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Scott A. Weiner
Commissioner

IN THE MATTER OF CERTAIN AMENDMENTS
TO THE ADOPTED AND APPROVED SOLID
WASTE MANAGEMENT PLAN OF THE
CAMDEN COUNTY SOLID WASTE
MANAGEMENT DISTRICT

CERTIFICATION
OF THE JUNE 6, 1991 AMENDMENT
TO THE CAMDEN COUNTY
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 designates 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 develop comprehensive plans for waste management in their respective districts. On July 17, 1980, the Department of Environmental Protection approved, with modifications, the Camden County District Solid Waste Management Plan (County Plan).

The Act requires that all district plans be based on and accompanied by a report detailing the existing waste disposal situation in the district, and a plan which includes the strategy to be followed by the district in meeting the solid waste management needs of the district for a ten-year planning period. The report must detail the current and projected waste generation for the district, inventory and appraise all facilities in the district, and analyze the waste collection and transportation systems which serve the district. The disposal strategy must include the maximum practicable use of resource recovery techniques. In addition to this strategy, the plan must designate sufficient available suitable sites for the disposal of the district's waste for a ten-year period, which sites may be in the district or, if none are available, in another district. (The Act provides procedures for reaching any necessary interdistrict agreements.)

The Act further provides that a district may review its plan at any time and, if found inadequate, a new plan must be adopted. Amendments to the Act found in N.J.S.A. 13:1E-136 et seq. require that, among other things, counties amend their district solid waste management plans to include an outline of the

proposed uses of the moneys in the District Resource Recovery Investment Tax (RRIT) Fund, as well as establish a schedule for disbursement of the moneys in that Fund. The Camden County Board of Chosen Freeholders (County Freeholders) completed such a review and on June 6, 1991 adopted an amendment to its approved County Plan to satisfy the requirements of N.J.S.A. 13:1E-150. The June 6, 1991 amendment proposed to modify the County's financial plan for disbursement of moneys from the District RRIT Fund from implementing resource recovery facilities to funding increased recycling activities, a used battery collection program, and a household hazardous waste collection program. However, a schedule for disbursement of the moneys was not submitted. Therefore, not all the requirements of N.J.S.A. 13:1E-150c. have been met.

The June 6, 1991 amendment was received by the Department on June 25, 1991. Copies of this amendment were distributed to various administrative review agencies for review and comment, as required by law. The Department has reviewed this amendment, as well as the entire County Plan, and has determined that the amendment adopted by the County Freeholders on June 6, 1991 is approved as provided in N.J.S.A. 13:1E-24. While the proposed modification of the uses for RRIT Fund moneys has been approved, a disbursement schedule must be submitted and approved by the Department prior to the disbursement of any RRIT Fund moneys. Also, deficiencies within the County Plan have been identified within Section C. of this certification.

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

Pursuant to N.J.S.A. 13:1E-24a(1) and N.J.S.A. 13:1E-150, I, Scott A. Weiner, Commissioner of the Department of Environmental Protection and Energy (Department or DEPE), have studied and reviewed the June 6, 1991 amendment to the County Plan according to the objectives, criteria and standards developed in the Statewide Solid Waste Management Plan and N.J.S.A. 13:1E-150 and I find and conclude the plan amendment is consistent with the Statewide Solid Waste Management Plan and N.J.S.A. 13:1E-150 in proposing an acceptable use of moneys in the County RRIT Fund. However, the plan amendment is inconsistent with N.J.S.A. 13:1E-150c. in failing to provide a disbursement schedule.

In conjunction with the review of the amendment, the Department circulated copies to sixteen administrative review agencies and solicited their review and comment. Pursuant to N.J.S.A. 13:1E-24a(2) and (3), these agencies included various bureaus, divisions, and agencies within the Department. These agencies were the following:

Division of Environmental Quality, DEPE
Division of Water Resources, DEPE
Division of Coastal Resources, DEPE
Division of Parks and Forestry, DEPE
Division of Fish, Game and Wildlife, DEPE
Division of Solid Waste Management, DEPE
Green Acres Program, DEPE

Pinelands Commission
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
Department of Agriculture
Department of Health
Department of Transportation
Department of Community Affairs
Department of the Public Advocate
U. S. Environmental Protection Agency

1. Agency Participation in the Review of the June 6, 1991 Amendment

The following agencies did not object to the proposed plan amendment:

Division of Environmental Quality, DEPE
Division of Water Resources, DEPE
Division of Coastal Resources, DEPE
Division of Parks and Forestry, DEPE
Division of Fish, Game and Wildlife, DEPE
Green Acres Program, DEPE
Pinelands Commission
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
Department of Agriculture
Department of Transportation
Department of Community Affairs
U. S. Environmental Protection Agency

The following agencies did not respond to the Department's requests for comments:

Department of Health
Department of the Public Advocate

The following agency submitted substantive comments which are further addressed below:

Division of Solid Waste Management, DEPE

2. Issues of Concern Regarding the June 6, 1991 Amendment

Issue: RRIT Fund Use and Disbursement

The provisions of the "McEnroe" legislation (N.J.S.A. 13:1E-136 et seq.) which establish RRIT Fund accounts for the state's twenty-one counties, set out a clear state policy objective to generate revenues in order to subsidize anticipated resource recovery tipping fees to a level which is competitive with disposal costs at landfills utilized by the counties. If a county can

demonstrate to the satisfaction of the Department that utilization of a resource recovery facility is not feasible for the disposal of solid waste generated in the county, then the RRIT Fund may be used to design, finance, construct, operate or maintain environmentally sound state of the art sanitary landfill facilities.

Prior to disbursement from its RRIT Fund, however, a county must prepare a plan amendment which outlines the proposed uses of the moneys in its District Fund and establishes a disbursement schedule for those moneys in the fund. Thus, two tests must be met: an eligible use test, which uses are limited to those identified in N.J.S.A. 13:1E-150b. and a disbursement schedule test, which test criteria are not specifically provided in the Act.

Eligible uses of the fund are provided in Attachment I, Part I, of this certification. In consideration of the intent and objectives of the Act outlined above and the specific limitations upon eligible uses of the fund provided in N.J.S.A. 13:1E-150b., projects not formally identified in the approved district solid waste management plan shall not be funded with RRIT Fund moneys. Therefore, in order to ensure users' rate reduction and facilitate timely project implementation, disbursements from a RRIT Fund shall be made only to projects formally identified in the approved district solid waste management plan.

Pursuant to law, in order to provide safeguards as to how the investment tax funds are to be spent, a schedule for the disbursement of the moneys must be provided through the plan amendment process established under the New Jersey Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.). In this way, a formal procedure for quantifying contributions to and withdrawals from the fund is established in order to maintain a running fund balance. Such a procedure may be followed using a variety of specific steps and methods of data presentation. In order to evaluate the adequacy of the disbursement schedule, the Department has established criteria (see Attachment I, Part II).

The provisions of the previously approved County Plan concerning the use of RRIT Funds enabled the County to distribute funds to both the Pollution Control Financing Authority of Camden County (PCFACC) and the Pennsauken Solid Waste Management Authority (PSWMA) for the implementation of two proposed mass burn resource recovery incineration projects. Disbursement schedules detailing how and when funds would be distributed to the PCFACC through fiscal year 1987 and to the PSWMA through 1994 were also approved. The June 6, 1991 plan amendment states that the PCFACC project is operational and the PSWMA project has been suspended. Consequently, the County proposes to revise the uses and disbursement of current and future RRIT Funds for new resource recovery projects beginning in 1991. These projects include the expansion and development of recycling activities, the implementation of a used battery collection program, and the expansion of the household hazardous waste collection program. The proposed uses of moneys from the County RRIT Fund for these identified projects are in conformance with the requirements of N.J.S.A. 13:1E-150b.

While the plan amendment states that the County shall make use of all RRIT Fund moneys received from January 1, 1991 on for the proposed uses, this does not constitute a disbursement schedule as specified in Attachment I, Part II. Not only does a cut off point need to be established which delineates what RRIT Funds are to be disbursed to the PCFACC and PSWMA for previously approved uses and to the County for new proposed uses, but the County needs to also identify the amount of funds to be allocated to each new proposed use and state when the funds will be disbursed. Therefore, in Section C., a subsequent plan amendment has been ordered to be submitted to the DEPE which includes a disbursement schedule for the previously approved and modified uses prior to the disbursement of any additional RRIT Fund moneys. Representatives of the Department did meet with officials of the County, PCFACC and PSWMA to discuss ways in which a clarifying disbursement schedule could be submitted to supplement the June 6, 1991 amendment, thus avoiding the need for a subsequent amendment adoption and review process. While these discussions lead to a workable distribution plan for historical and future disbursements from the Fund, the provisions of N.J.S.A. 13:1E-150c. are clear in requiring the formal adoption and certification of disbursement schedules. As a result, I have no choice but to require a subsequent plan amendment submission within Section C. below.

C. Certification of the Camden County District Solid Waste Management Plan Amendment

I, Scott A. Weiner, Commissioner of the Department, 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 district solid waste management plans, and N.J.S.A. 13:1E-150 which establishes eligible uses and disbursement schedule requirements for a district's RRIT Fund, have reviewed the June 6, 1991 amendment to the approved County Plan and certify to the County Freeholders that the June 6, 1991 amendment is approved as further specified below.

1. June 6, 1991 Amendment

The County Plan inclusion of the proposed uses for the Camden County District Resource Recovery Investment Tax Fund is in conformance with the requirements of N.J.S.A. 13:1E-150b.(1) and are approved. Specifically, the uses are to increase the County's recycling rate through development of a new materials recovery facility and implementation of other recycling initiatives, to implement a used battery collection program, and to expand the district's household hazardous waste collection program. However, the Department finds that the provisions of the plan amendment concerning the allocation of moneys over time as they relate to the RRIT Fund do not constitute the Department's content and format criteria for provision of a disbursement schedule. Therefore, the County Freeholders are directed to submit a subsequent plan amendment containing

the disbursement schedule as required by N.J.S.A. 13:1E-150c. This disbursement schedule must, at a minimum, cover the timeframe of fiscal year 1988 through fiscal year 1992 prior to disbursement of any RRIT Fund moneys. The disbursement schedule, which will address prior year moneys not covered by DEPE approved schedules and future year moneys, must be subject to the public hearing process and follow the format and content criteria set forth within Attachment I, Part II.

2. Camden County District Solid Waste Management Plan Deficiencies

On October 25, 1991, I certified the April 4, 1991 and May 16, 1991 amendments to the County Plan. Within that certification, I noted deficiencies within the County Plan. Specifically, the need to address the Governor's Task Force Final Report with respect to source reduction, recycling, and regionalization. I am again reminding the County of the need to address these deficiencies within 120 days of the October 25, 1991 date or by February 22, 1992. Also, despite the October 10, 1991 execution of the Amended and Restated Operations Transfer Agreement, I am reminding the County of the need to formally adopt the CLEAR Plan as soon as possible.

D. Other Provisions Affecting the Plan Amendment

1. Contracts

Any contract renewal or new contract for solid waste collection or disposal which is inconsistent with this amendment to the County Plan and which was executed prior to the approval of this amendment and subsequent to the effective date of the Solid Waste Management Act (July 29, 1977), and which shall further be for a term in excess of one year, shall immediately be renegotiated in order to bring same into conformance with the terms and provisions herein set forth. Any solid waste collection operation or disposal facility registered by the Department and operating pursuant to a contract as herein described, shall be deemed to be in violation of this amendment and of the County Plan if such renegotiation is not completed within ninety (90) days of the effective date of this amendment provided, however, that any such registrant may, upon application to the Department, and for good cause shown, obtain an extension of time to complete such renegotiation.

2. Compliance

All solid waste facility operators and transporters registered with the Department and operating within the County and affected by the amendment certified 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.

3. Types of Solid Waste Covered by the District Solid Waste Management Plan

The provisions of the County Plan shall apply to all solid wastes defined in N.J.S.A. 13:1E-3 and N.J.A.C. 7:26-2.13 and shall not apply to liquid wastes, sewage sludge, septage and hazardous wastes. All nonhazardous materials separated at the point of generation for sale or reuse are excluded from the waste flows designated in the Interdistrict and Intradistrict Solid Waste Flow Rules (N.J.A.C. 7:26-6).

4. Certification to Proceed with the Implementation of the Plan 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 shall proceed with the implementation of the approved amendment contained herein.

5. 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 and N.J.A.C. 7:26-1.4 and -2.13.

6. Effective Date of the Amendment

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

7. Audit Requirements

The County shall, by October 31 of each year in which moneys remain in its District Resource Recovery Investment Tax Fund, file an audit of the fund and any expenditures therefrom with the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs. The audit shall be conducted by an independent public accountant. A copy of the audit shall be provided to: Director, Division of Solid Waste Management, CN 414, Trenton, New Jersey 08625.

8. 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. The Department has published a Statewide Solid

Waste Management Plan with appendices which include the Department's planning guidelines, rules, regulations, orders of the Department, including the interdistrict and intradistrict waste flow rules, and also include the compilation of individual district plans and amendments as they are approved.

E. Certification of Approval of the Amendment and Notification of Deficiencies by the Commissioner of the Department of Environmental Protection and Energy

In accordance with the requirements of N.J.S.A. 13:1E-1 et seq., I hereby approve the amendment, as outlined in Section C. of this certification, to the Camden County District Solid Waste Management Plan which was adopted by the Camden County Board of Chosen Freeholders on June 6, 1991. However, I require that a disbursement schedule be submitted pursuant to N.J.S.A. 13:1E-150c. and approved by the Department before the County may disburse any RRIT Funds for the modified uses. Also, Camden County is hereby directed to address the noted deficiencies identified in Section C. of this certification within the timeframes specified. This certification memorializes the determinations made by me on or before November 21, 1991.

11-21-91

DATE



SCOTT A. WEINER
COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND ENERGY

ATTACHMENT I

Content and Format Criteria for District Resource Recovery Investment Tax Fund Plan Amendment Submissions, in Accordance with N.J.S.A. 13:1E-150

I. Proposed Uses

The money in the fund shall be disbursed only for the following purposes:

- 1) To reduce the rates charged to all users by a resource recovery facility serving the county in order to provide a gradual transition to resource recovery facility rates from sanitary landfill facility rates. A county may achieve reductions through the use of moneys in its district investment tax fund to pay directly part of the fees charged for disposal to all users of a resource recovery facility;
- 2) To design, finance, construct, operate or maintain environmentally sound state-of-the-art sanitary landfill facilities to be utilized for disposing of those solid wastes which cannot be processed by a resource recovery facility or the waste products resulting from the operation of a resource recovery facility;
- 3) To design, finance, construct, operate or maintain environmentally sound state-of-the-art sanitary landfill facilities to be utilized for disposal of solid waste, on a long-term basis, if a county can demonstrate to the satisfaction of the department that utilization of a resource recovery facility is not feasible for disposal of the solid waste generated in that county;
- 4) To finance the closing costs for the proper closure of any terminated sanitary landfill facility located within a county whenever that county has made an investment tax rate adjustment for this purpose in accordance with the study conducted pursuant to N.J.S.A. 13:1E-146; and
- 5) To administer the investment tax fund, up to an amount not to exceed 2% of the total moneys appropriated to the fund during the fiscal year.

II. Disbursement Schedule

All disbursement schedules for District Resource Recovery Investment Tax Fund moneys shall be consistent with, but not be limited to, the following:

- 1) Narrative which outlines the purpose, background and legislative justification of and authorization for the use of the funds;
- 2) Narrative which provides the purpose, description and objectives of the project proposed for receipt of fund moneys;

- 3) Narrative which provides specific project performance data, implementation schedules and project status;
- 4) A spreadsheet or other tabular or budgetary format which provides at least the following information, the activities over time (choice of the time interval is at the discretion of the county, but shall not be longer than annually):
 - a) Initial fund balance;
 - b) Additional deposits to fund based upon tax rates and projected waste generation and disposal figures, under various recycling or other reduction assumptions and population and/or economic growth assumptions;
 - c) Interest accrued on fund balance, by year;
 - d) Recipients of fund moneys, by amount, by proposed use, by time intervals;
 - e) Use of moneys by recipients, by amount, by time interval; and
 - f) A budget for fund disbursements.