

ORDINANCE OF THE BOARD OF ESSEX COUNTY COMMISSIONERS

Statutory Authority for Ordinance NJSA40A-38
Authority for Action NJSA 40-41 A-36
NJSA 12:1E-23 & 24
NJAC 7:26-6.11 (B) 3

Ordinance No. _____

Proposed by:

SUBJECT: ORDINANCE AMENDING THE ESSEX COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN

INCLUSION OF THE THIRD SUPPLEMENTAL AGREEMENT BETWEEN THE ESSEX COUNTY UTILITIES AUTHORITY AND THE PORT AUTHORITY (A GOVERNMENT TO GOVERNMENT AGREEMENT) EXTENDING THE TERMS OF THE WASTE DISPOSAL AGREEMENT FOR DISPOSAL OF APPROXIMATELY 370,000 TONS OF PROCESSIBLE MUNICIPAL AND COMMERCIAL SOLID WASTE TYPE 10, 25 AND 27 AT THE ESSEX COUNTY RESOURCE RECOVERY FACILITY (THE ECRRF), OWNED BY THE PORT AUTHORITY AND MAINTAINED AND OPERATED BY COVANTA ENERGY DURING THE ENTIRE EXTENDED TERM OF THE THIRD SUPPLEMENTAL AGREEMENT FOR THE PERIOD FEBRUARY 1, 2022 TO DECEMBER 31, 2025, PURSUANT TO REGULATORY WASTE FLOW CONTROL.

AS RECOMMENDED BY THE
ESSEX COUNTY UTILITIES AUTHORITY

WHEREAS, pursuant to the provisions of the New Jersey Solid Waste Management Act, constituting Chapter 39 of the Pamphlet Laws of 1970, of the State of New Jersey, and the acts amendatory thereof and supplemental thereto, the County of Essex, New Jersey (“the County”) has been designated as a Solid Waste Management District and as such, is charged with the responsibility of adopting and providing for the implementation of the Essex County District Solid Waste Management Plan (the “County Plan”) to provide for the disposal generated within the geographic boundaries of the County; and

WHEREAS, the Board of Chosen Freeholders of the County of Essex (the "County") developed, and the New Jersey Department of Environmental Protection (the "Department") subsequently approved, the County Plan for the Essex County Solid Waste Management District, which provides for, among other things, the development and implementation of a comprehensive solid waste system relating to the collection and disposal of County-generated solid waste; and

WHEREAS, in order to, among other things, provide for the provision of solid waste management services in a more effective and efficient manner, the Board of Chosen Freeholders, by ordinance finally adopted on July 1, 1992, created The Essex County Utilities Authority (the "Authority") as a public body corporate and politic of the State of New Jersey, with all necessary and proper powers to acquire, construct maintain, and operate or contract for the operation of facilities for the collection, transportation, processing, recycling and disposal of solid waste generated within the geographic boundaries of the County in an environmentally sound manner; and

WHEREAS, on August 4, 1993, the Board of Chosen Freeholders of the County adopted an amendment to the County Plan designating the Authority as the sole agency responsible for implementation of the County Plan, and

WHEREAS, the Port Authority and the ECUA, as implementing agency for the Essex County Solid Waste management Plan and as assignee of the rights, duties and obligations of the County of Essex, New Jersey ("County") with respect to the disposal of all solid waste generated within the geographic boundaries of the County, heretofore and as of the 15th day of July 1999 entered into that certain Waste Disposal Agreement ("WDA") which, as an amendment of that certain Amended and Restated County Service Contract dated as of February 28, 1986. By and between the Port Authority and the County, provides for the disposal of solid waste generated within the County at the Essex County Resource Recovery Facility (the "ECRRF") owned by the Port Authority and operated and maintained by Covanta Energy, as successor to American Ref-Fuel Company of Essex County;

WHEREAS, The Port Authority and the ECUA extended the term of the WDA and otherwise amended the terms of the WDA in certain respects pursuant to those certain government t to government supplemental agreements dated October _____ 2009 ("The Supplemental Agreement") and _____, 2014 (the "Second Supplemental Agreement") and

WHEREAS in 2014 the Essex County Utilities Authority entered into the seven (7) year Government to Government Second Supplemental Agreement with the Port Authority of New York and New Jersey for the disposal of all Essex County Municipal Type 10 Processible Waste at the Resource Recovery Facility (ECRRF) owned by the Port Authority for the period February 1, 2015 until January 31, 2022; and

WHEREAS the Essex County Utilities Authority has advised that the said seven (7) year Government to Government Second Supplemental Agreement has been beneficial to all 22 Essex County Municipalities as a result of reduced tipping fees during that period and

WHEREAS the Essex County Utilities Authority has advised that the Resource Recovery Facility (ECRRF) located in Newark, New Jersey has been very convenient for Essex County haulers and that the facility has handled the delivery of Processible Solid waste over this period of time in a careful and expeditious manner; and

WHEREAS the Second Supplemental Agreement between the Port Authority and the ECUA will expire on January 31, 2022 and the parties desire to further extend the term of the WDA and to otherwise amend the terms of the WDA in certain respects, by the execution of a certain additional government to government supplemental agreement (“the Third Supplemental Agreement”) and

WHEREAS the Authority has further advised that the new Third Supplemental Agreement between the Essex County Utilities and the Port Authority will result in the continuation of low Tipping Fees for Essex County municipalities , businesses and haulers for 2022 and thereafter as well as long term certainty as to Type 10 Processible Waste disposal and

WHEREAS the Essex County Utilities Authority, as the regulatory agency for the collection and disposal of solid waste generated within the geographic boundaries of Essex County has directed, pursuant to regulatory waste flow control, in accordance with the Third Supplemental Agreement, the disposal of approximately 370,000 tons of processible municipal and commercial waste type 10, 25 and 27 generated within Essex County on a yearly basis for the period February 1, 2022 to December 31, 2025 to the Essex County Resource Recovery Facility (ECRRF) in Newark, New Jersey and

WHEREAS as a result of regulatory waste flow control, the Essex County Utilities Authority, as regulatory agency, in addition to maintaining low tipping fees for its municipal and commercial customers throughout the four year period of the Third Supplemental Agreement, the Authority will also be able to continue to substantially reduce its bonded indebtedness and

WHEREAS the Authority by Resolution 06-21-26 duly adopted on June 15, 2021, approved and authorized the Government to Government Third Supplemental Agreement by and between the Authority and the Port Authority for the period February 1, 2022 to December 31, 2025, and further approved the Plan Amendment to the Essex County Solid Waste Management Plan and recommended the Plan Amendment to the Essex County Board of County Commissioners for adoption by Ordinance after Public Hearing in accordance with the Solid Waste Management Act and

WHEREAS The ECUA, as the regulatory agency for the collection and disposal of all solid waste generated in Essex County has advanced the following additional factors in support of this Plan Amendment:

1. All Essex County municipal processible solid waste has been disposed of at the Essex County Resource Recovery Facility continuously since 1994.
2. The facility has proven over the years to be geographically convenient for Essex County municipal haulers and disposal of solid waste at the facility has been handled in an expeditious manner with consistent reliable availability. The location of the facility in the City of Newark substantially reduces truck traffic. A high percentage of the solid waste is generated by the larger Essex County municipalities, which are located in close proximity to the E.C.R.R.F. being the City of Newark, City of East Orange, Township of Irvington, City of Orange and Township of Belleville. These five municipalities represent sixty one percent of the total Essex County population.
3. Throughout the entire term of the seven (7) year extension agreement which is about to expire, as in the prior five (5) year agreement, Essex County has maintained its priority ranking in terms of capacity and priority of delivery of solid waste at the facility.
4. The New Jersey Department of Environmental Protection (NJDEP) previously approved both extensions of the government to government contract for the transfer, transportation and disposal of municipal processible solid waste types 10, 25 and 27 generated within Essex County at the ECRRF.
5. The NJDEP has also approved and certified the direction of all municipal processible solid waste types 10, 25 and 27 to the Essex County Resource Recovery Facility (ECRRF) in the City of Newark pursuant to regulatory flow control.
6. The previous extensions with the Port Authority have resulted in very substantial disposal cost savings for all Essex municipalities. The substantial cost savings which will be realized from the new Four (4) year contract extension will allow the ECUA to continue, enlarge and expand its various environmental activities, including a major focus on recycling in Essex County.
7. As a result of this government to government extension agreement Essex County municipalities will pay less for processible waste disposal in 2022-2025 than they paid in 2014.
8. The use of the ECRRF in conformity with existing DEP and EPA emission standards is less harmful to the environment than land filling.

9. Court decisions and more particularly the U.S. Supreme Court have validated a government to government contract directing the flow of solid waste to a publicly owned solid waste facility pursuant to regulatory flow control as is contemplated herein.
10. In addition, the New Jersey Department of Environmental Protection has also approved District Solid Waste Management Plan amendments approving regulatory flow control.
11. As a result of regulatory flow control, the ECUA has been able to substantially reduce its bonded indebtedness . A further reduction in ECUA bonded indebtedness as result of the projected cost savings in the four (4) year extension agreement and the continuation of regulatory waste flow control, is anticipated.

WHEREAS the Plan Amendment was approved by the Solid Waste Advisory Council (SWAC) at its meeting of May 25, 2021 Resoution # 1-21.

NOW THEREFORE, BE IT ORDAINED by the Essex County Board of Commissioners as follows:

1. The Essex County District Solid Waste Management Plan is hereby amended, pursuant to NJAC 7:26-6.11(B)3 to include the within Plan Amendment, which is attached hereto and which by this reference is incorporated as if fully set forth herein, to include the Essex County Resource Recovery Facility in Newark, New Jersey as the County's designated facility for the disposal of approximately 370,000 tons per year of Essex County Municipal and Commercial Processible Solid Waste Types 10, 25 and 27 and inclusion of the Third Supplemental Agreement between the Port Authority and the Essex County Utilities Authority for the period February 1, 2022 until December 31, 2025 and for the direction of approximately 370,000 tons per year of Essex County municipal and commercial processible waste to the Essex County Resource Recovery Facility in Newark, New Jersey pursuant to Regulatory Waste Flow Control.

2. 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.

3. A public hearing relating to this Ordinance shall be held in accordance with N.J.S.A. 12:1E-23, on _____

4. The Clerk of the Board of County Commissioners is hereby directed to send notice of said public hearing and copies of this Ordinance and the County Plan and the attached Plan Amendment to the Mayor of each municipality within the county, and to publish notice of such public hearing once each week for two consecutive weeks, the last publication to be not less than ten (10) days prior to the date set forth for such public hearing. Said notices shall state that the County Plan and the attached Plan Amendment will be available for review at the office of the Clerk of the Board of Essex County Commissioners.

5. This Ordinance shall take effect at the time and in the manner prescribed by law.

6. Upon adoption, the Clerk of the Board of Essex County Commissioners shall forward certified copies of this Ordinance and Plan Amendment, a copy of the transcript of the public hearing to the Commissioner of the N.J. Department of Environmental Protection, the County Executive and the Essex County Utilities Authority

PLAN AMENDMENT TO THE ESSEX COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN

FOR THE INCLUSION OF THE THIRD SUPPLEMENTAL AGREEMENT BY AND BETWEEN THE ESSEX COUNTY UTILITIES AUTHORITY AND THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY EXTENDING THE TERM OF THE WASTE DISPOSAL AGREEMENT FOR THE DISPOSAL OF APPROXIMATELY 370,000 TONS OF PROCESSIBLE MUNICIPAL AND COMMERCIAL WASTE TYPE 10, 25 AND 27 GENERATED WITHIN ESSEX COUNTY PER YEAR AT THE ESSEX COUNTY RESOURCE RECOVERY FACILITY FOR THE ENTIRE EXTENDED TERM OF THE AGREEMENT BEING FEBRUARY 1, 2022 TO DECEMBER 31, 2025 PURSUANT TO REGULATORY WASTE FLOW CONTROL, AND CONTINUING THE INCLUSION OF THE ESSEX COUNTY RESOURCE RECOVERY FACILITY IN NEWARK, NEW JERSEY IN THE ESSEX COUNTY DISTRICT SOLID WASTE MANAGEMENT PLAN

1. INTRODUCTION

The Solid Waste Management Act, N.J.S.A:1E-1se. ("the Solid Waste Act") requires that each solid waste management district include in its solid waste management plan suitable sites to treat and dispose of all solid waste generated within the district and that such plan also include a statement of the solid waste disposal strategy to be applied in the district on July 19, 1980, the Board of Commissioners of the County of Essex (the "County") adopted the Essex County District Solid Waste Management Plan the (the "Essex Plan"), which was subsequently approved by the New Jersey Department of Environmental Protection (NJDEP) on August 13, 1980.

In 1982, the County created the Essex County Utilities Authority (the "ECUA") as a public body corporate and politic of the State of New Jersey, with all necessary and proper powers to acquire, construct maintain and operate or contract for the operation of facilities for the collection, transportation, processing, recycling and disposal of solid waste generated within the County. In 1993, the County amended and the NJDEP approved the Essex Plan, to designate the ECUA as the sole agency responsible for implementation of the Essex Plan. Thereafter the County assigned all of its rights and obligations under existing solid waste disposal, transportation and processing contracts to the ECUA and since such assignment the ECUA has assumed and carried out all duties and responsibility relating to solid waste originating within the geographic boundaries of the County. The Essex Plan has since been amended and modified from time to time.

2. INCLUSION OF THE THIRD SUPPLEMENTAL AGREEMENT FOR THE DISPOSAL OF APPROXIMATELY 370,000 TONS OF PROCESSIBLE MUNICIPAL AND COMMERCIAL WASTE TYPE 10, 25 AND 27 GENERATED WITHIN ESSEX COUNTY PER YEAR TO THE ESSEX COUNTY RESOURCE RECOVERY FACILITY (THE ECRRF) FOR THE ENTIRE EXTENDED TERM OF THE THIRD SUPPLEMENTAL AGREEMENT BEING FEBRUARY 1, 2022 TO DECEMBER 31, 2025 PURSUANT TO REGULATORY WASTE FLOW CONTROL

This Plan Amendment is for the inclusion of the Third Supplemental Agreement by and between the Essex County Utilities Authority and the Port Authority of New York and New

Jersey for the transfer, transportation and disposal of approximately 370,000 tons per year of Solid Waste Types 10, 25 and 27 generated in Essex County, to the Essex County Resource Recovery Facility (the ECRRF) pursuant to Regulatory Flow Control for the period commencing on February 1, 2022 terminating on December 31, 2025, and continuing the inclusion of the Essex County District Solid Waste Plan.

Essex County Utilities Resolution No. 06-21-26 duly adopted June 15, 2021 approved and authorized the execution of the Third Supplemental Agreement by and between the Essex County Utilities Authority and the Port Authority of New York and New Jersey and recommended to the Board of County Commissioners that the Plan Amendment be approved by Ordinance after public hearing in accordance with the Solid Waste Management Act.

The Plan Amendment was also approved by the Solid Waste Advisory Council (SWAC) at its meeting of May 25, 2021 Resolution # 1-21.

During the entire term of the four (4) year extension agreement, the Plan Amendment requires and includes the payment by the facility (and is included in the service charges throughout the term of the contract) of the \$3.00 per ton recycling tax imposed by the `Recycling Enforcement Act (N.J.S.A. 13:1E-96.2 et seq.) on all municipal and processible waste disposed of at the Essex County Resource Recovery Facility.

The Essex County District Solid Waste Management Plan is hereby amended pursuant to NJAC 7:26-611(B) 3 to include the Third Supplemental Agreement by and between the Essex County Utilities Authority and the Port Authority of New York and New Jersey for the transfer, transportation and disposal of approximately 370,000 tons of processible municipal and commercial solid waste types 10, 25 and 27 per year, generated within Essex County, at the Essex County Resource Recovery Facility, in Newark, New Jersey for the entire extended term of the four (4) year Agreement being February 1, 2022 until December 31, 2025 pursuant to Regulatory Waste Flow Control, and continuing the inclusion of the Essex County Resource Recovery Facility in Newark, New Jersey in the Essex County District Solid Waste Management Plan

A certified copy of the within Plan Amendment shall be submitted to the Commissioner of the NJDEP.

3. SCOPE OF AMENDMENT

This Amendment is intended to modify only those portions of the approved Essex Plan specifically addressed herein. All previously approved provisions, which are not inconsistent with this Amendment, are intended to remain in force and effect.

If any clause provision subsection, section or article of the Amendment shall be ruled invalid by and court of competent jurisdiction or administrative agency the invalidity of such clause, provision subsection, or article shall not affect any of the remaining portions of this Amendment.