

***Resource Recovery—Solid Waste Disposal—Environment N.J. Stat. Ann. §§ 13:1E-136 to -168; 13:1E-20, 23, 40A:4-27.1, 27.2, 45.25, 40A:11-15, 48:13A-5.1, 48:14A-5 (West Supp. 1986)***

New Jersey is in the midst of a solid waste disposal crisis, as evidenced by the state's rapidly diminishing landfill capacity. The development of resource recovery incinerators is one long-term solution to this problem. In order to foster the development of resource recovery facilities in New Jersey, the Legislature enacted on February 4, 1985 Assembly Bill No. 1778 (hereinafter "the Act") which supplemented and amended the Solid Waste Management Act of 1970.

The Act affects solid waste disposal in New Jersey in two ways. First, it imposes a solid waste disposal tax on counties which transport solid waste to another district for disposal, and compensates those counties that accept out-of-district solid waste for the additional costs incurred. The revenues from these taxes are used by each county to soften the "rate shock" caused by the shift from relatively inexpensive landfilling to more costly resource recovery.

Second, the Act establishes a procedure for local governments to enter into long-term contracts with private firms for the financing, construction, operation and maintenance of resource recovery incineration facilities. The procedure allows counties to promote private sector financing of resource recovery projects, through the use of franchises, anticipated federal tax benefits, and exemption from rate regulation by the State Board of Public Utilities (B.P.U.).

The Act imposes three new taxes on the traditional disposal of solid waste by landfilling. The "solid waste services tax" is levied initially at the rate of fifty cents per ton, and increases by five cents per ton each year. This tax has no expiration date, and does not apply to owner-operators of landfills which are used for the disposal of waste products generated by resource recovery facilities.

The "resource recovery investment tax" is levied initially at a rate of one dollar per ton, and increases in either of the following two ways. First, a county may conduct a study within two years of the effective date of the Act to estimate the tax rate necessary to

generate revenues capable of subsidizing anticipated resource recovery tipping fees on a level competitive with disposal costs at the landfill currently used by the county. This adjusted rate may not exceed ten dollars per ton. In contrast, the investment tax will increase by one dollar per ton every year if a county decides not to estimate a new adjusted rate. The resource recovery investment tax will terminate on January 1, 1996, notwithstanding the method of increase that occurs.

The "solid waste importation tax" is the third tax created by the Act, and is levied at the initial rate of one dollar per ton on the disposal of all out-of-district solid waste. This waste importation tax increases to four dollars per ton on January 1, 1988, and by two dollars per ton annually after this date. The tax terminates on January 1, 1996, and is not levied on owner-operators of landfills used for the disposal of waste products generated by resource recovery facilities.

The revenues generated from these taxes are deposited into several funds. The "solid waste services tax fund" in the Department of Environmental Protection (DEP) is, as the name suggests, the depository for solid waste services taxes. The monies in the fund are distributed to the counties by the DEP on the basis of solid waste generation, and are used to further the development of county solid waste management plans. Every county receives at least two-percent of the revenues deposited in the fund each calendar year, including counties which dispose their solid waste in another state. No more than two-percent of these funds are allowed to be used for administration and collection costs by the DEP.

The DEP may determine that a county has failed to fulfill its solid waste planning responsibilities and withhold all or part of the money it would have received from the fund for a year, or until the county fulfills its responsibilities. In order to avoid such action by the DEP, every county must make a good faith effort to locate suitable sites for solid waste facilities within its borders, and to provide for its own waste disposal needs.

The "resource recovery investment tax fund" is the depository of the investment tax and waste importation tax revenues, and is located in the Department of Treasury. Monies from the fund are deposited into individual county sub-accounts known as "district resource recovery investment tax funds". Allocations to

each county fund are based on a determination of the total amount of solid waste generated within a county, and the total amount of solid waste accepted for disposal from out-of-county and out-of-state sources. A county can use its fund for any or all of the following purposes: (1) to subsidize the cost differential between current landfill disposal costs and more expensive resource recovery tipping fees; (2) to finance the design, construction, operation, and maintenance of sanitary landfills for the disposal of non-processible resource recovery wastes; (3) to finance the design, construction, operation and maintenance of sanitary landfill facilities, if resource recovery is not feasible in the county; (4) to finance the closure costs associated with terminated county landfills, provided that the county has conducted a study which resulted in an adjustment of its investment tax rate, and the revenues derived from the increased tax rate are applied to landfill closure costs; and (5) to administer the fund, provided that no more than two-percent of the total revenues from the county's fund are spent on such costs. Like the solid waste services tax fund, the DEP may assume administration of the fund of any county which fails to fulfill its solid waste management planning and facility siting responsibilities.

There are two primary economic benefits the Act has created for municipalities where sanitary landfills or resource recovery facilities will be located. First, "host municipalities" are entitled to an annual economic benefit not less than the equivalent of one dollar per ton of solid waste accepted for disposal during the period year. The economic benefit is the annual payment by landfill owner-operators to the municipality in consideration of the use of the municipality's land or a disposal site. The actual payment can be made in the form of: (1) payments in lieu of taxes on the land; (2) an exemption from all fees and charges for the disposal of solid waste generated by the municipality; (3) a lump sum cash payment; or (4) any combination thereof which totals not less than one dollar per ton. The annual payments are viewed as "pass through" costs by landfill owner-operators and solid waste collector-haulers because they come out of the "user fees" paid to them by other waste generators utilizing the sanitary landfill facility. Finally, these annual payments are exempt from statutory ("cap") limitations on municipal expenditures, and can be used by a municipality for any purpose.

The second economic benefit is designed specifically for municipalities hosting resource recovery facilities. These municipalities receive annual payments from resource recovery franchise holders which are not less than the equivalent of one dollar per ton of all solid waste accepted for processing during the previous year. The payments are a minimum economic benefit in consideration for the siting of a facility in a particular municipality. Like payments from landfill operations, these funds are exempt from limitations on municipal expenditures, and can be used by the municipality for any purpose.

As mentioned, the Act creates a new procedure that local government units can use when negotiating long-term contracts with private firms for the financing, operation and maintenance of resource recovery incineration facilities. It is an important supplement to the 1970 Solid Waste Management Act, because it affects both the local and state level negotiation process(es) in several ways.

Local governmental contracting units can issue requests for the qualifications of private firms, review them, and select satisfactory firms at their own discretion. However, once a firm and its proposal is accepted, the contract that is drawn must include certain provisions enumerated by the Act. This is a safeguarding measure, because the contract entered into by the local government unit constitutes the basis for which the cost of resource recovery services for the length of the contract is calculated. Some of these provisions include allocation of the risks of financing, constructing, and maintaining a facility, including those risks that are beyond the control of the government contracting unit and the private firm.

Finally, local government contracting units must submit a proposed contract to the Division of Rate Counsel, the DEP, the B.P.U. and the Division of Local Government Services for review and approval. Furthermore, the contracting unit must hold a public hearing within forty-five days of submission of the contract to these state agencies.

The clear purpose and effect of this Act is to provide economic incentives to counties which will encourage development of resource recovery facilities as a viable form of solid waste disposal. Obviously, the construction and use of resource recovery facilities will not immediately fulfill the solid waste disposal needs

of this state. Some counties may be better off using modern, state-of-the-art sanitary landfills to meet their needs. Nevertheless, the environmental, economic and aesthetic benefits of resource recovery make this form of solid waste disposal a clear choice of the future for New Jersey.

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