include physical inspection of locations and/or vehicles or apparatus related to the collection and disposal of solid waste. Where appropriate, enforcement actions may consist of the issuance of a notice of violation, offer of penalty settlement, or the initiation of appropriate action in the court of competent jurisdiction.

These inspection and enforcement activities would be conducted as specified in the shared services agreement, the approved CEHA Solid Waste Work Program, and in accordance with the policies and guidelines established by the Sussex County Department of Environmental & Public Health Services and NJDEP.

These Amendments shall supersede any other provisions of the Sussex County Solid Waste Plan which they may be in conflict with.

**RESOLUTION RE: SOLID WASTE ADVISORY COUNCIL'S
RECOMMENDATION TO THE BOARD OF CHOSEN
FREEHOLDERS FOR A SOLID WASTE DISTRICT
PLAN AMENDMENT TO REIMPLEMENT SOLID
WASTE FLOW CONTROL**

WHEREAS, on November 12, 1986, the Sussex County Board of Chosen Freeholders, through a Solid Waste Plan Amendment, designated the Sussex County Municipal Utilities Authority (SCMUA) as the implementing agency for the acquisition, construction, maintenance and operation of facilities for the processing, recycling and disposal of solid waste generated within Sussex County; and

WHEREAS, in June 1988, the SCMUA issued \$46 million in Solid Waste Revenues Bonds to finance the Sussex County Solid Waste System which were issued with County financial backing in the form of the 1987 Deficiency Agreement; and

WHEREAS, the Sussex County Solid Waste System was intended to be a financial self-sustaining system in which bonds issued to finance the system were to be repaid by charging "tip fees" to the solid waste system users; and

WHEREAS, prior to 1997, all solid waste generated in Sussex County was required by NJDEP regulations to be disposed of at the Sussex County Solid Waste Facilities; and

WHEREAS, in C&A Carbone, Inc. v. Clarkstown, the U.S. Supreme Court held that an ordinance requiring haulers to deliver waste to a particular private facility discriminated against interstate commerce and, thereby, "depriv[ed] competitors, including out-of-state firms, of access to a local market." 511 U.S. 383, 386 (1994); and

WHEREAS, In 1997, in Atlantic Coast Demo. & Recycling, Inc. v. Bd. of Chosen Freeholders of Atlantic County, et al., the U.S. Court of Appeals for the Third Circuit, following the Carbone holding, issued an injunction against the State of New Jersey enjoining enforcement of the State's then-existing flow control regulatory scheme. 112 F. 3d 662 (1997); and

WHEREAS, subsequent to the Carbone and Atlantic Coast decisions, many N.J. Solid Waste Systems relying on flow control experienced significant financial difficulties in maintaining operations and providing sufficient revenues to pay debt service expenses; and

WHEREAS, since 1997, the SCMUA Solid Waste Facilities has depleted its surplus funds of approximately \$3.9 million and has relied on NJ State Solid Waste Debt Services Assistance in amount of approximately \$11.7 million to finance the "stranded debt" and to prevent default on Solid Waste Facilities' debt service payments to bond holders; and

WHEREAS, on April 30, 2007, the U.S. Supreme Court, in United Haulers Association Inc. v. Oneida-Herkimer Solid Waste Management Authority, clarified its 1994 Carbone decision, holding that local governments may direct solid waste flow to publicly-owned and operated disposal facilities. 127 S.Ct. 1786, 1795 (2007); and

WHEREAS, on or about October 22, 2007, following the United Haulers decision, the NJDEP issued correspondence that stated, in pertinent part, "the Department will accept requests from Counties, in the form of District Solid Waste Management Plan Amendments, to restore reasonable flow control provisions based upon economic necessity..."; and

WHEREAS, the continuation of debt service-related financial assistance from the state is uncertain due to the current fiscal crisis and, additionally, the fact that said assistance has been inadequate in the past to provide the funds necessary for the operations, maintenance, debt service and required reserves of the Solid Waste System; and

WHEREAS, other Solid Waste Facilities financial options, including, without limitation, debt restructuring, sale of the Solid Waste Facilities, acceptance of out-of-county waste and other solid waste program cutbacks appear unfeasible and/or insufficient to provide for financial self-sufficiency of the County's Solid Waste System; and

WHEREAS, in the event of a shortfall in the County Solid Waste System finances, the 1987 County Deficiency Agreement between the County of Sussex and SCMUA would be invoked, necessitating an increase in County property tax and/or diminution of services to County taxpayers; and

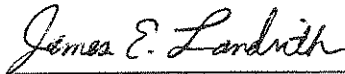
WHEREAS, after much discussion and deliberation at the SWAC Meetings of March 10, April 14 and May 12, 2009 and reviewing and evaluating various financial reports, tonnage reports and the "Report to the Sussex County Solid Waste Advisory Council on the Sussex County Solid Waste System Finances" dated May 5, 2009, which is incorporated herein by reference, SWAC has found and determined that the re-establishment of solid waste flow control is in the best interest of its member constituents and does hereby recommend adoption and institution of a solid waste flow control program to the Sussex County Board of Chosen Freeholders.

NOW THEREFORE BE IT RESOLVED, SWAC recommends that the Sussex County Board of Chosen Freeholders amend the Sussex County District Solid Waste Management Plan to reinstitute Solid Waste Flow Control with all solid waste generated in Sussex County in categories ID 10, 13, 23, 25 and 27 as specified in Section 2.1.1 of the Sussex County District Codified Solid Waste Management Plan as well as ID 13C, 27A and 27I as described in the current SCMUA Solid Waste Facility Permit for Site 1E, be directed to the SCMUA Solid Waste Facilities.

BE IT FURTHER RESOLVED, that the plan amendment provide for a Solid Waste Flow Control Enforcement Program to be developed between the Sussex County Department of Environmental and Public Health Services and the Sussex County Municipal Utilities Authority as provided for under the County Environmental Health Act (CEHA) and the Uniform Shared Services Act and that said agencies together with County departments, staff and professionals be directed and empowered to undertake any and all actions necessary to implement said Solid Waste Flow Control Enforcement Program.

BE IT FURTHER RESOLVED, that copies of this resolution shall be distributed to the Sussex County Board of Chosen Freeholders, Sussex County Municipal Utilities Authority, Sussex County Department of Environmental and Public Health Services, the County Solid Waste Coordinator, NJDEP, and the County Recycling Coordinator.

Certified as a true copy of the
Resolution adopted by the Sussex
County Solid Waste Advisory Council
On Tuesday, May 12, 2009.



James Landrith, Chairman