SALEM COUNTY IMPROVEMENT AUTHORITY

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RESOLUTION 2012-97

August 27, 2012

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. Oneide-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, has been 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.

John Ober, Chairman
I hereby certify the above to be a true copy of a resolution adopted by the SCIA at a regular meeting held on August 27, 2012.

[Signature]

Michael Burke, Vice Chairman