SALEM COUNTY IMPROVEMENT AUTHORITY

RESOLUTION 2015-65

November 12, 2015

RESOLUTION APPROVING AMENDMENT TO
THE SALEM COUNTY SOLID WASTE MANAGEMENT PLAN

WHEREAS, the Solid Waste Management Act, N.J.S.A. 13:1E-1, et seq. (the “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. In 1979, the Department of Environmental Protection (the “DEP”) approved the Salem County Solid Waste Management Plan (the “County Plan”) and amended same from time to time thereafter; and,

WHEREAS, in 2008, the Salem County Board of Chosen Freeholders transferred the ownership, maintenance and operation of the Salem County Landfill from the Salem County Utilities Authority to the Salem County Improvement Authority; and

WHEREAS, the Salem County Improvement Authority is also responsible for the maintenance and enforcement of the County Plan; and

WHEREAS, in C&A Carbone, Inc. v. Clarkstown, the U.S. Supreme Court held that an Ordinance requiring waste haulers to deliver waste to a particular private facility discriminated against the interstate commerce clause 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 NJ Solid Waste Systems relying on flow control experienced financial challenges as a result of the ruling; and

WHEREAS, on April 30, 2007, the U.S. Supreme Court in United Haulers Association 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. 1788, 1795 (2007); and

WHEREAS, on or about October 22, 2007, following the United Haulers decision, the DEP 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, flow control is necessary in order to allow the Salem County Improvement Authority to obtain the income from the Salem County Landfill which is necessary to operate and maintain the landfill without an increase in fees and costs to its customers and the economic necessity is present; and

WHEREAS, the amendment to the County Plan, in order to institute flow control, is attached hereto as Exhibit A.

NOW, THEREFORE, be it resolved by the members of the Salem County Improvement Authority that:

1. The Amendment to the County Plan, which is attached hereto as Exhibit A, is hereby approved.

2. The Executive Director is authorized and directed to present the Amendment to the County Plan to the Salem County Solid Waste Advisory Council for review and comment.

3. Upon receipt of a report from the Salem County Solid Waste Advisory Council with respect to the Amendment to the County Plan, the Executive Director is authorized and directed to send a copy of the Amendment to the County Plan and report from the Salem County Solid Waste Advisory Council to the Mayor of each municipality in the County of Salem.

4. After sending a copy of the necessary documents to each Mayor, as set forth above, the Executive Director is authorized and directed to send a copy of the Amendment to the County Plan (with any modifications) and the report from Salem County Solid Waste Advisory Council to the Salem County Board of Chosen Freeholders for their review and consideration and with a request that the Freeholders immediately schedule a public hearing on same and follow all additional steps necessary to finalize and implement the Amendment to the County Plan.

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Michael Brooks, Secretary          Robert Widdifield, Chairman

I hereby certify the above to be a true copy of a resolution adopted by the SCIA at a regular meeting held on November 12, 2015.

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Michael Brooks, Secretary
SALEM COUNTY SOLID WASTE MANAGEMENT PLAN AMENDMENT CONCERNING ADOPTION OF SOLID WASTE FLOW CONTROL

In accordance with a Solid Waste Management Plan Amendment proposed by the Salem County Improvement Authority, the Salem County Solid Waste Management Plan, is hereby amended and supplemented to include the following sections. Any other provisions of the Salem County Solid Waste Management Plan that are inconsistent with this Plan Amendment shall be deemed repealed. All other elements of the Plan shall remain in full force and effect.

I. Solid Waste Flow Control Background

In 1970, the New Jersey Legislature enacted the Solid Waste Management Act (SWMA) and the Solid Waste Utility Control Act (SWUCA), creating a comprehensive regulatory framework for the disposal of solid waste in New Jersey. In accordance with those statutes, each county was considered a solid waste management district, responsible for developing and implementing a long-term solid waste management plan, subject to approval by the New Jersey Department of Environmental Protection (DEP).

In response to the (SWMA) and (SWUCA) the Salem County Solid Waste Management Plan was developed by Salem County and subsequently approved by the New Jersey Department of Environmental Protection in 1979 was subsequently amended in 2005 and 2008.

The Salem County Solid Waste Management Plan designated the Salem County Utilities Authority (SCUA) as the solid waste agency for Salem County. The Plan calls for the operation of the SCUA Landfill and the implementation of a regional Recycling Collection Program.

In March 2009, the SCUA was dissolved by the County of Salem and all of its rights, responsibilities and assets were transferred to the Salem County Improvement Authority (SCIA) which is now responsible for the Salem County Solid Waste Management Plan and which operates the Salem County landfill.

On April 30, 2007 the United Stated Supreme Court ruled that a local ordinance (Waste Flow Control) that requires the delivery of all solid waste to a publicly owned facility does not violate the Commerce Clause, in a case captioned 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. In Oneida Herkimer, the Supreme Court determined that a waste flow ordinance that directs waste to a facility run by a public authority places only an incidental burden on interstate commerce, which is outweighed by the public purposes of providing publicly owned environmentally safe and sound solid waste disposal facilities. Under such circumstances, waste flow is permissible under the Commerce Clause. The Court’s decision in Oneida Herkimer has allowed other New Jersey Counties to utilize Waste Flow Control to establish financial stability and operate environmentally sound solid waste disposal systems.

EXHIBIT A
The SCIA landfill has a total design/permitted capacity of 8,265,556 cubic yards (8,604,356 cubic yards with final cover system). The landfill is anticipated to reach capacity in the year 2044, and is designed to accommodate the expected volumes of waste that will be generated and disposed of within Salem County. Now that the legality of Waste Flow Control has been decided; other Counties have implemented control within their County Solid Waste Plans, which is redirecting waste which would otherwise be disposed in the SCIA Landfill. Therefore, Salem County must take measures to institute its own flow control in order to counteract the Flow Control activities of neighboring counties and insure the financial stability of Salem County Improvement Authority Solid Waste Division and County of Salem.

II. Definitions

The terms, words and phrases used in this Plan Amendment shall have the definitions and meanings set forth below. In the event that a term, word or phrase used in this Plan Amendment is not defined, then the definitions and meanings set forth in the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99 et seq., and the rules promulgated there under, in N.J.A.C. 7:26-1 et seq., and N.J.A.C. 7:26A-1.1 et seq., as the same may be from time to time amended, shall apply. In the event of a conflict between the definitions in this Plan Amendment, the definitions and meanings in said State Acts and regulations shall be controlling.

1. Construction and Demolition Waste (ID 13C): Non-putrescible solid waste from the construction, remodeling, repair or demolition of structures including buildings and paved roads. Construction and Demolition waste includes waste building materials, packaging, and rubble such as concrete, brick bituminous concrete, wood, masonry, glass, trees, structural metals, insulation, roofing material, and plastic building parts. Demolition Waste does not include uncontaminated earth or rock, hazardous materials, asbestos, industrial waste or appliances.

2. Effective Date: The date upon which the NJ DEP Commissioner certifies this Plan Amendment.

3. Enforcing Authority: The designated agency authorized by the Salem County Department of Health and Salem County Improvement Authority to carry out duties specified in this ordinance.

4. Generators of Solid Waste: Includes, but is not limited to, any and all residential, commercial, industrial and institutional premises that generate solid waste located within the geographical boundaries of Salem County.

5. Illegal Dumping: The disposal, dumping, depositing or other storage of solid waste materials at any area or facility or other real property not authorized and permitted under State or Federal law for the acceptance, storage, processing or disposal of such solid wastes, or is otherwise in violation of applicable State or Federal laws or rules, including but not limited to the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., or the Federal Comprehensive Environmental Response, Compensation and

6. Materials Recovery Facility: An NJDEP permitted transfer station facility or other authorized solid waste facility at which non-hazardous solid waste, which material is not source separated by the generator thereof prior to collection, is received for onsite processing and separation utilizing manual or mechanical methods for the purposes of recovering recyclable materials for disposition and recycling prior to the disposal of the residual solid waste at the authorized solid waste facility as set forth herein.

7. Municipal (household, commercial and institutional) Solid Waste (MSW) ID 10 stream: All solid waste generated at residential, commercial, and institutional establishments within the boundaries of Salem County

8. Occupant: Any person, including guests, in actual physical possession or occupancy of real property and/or a unit of real property space on a regular basis.

9. Owner: The person or entity that is identified as the holder of legal title of record to any real property. The Owner shall also include a person or entity who has conveyed title to the property, which conveyance was due bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of the State or local government. For purposes of assigning specific duties or responsibilities under this Ordinance and Plan Amendment, the term Owner, unless the text indicates otherwise, shall mean the owner, tenant, lessee, head of the family or household, or the adult person assuming basic responsibility for the use, renting and/or occupancy of the real property.

10. Recycling: The collection, separation, recovery and marketing of Source Separated Recyclable Materials generated within the boundaries of Salem County, which would otherwise be disposed of or processed as Solid Waste, in accordance with the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99 et seq., and the rules promulgated there under.

11. Registered Hauler: A person who is in possession of all permits, licenses and registrations, which may be required by the New Jersey Department of Environmental Protection (NJDEP) for the collection, transportation, storage, or disposal of Solid Waste or Source Separated Recyclable materials within Salem County.

12. Sanitary Landfill: A solid waste facility that is authorized and permitted under State or Federal Law, including but not limited to the provisions of the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Federal Resource Conservation and Recovery Act (RCRA) 42 U.S.C. 6901 et seq., the rules promulgated there under.

13. Solid Waste: Any Waste, including but not limited to Animal and Food Processing (ID 25, Asbestos (ID 27A), Incinerator Ash or Ash Containing Waste and Ash Residue (ID 27I), Bulky (ID 13), Construction and Demolition (ID 13C), Industrial (ID 27), Municipal-household, commercial and institutional (ID 10), Vegetative waste (ID 23),
Yard (ID 23D); Treated regulated medical waste (Class 2 through 7) as per N. J. A. C. 7:26-3A.5 (N. J. A. C. 7:26-2.11(b)9 or Hazardous Wastes as defined by the state of New Jersey, including solid, liquid, semisolid or contained gaseous materials.

14. Solid Waste Disposal Facility: any facility or other real property, that is used for the acceptance, storage, processing, handling or disposal of solid wastes, provided that such facility or other property is authorized and permitted under State or Federal Law, including but not limited to the provisions of the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Federal Resource Conservation and Recovery Act (RCRA) 42 U.S.C. 6901 et seq., and the rules promulgated there under, for such uses and activities.

15. Solid Waste Transfer Facility: Any Facility that is authorized and permitted under State or Federal Law, and applicable rules to accept and transfer solid waste generated within Salem County, including waste types 10, 13, 13C, 23, 25, 27 and 27A.

16. Solid Waste Transporter: Any individual or company properly licensed to engage in or arranging for collection and/or transportation of solid wastes generated within Salem County.

17. Source Separation: The process by which materials designated as recyclable materials in the Salem County Solid Waste Management Plan shall be separated from solid waste by residential, commercial and institutional generators, at the point of generation.

18. Tipping Fee: The rate charged for disposal of Solid Waste or processing of Recyclable Materials.


III. Solid Waste Flow Control

In accordance with the updated Statewide Solid Waste Management Plan, the Salem County Solid Waste Management Plan Amendment reaffirms the use of the solid waste management hierarchy utilized for all waste generated in Salem County. The primary elements of this hierarchy include:

- Source Reduction including activities that decrease the quantity and/or toxicity of waste entering the solid waste stream and actions that promote continued product use/reuse;

- Recycling including processes by which materials which would otherwise become solid waste are collected, separated, or processed and returned to the economic mainstream in the form of raw materials or products;
• Other specific recovery or reclamation projects that use or reuse a material that would otherwise become solid waste including projects such as beneficial use, landfill gas recovery and household hazardous waste collection;

• Sustainable landfilling including the employment of suitable innovative technologies to extend the useful life of the existing sanitary landfill.

The Salem County Improvement Authority, through a combination of public and private entities, seeks to provide a sufficient volume of disposal capacity and source reduction and recycling opportunities to meet the long-term needs of the County. These solid waste management practices will be done in a manner that is environmentally secure, technically sound, economically responsible and relatively convenient for its users.

The SCIA’s solid waste facility, which currently includes a landfill, convenience center and methane gas collection and energy production facility, has a current design/permitted capacity of 8,265,556 cubic yards (8,604,356 cubic yards with final cover system) cubic yards. The landfill is anticipated to reach capacity in the year 2044.

Solid Waste Flow Within Salem County; Designation of Facilities:

All NJ DEP Waste Types 10, 13, 13C, 23, 25, 27 and 27A generated within all municipalities by any residential, public, commercial, industrial or institutional establishment located within Salem County shall be directed and transported to the SCIA Landfill (NJ DEP Facility No. 132608 located at 52 McKillip Road, Alloway, New Jersey for processing and/or disposal).

No person shall, regardless of intent, engage, cause or otherwise arrange for collection, transportation or disposal of any solid wastes (NJ DEP Waste Types 10, 13, 13C, 23, 25, 27 and 27A) generated within any municipality at any residential, public, commercial, industrial or institutional establishment located within Salem County to any other solid waste disposal facility that is located within the State of New Jersey, except as authorized or directed by this Ordinance and Plan Amendment.

The waste flow requirements set forth above shall not apply to:

a. Collection, shipment, processing, storage and marketing of source separated recyclable materials, as authorized by the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99 et seq., and the rules promulgated there under, provided that such materials are directed to a facility that is permitted and authorized under all applicable State and Federal laws, regulations and local ordinances to engage in such recycling activities, and further provided that solid waste residue generated by such activities occurring within New Jersey shall remain subject to the solid waste flow disposal requirements set forth above and directed to Salem County Improvement Authority Solid Waste Division.
b. collection, shipment, processing, storage and marketing of materials to any to any facility located within New Jersey, for Materials Resource Recovery activities, provided that such facility is permitted and authorized under all applicable State and Federal laws, regulations and local ordinances to engage in Material Resource Recovery activities, and further provided that any solid waste residue generated by Material Resource Recovery activities shall be disposed of as set forth above and directed to Salem county Improvement Authority Solid Waste Division.

**Administration of the Plan Amendment:** The provisions of this Plan Amendment shall be administered by the Salem County Improvement.

**SCIA’s Role & Responsibilities:** The SCIA contracts with Salem County municipalities, public and private entities and businesses for future collection and delivery of acceptable solid waste from the community in return for environmentally sound disposal. Additionally, the SCIA commits to separation and marketing of designated recyclable materials, providing scheduled household hazardous waste collection events, shredding events, administration of the Salem County Adopt-a-road (litter abatement) program, Clean Communities Program, and conducting recycling education throughout the County. It is the Authority’s intent to contract with private and public entities that may need the level of services that are available through the SCIA.

The Authority has demonstrated a continued commitment to reducing costs and increasing revenues. The Authority continues to demonstrate its commitment to explore, evaluate and implement suitable innovative operations and technologies to increase the overall long term efficiency and optimization of the landfill and other solid waste components. As new technologies emerge, the Authority is dedicated to continue to explore, evaluate and implement the most environmentally sound and financially viable options for Salem County.

Municipalities shall deliver acceptable solid waste to the SCIA SWD landfill directly or via a contract hauler.

**IV. SCIA Enforcement of Solid Waste Regulations and the County Solid Waste Management Plan:** The Plan will take effect after approval by the New Jersey Department of Environmental Protection. For the year 2016, the Authority will execute a Shared Services Agreement with the Salem County Health Department for enforcement of the Plan. For the 2017 year, the Authority will employ an Enforcement Officer with the Health Department credentials.

The enforcement personnel shall perform surveillance to ensure compliance with NJDEP’s Solid Waste Transportation/Transporter Regulations found at N.J.A.C. 7:26-3.4 and 3.5, as well as the solid waste truck route provisions of the County Solid Waste Management Plan, as amended herein. Violations of these solid waste transportation regulations are prosecuted through the NJDEP or the County Health Department’s enforcement program.

The Authority will also actively enforce the provisions of the County Plan in 2017 which requires that all non-recyclable solid waste generated in Salem County be disposed of at SCIA’s landfill. Currently there is one fully approved public Solid Waste Disposal facility within Salem County located in Alloway Township. The use of any other NJDEP permitted solid waste
facility located in the State of New Jersey, but outside the County of Salem, for disposal of Salem County generated solid waste is specifically prohibited. The use of NJDEP permitted solid waste transfer stations, located within the State of New Jersey, to facilitate the transportation of solid waste generated within Salem County must be disposed of at the SCIA SWD landfill. Similarly, the use of permitted material recovery facilities, located within the State of New Jersey, to remove materials from Salem County generated solid wastes for the purposes of recycling or re-use is a violation of the provisions of the County Plan, provided that the residue (i.e., the non-recyclable/recovered materials) resulting from Salem County generated solid waste delivered to such materials recovery facility is disposed of in accordance with the provisions of the Salem County Solid Waste Management Plan.

To ensure compliance with these requirements, the enforcement staff shall inspect active construction and demolition sites within the County and performs surveillance of solid waste haulers to monitor the waste disposal locations utilized. All haulers transporting solid waste generated within Salem County are responsible for compliance with the solid waste disposal procedures set forth in the County Plan. Accordingly, in event of any dispute regarding non-compliance, it shall be the responsibility of each generator/hauler to maintain satisfactory documentation to demonstrate compliance with solid waste disposal requirements of the County Plan. Violators of these waste disposal requirements are prosecuted through the County Health Department under authority provided by the County Environmental Health Act (CEHA) as detailed later in this section.

The enforcement staff may assist municipal recycling coordinators and the County Health Department periodically to inspect businesses to ensure that designated recyclables are recovered by the generator prior to final disposal in accordance with the County Plan. Such inspections may typically consist of conducting random recycling audits at commercial and institutional generators located in Salem County. To supplement the inspection of businesses, the SCIA will encourage private solid waste haulers to notify their customers of the requirements to source separate and recycle designated materials. The Authority will also request the assistance of haulers in distributing “informational cards”, developed by the SCIA, to advise waste generators of the mandatory recycling requirements. Haulers that encounter non-compliant waste generators should seek additional enforcement assistance from the municipality’s recycling coordinator or designated code enforcement official. Municipal recycling coordinators or other designated recycling enforcement personnel may also utilize the services of the County Health Department to resolve non-compliant issues involving commercial establishments that repeatedly fail to cooperate.

In addition to the enforcement measures described above, the SCIA’s staff also assists municipalities and the County Health Department with monitoring the enforcement of other solid waste & recycling activities including but not limited to:

- Monitoring solid waste transporters for proper NJDEP registration;
- Investigating solid waste complaints received from citizens and the NJDEP for activities such as illegal dumping of solid waste and unregistered transporters;
Public Bid Specifications/Contracts Issued by SCIA

To better achieve compliance with recycling and solid waste management policies and practices established by the County Solid Waste Management Plan, the SCIA will provide language to municipal and other public entities to meet these requirements into all applicable documents. The Authority will incorporate specific language in its standard bid specifications package and contract documents to ensure that all private vendors and contractors from which SCIA procures products and services strictly complies with requirements established in the County Plan for source separation, recycling and solid waste disposal. The SCIA will incorporate these policies and practices, as appropriate, into all technical and legal documents issued to ensure compliance with the County Plan.

SCIA shall provide written notice to all private and public haulers in the region via regular mail regarding the revision to the County Plan. In addition, all municipalities in Salem County and all contracts will be updated and mailed for the 2016 year.