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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  
SOMERSET COUNTY SOLID WASTE  
MANAGEMENT DISTRICT**

**CERTIFICATION  
OF THE SEPTEMBER 4, 1990  
AMENDMENT TO THE SOMERSET 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 develop comprehensive plans for waste management in their respective districts. On July 31, 1980, the Department of Environmental Protection approved, with modifications, the Somerset 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.A.C. 13:1E-136 et seq. require that, among other things, counties amend their district plans to include an outline of the proposed use of the moneys in the District Resource Recovery Investment Tax (RRIT) Fund, as well as establish a schedule for disbursement of the moneys in the fund. The Somerset County Board of Chosen Freeholders (County Freeholders), on September 4, 1990, adopted an amendment to its County Plan to satisfy the requirements of N.J.S.A. 13:1E-150. The proposed amendment redesignates the disbursement of funds from the RRIT Fund in the amount of \$1,800,000.00 to develop an intermediate processing facility. 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 amendment was received by the Department on June 18, 1991 and copies 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 September 4, 1990 is approved as provided in N.J.S.A. 13:1E-24. While the immediate plan amendment has been approved, a disbursement schedule must be submitted and approved by the Department prior to the disbursement of any RRIT Fund moneys for the redesignated use. Also, deficiencies in the County Plan have been identified within Section C. of this certification.

**B. Findings and Conclusions with Respect to the Somerset 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 September 4, 1990 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 that this plan amendment is consistent with the Statewide Solid Waste Management Plan and N.J.S.A. 13:1E-150 in proposing an acceptable use for moneys in the County RRIT Fund.

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 Coastal Resources, DEPE  
Division of Parks and Forestry, DEPE  
Division of Fish, Game and Wildlife, DEPE  
Division of Solid Waste Management, DEPE

Groundwater Quality Management Element, DEPE  
Wastewater Facilities Regulation Element, DEPE  
Green Acres Program, DEPE  
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 September 4, 1990 Amendment

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

Division of Environmental Quality, DEPE  
Division of Parks and Forestry, DEPE  
Division of Fish, Game and Wildlife, DEPE  
Groundwater Quality Management Element, DEPE  
Wastewater Facilities Regulation Element, DEPE  
Green Acres Program, DEPE  
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:

Division of Coastal Resources, DEPE  
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 September 4, 1990 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).

On February 17, 1987, the County Freeholders adopted an amendment which proposed disbursing moneys from the RRIT Fund for the preparation of impact studies and preliminary designs for a residue landfill. In the August 20, 1987 certification to this amendment, former Commissioner Dewling conditionally approved the proposed uses of the fund but rejected the disbursement schedule. Further, the County was directed not to disburse moneys from the RRIT Fund until the Department approved a plan amendment which contains a disbursement schedule. To date, the County has not submitted a plan amendment containing the required disbursement schedule. Therefore, the Department has not approved any disbursement of moneys from the Somerset County RRIT Fund.

On September 4, 1990, the County Freeholders adopted the amendment under consideration herein which outlined the proposed new uses of the RRIT Fund. The proposed amendment redesignates the RRIT Fund allocation in the amount of \$1,800,000.00 to develop an intermediate processing facility. This is an eligible use pursuant to N.J.S.A. 13:1E-150b. However, a disbursement schedule as required by N.J.S.A. 13:1E-150c. was not included. Therefore, a subsequent plan amendment must be submitted to the DEPE which includes said schedule for the revised use prior to the disbursement of any RRIT Fund moneys. In addition, the previously approved use of the moneys for the preparation of impact studies and preliminary designs for a residue landfill is deleted from the County Plan and no disbursement of moneys from the RRIT Fund may be allocated for the residue landfill project.

C. Certification of the Somerset 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 September 4, 1990 amendment to the approved County Plan and certify to the County Freeholders that the September 4, 1990 amendment is approved as further specified below.

1. Resource Recovery Investment Tax Fund Use

The amendment redesignates the Somerset County Resource Recovery Investment Tax Fund allocation in the amount of \$1,800,000.00 to develop an intermediate processing facility. The proposed use of the moneys in the Somerset County RRIT Fund is in conformance with the requirements of N.J.S.A. 13:1E-150b. and is approved. However, the required disbursement schedule has not been submitted. Therefore, the County Freeholders are directed to submit a subsequent plan amendment containing the required disbursement schedule, as required by N.J.S.A. 13:1E-150c., prior to the disbursement of any RRIT Fund moneys for the newly approved use. Also, the previously approved RRIT Fund use for the preparation of impact studies and preliminary designs for a residue landfill is hereby deleted from the County Plan and no disbursement of moneys from the RRIT Fund may be allocated for the residue landfill project.

2. Somerset County District Solid Waste Management Plan Deficiencies

On August 5, 1991 and February 6, 1991, recent amendments to the County Plan were certified. Within those certifications deficiencies were noted within the County Plan and the County Freeholders were directed to address the deficiencies within a subsequent plan amendment submission. Specifically, the longstanding deficiencies pertain to the lack of sufficient available suitable sites, the lack of a transportation plan, and the lack of a description of financing needed solid waste facilities. Also, the County Freeholders were directed to address the recommendations of the Emergency Solid Waste Assessment Task Force Final Report pertaining to source reduction, recycling, and regionalization. To date, the Department has not received the required plan amendment although we have been advised that the required submission will be forthcoming. Therefore, the County Freeholders are again reminded of the critical need to address these plan deficiencies and are herein required to submit the necessary plan amendment within 60 days. In this regard, while I consider punitive actions by the Department a last resort, be advised that the continued disregard of mandated deadlines could result in the withholding of solid waste program funding and/or possible direct intervention of the Department in the planning process in Somerset County.

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 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.

3. Types of Solid Wastes 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 set forth at 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 certified 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. 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 includes the Department's planning guidelines, rules, regulations, orders of the Department, interdistrict and intradistrict waste flow rules, and also includes 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 Somerset County District Solid Waste Management Plan which was adopted by the Somerset County Board of Chosen Freeholders on September 4, 1990. 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. I hereby also require, as noted in Section C., the Somerset County Board of Chosen Freeholders to address the noted deficiencies within 60 days. This certification memorializes the determinations made by me on or before November 14, 1991.

11-12-91  
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.