



Department of Administration
BUDGET OFFICE
One Capitol Hill
Providence, R.I. 02908-5886

Memorandum

To: The Honorable Helio Melo
Chairman, House Finance Committee

The Honorable Daniel DaPonte
Chairman, Senate Finance Committee

From: Thomas A. Mullaney *Thomas A. Mullaney*
Executive Director/State Budget Officer

Date: May 27, 2011

Subject: Article Amendment – Resource Recovery Article

The Governor requests an amendment to the article submitted separately on April 7th and revised April 12th relating to the Resource Recovery Corporation. The amendment replaces the word 'August' with 'September' in Section 2 amending RIGL 23-19-13.5, relating to the Corporation's calculation and distribution of year-end tipping fee adjustments to the communities. After consideration of the practicality in meeting an early August deadline for responsibly completing the calculation, the Corporation determined that it requires adequate time in order to calculate tonnage received at the materials recycling facility, and verify conformity with solid waste and recycling services agreements with the communities, before it can issue its rebates. The first Monday in September of each year is deemed an adequate time frame by the Corporation.

There are two copies of the amended article section attached to this letter. The first version highlights the changes from the Governor's original submission. In cases where we are striking previously proposed language, we show a double strike-out. Where we're proposing new language in addition to previously submitted, we show the change as a double-underline. All single underlined and single strike-out language that remains reflects our original submission. The second version is a clean version of the article including all proposed revisions.

If you have any questions or need any additional information concerning this article, please feel free to contact me at 222-6300.

Page 2
May 27, 2011

TAM:sma 11-64

Attachment

cc: Representative Brian Newberry
Senator Dennis L. Algiere
Sharon Reynolds Ferland
Peter Marino
Christine Hunsinger
Elizabeth Leach

REVISED

**RELATING TO HEALTH AND SAFETY – RHODE ISLAND RESOURCE RECOVERY
CORPORATION**

SECTION 1. Section 23-19-13 of the General laws in Chapter 23-19 entitled “Rhode Island Resource Recovery Corporation” is hereby amended to read as follows:

23-19-13. Municipal participation in state program. – (a) (1) Any person or municipality which intends to transfer, treat, or dispose of solid waste originating or collected within the state, or which intends to make arrangements to do so, shall utilize, exclusively, a system or facility designated by the corporation as provided under this chapter. All transfer stations in existence as of December 1, 1986 are empowered so long as they maintain the appropriate license to continue their operations, and the corporation shall not exercise its powers under this chapter to compete with their operation and activity. No municipality shall have power to engage in, grant any license, or permit for or enter into any contract for the collection, treatment, transportation, storage, or disposal of solid waste, and no municipality or any person shall engage in any activities within the state, including disposal of solid waste, which would impair the ability of the corporation to meet its contractual obligations to its bondholders and others, or which would be in competition with the purposes of the corporation as provided in this chapter. The corporation shall not be empowered to engage in the transportation, transfer, or storage of solid waste, except in temporary situations where a municipality has defaulted in its obligation under this section, or in conjunction with its activities at its disposal sites. Provided, however, that municipal contracts which were in existence on March 1, 1985, are excepted from this requirement until expiration of the original term of the contract or the expiration of any extension approved by the corporation, or sooner termination of the contracts and provided, further, that municipalities operating their own landfills on December 1, 1986 shall be free to continue to use the landfills until closure of the landfills. Without limiting the generality of the preceding, municipalities and persons are expressly empowered to contract with the corporation and/or, subject to the approval of the corporation, with a duly licensed private disposal facility for the disposal of solid wastes. The approval shall be conditioned upon a finding by the board of

commissioners of the corporation that any proposed contract with a Rhode Island municipality or person is in conformity with the statewide resource recovery system development plan and this chapter, and that the proposed contract will not impair the ability of the corporation to meet its contractual obligations to its bondholders and others. The contracts may have a maximum total term, including all renewals, of up to fifty (50) years.

(2) The corporation shall charge fees for its solid waste management services that, together with other revenues available to the corporation, will, at a minimum, be sufficient to provide for the support of the corporation and its operations on a self-sustaining basis, including debt service on its bonds and other obligations.

(b) Insofar as the provisions of this chapter are inconsistent with the provisions of any other laws of this state, general, special or local, restricting the power of any municipality to enter into long term contracts with the corporation, the provisions of this chapter shall be controlling. The corporation shall provide suitable and appropriate assistance to communities under these circumstances. Notwithstanding the preceding, if the corporation deems it desirable, it may from time to time permit municipalities to contract among themselves for the disposal of their wastes.

(c) Municipalities, along with private producers of waste which contract with the corporation for disposal of their wastes, shall continue to be free to make their own arrangements for collection of wastes at the source and/or the hauling of wastes to the designated processing and/or transfer stations, so long as those arrangements are in compliance with the provisions of chapter 18.9 of this title and with this chapter, and any municipal license relating thereto.

(d) All municipalities and state agencies which are participants in the state waste disposal program shall initiate a separation and recycling program within one year after the date on which the resource recovery facility utilized by that municipality or agency is operational and accepting waste for incineration.

(e) (1) The corporation and any municipality may enter into a contract or contracts providing for or relating to the disposal of solid waste originating in the municipality and the cost and expense of the disposal.

(2) The contract may be made with or without consideration and for a specified or unspecified time not to exceed fifty (50) years, and on any terms and conditions which may be approved by the municipality and which may be agreed to by the corporation in conformity with its contracts with the holders of any bonds or other obligations. Subject to the contracts with the holders of bonds, the municipality is authorized and directed to do and perform any and all acts or things necessary, convenient, or desirable to carry out and perform the contract and to provide for the payment or discharge of any obligation under the contract in the same manner as other obligations of the municipality.

(3) All municipalities that contract with the corporation for the disposal of solid waste shall prepare as an addendum to its fiscal year 2010 contract with the corporation and any contracts with the corporation for the subsequent years a plan that includes a description of the process by which thirty-five percent (35%) of its solid waste will be recycled and fifty percent (50%) of its solid waste will be diverted beginning July 1, 2012. This addendum shall include a residential and municipal waste stream evaluation, a plan for the reduction of solid waste and recyclables generated and the process by which recyclable materials are to be segregated. The corporation shall have the right to execute or deny execution of the municipal solid waste and recycling services contract pending approval of the addendum. Once the corporation approves this addendum, the municipality must implement the plan and report on the results annually to the corporation. The corporation shall enforce the provisions of this section pursuant to subdivision 23-19-13(g)(3).

(4) The corporation shall notify every city or town that it contracts with ~~no later than August 1, 2008~~ as to the addendum requirements that must be included in ~~the fiscal year 2010~~ contracts to recycle thirty-five percent (35%) and divert fifty percent (50%) of solid waste beginning July 1, 2012.

(f) The municipalities and the state have shared responsibility for the payment of the cost of municipal solid waste disposal. The state will pay its share of the cost of the solid waste disposal services

to be provided by the corporation to the municipalities at its solid waste management facilities and its central landfill in the town of Johnston, and at any back-up facility which the corporation is required to provide, by providing solid waste disposal operating subsidies as provided in subsections (i) and (j).

(g)(1) The corporation shall charge each municipality with which it has a long-term contract for solid waste disposal services a tipping fee per ton of source separated solid waste excluding separated recyclable materials, sludge, and demolition debris delivered to any corporation facility computed in accordance with this subsection. For purposes of this chapter, "fiscal year" shall mean the twelve-month period, July 1 to June 30. The municipal tipping fee shall be equal to one hundred seven and one-half percent (107.5%) of the prior fiscal year's municipal tipping fee through the end of the 2009 fiscal year. One dollar and ten cents (\$1.10) per ton on all garbage, including recycled garbage, collected by the corporation as tipping fee shall be paid to the town of Johnston. In addition to any other fees the corporation shall also charge a three dollar (\$3.00) tipping fee per vehicle. Any vehicle carrying municipal solid waste shall be exempt from this three dollar (\$3.00) tipping fee. All fees collected shall be paid to the town of Johnston on a biannual basis. No tipping fee shall be charged for recyclable materials delivered to a recycling facility provided by or through the corporations.

(2) Notwithstanding the provisions of subdivision (g)(1), the municipal tipping fee may be increased, if, due to the commencement of operation of a new resource recovery facility during the previous fiscal year, the state subsidy as calculated pursuant to subsection (i), not considering landfill revenues and losses, is projected to be greater than the state subsidy projected by the corporation and the department of administration when the projections were officially accepted by the corporation on the basis of contracts entered into for the initial resource recovery facility. The amount by which the projected state subsidy exceeds the original projections will be apportioned between the state and the municipalities in the same ratio as the state subsidy for the previous year divided by the number of tons of municipal solid waste processed by the corporation bears to the municipal tipping fee for that year. The increased municipal tipping fee herein provided shall be subject to the same escalation factor as the municipal tipping fee set forth above.

(3) The corporation shall establish in the contract, the maximum amount of municipal solid waste that each municipality will be entitled to deliver to the corporation at the municipal tipping fee. Solid waste in excess of the contract amount will be charged to the municipality at the non-municipal rate. In determining the maximum amount of municipal solid waste which will qualify for the municipal tipping fee, the corporation shall consider the municipality's solid waste per capita average, the statewide solid waste per capita average, and any other factors that it shall deem appropriate.

(4) Seaweed collected and removed by a municipality shall be deemed "yard waste" for purposes of this chapter and any rules, regulations and/or plans promulgated by the corporation pursuant to this chapter, and shall be accepted by the corporation at the same rate and cost as all other municipal yard waste.

(h) The corporation, after the initial resource recovery facility becomes operational, shall charge each non-municipal user of its facilities a fee per ton equal to the projected annual resource recovery system cost less energy revenues and interest earnings on bond reserve funds, if any, divided by the projected tons to be processed by the corporation at its resource facilities for the year. Landfill costs shall not be considered in the calculation unless landfill costs exceed revenues generated at the landfills; in those cases, excess landfill costs will be added to the system costs.

(i) The annual state subsidy for the cost of disposal of municipal solid waste shall be calculated for each fiscal year or portion of each fiscal year according to the following formula: The annual state subsidy shall equal the total projected annual resource recovery system costs (minus costs associated with the central landfill) for the next fiscal year less the sum of the following: (1) projected resource recovery system revenues for the year; and (2) projected landfill revenues; provided, however, that in the event that the landfill is projected to operate at a loss, the amount of the loss shall be added to the subsidy.

(j) (1) On or before October 1 of each year, the corporation shall submit a budget to the director of administration for the succeeding fiscal year using actual resource recovery system revenues and costs, and the audit of the preceding fiscal year prepared by the corporation's independent auditors and accepted by the auditor general. On or before December 1 of each year, the director of administration, in

consultation with the corporation, shall review the budget of the corporation and shall determine and certify the annual state subsidy for the succeeding fiscal year to the governor who shall submit to the general assembly printed copies of a budget which shall include the state subsidy as previously determined in this subsection. The state subsidy appropriation shall be on a system basis but shall contain specific appropriations for each resource recovery facility. If the amount appropriated exceeds the amount needed for a specific facility, the corporation, with the approval of the director of administration, may reallocate the appropriated but unadvanced funds to other corporation facilities or costs. If the audit prepared by the corporation's independent auditors indicates that the amounts appropriated and disbursed to the corporation as a subsidy were in excess of the amounts which would have been required for the year if actual resource recovery system revenues and costs had been used in the calculation of the subsidy, the excess shall be credited against the current fiscal year's subsidy.

(2) At any time, if the corporation determines that the state subsidy will be insufficient to discharge the corporation's obligations for the current fiscal year, it shall request, in writing, to the director of administration for a supplemental appropriation. After review, the director of administration will recommend to the governor additional funding for the corporation, and the governor after further review, shall submit a supplemental appropriation bill request for the funds to the general assembly.

(3) From the appropriations made by the general assembly, the state controller is authorized and directed to draw his or her orders upon the general treasurer every month for the payment of those sums that may be required upon receipt by him or her of properly authenticated vouchers.

(k) If, in any fiscal year, the appropriation for the state subsidy is not made and if the corporation has insufficient other funds to discharge its obligations to holders of its bonds and notes as certified by the state auditor general, the corporation shall be empowered to charge both municipal and non-municipal users whatever fees are necessary to discharge its obligations to holders of its bonds and notes, and the municipal tipping fee set forth in subsection (g) shall not be applicable for the fiscal year.

(1) On or after the date established for separation of recyclable solid waste in the statewide plan for separation of recyclables by the department of environmental management, only segregated solid waste shall be accepted at the corporation's facilities.

(m) Costs associated with participation in the state program shall not constitute state mandated costs under section 45-13-7.

SECTION 2. Section 23-19-13.5 of the General Laws in Chapter 23-19 entitled "Rhode Island Resource Recovery Corporation" is hereby amended to read as follows:

23-19-13.5. Interim rates. – The municipal tipping fee charged by the resource recovery corporation shall be as follows:

(1) Thirty-two dollars (\$32.00) per ton from July 1, ~~2010~~ 2011 to June 30, ~~2011~~ 2014, for any municipality that recycles between zero percent (0%) and ~~twenty-three~~ twenty-four and ninety-nine hundredths percent (~~23.99%~~) (24.99%) of its solid waste at the Corporation's material recycling facility ("MRF") in Johnston.

(2) Thirty-one dollars (\$31.00) per ton from July 1, ~~2010~~ 2011 to June 30, ~~2011~~ 2014, for any municipality that recycles between ~~twenty-four~~ twenty-five percent (~~24%~~) (25%) and twenty-nine and ninety-nine hundredths percent (29.99%) of its solid waste at the Corporation's ("MRF") in Johnston.

(3) Thirty dollars (\$30.00) per ton from July 1, ~~2010~~ 2011 to June 30, ~~2011~~ 2014, for any municipality that recycles between thirty percent (30%) and thirty-four and ninety-nine hundredths percent (34.99%) of its solid waste at the Corporation's ("MRF") in Johnston.

(4) Twenty-nine dollars (\$29.00) per ton from July 1, ~~2010~~ 2011 to June 30, ~~2011~~ 2014, for any municipality that recycles thirty-five percent (35%) or more of its solid waste at the Corporation's ("MRF") in Johnston.

(5) The Corporation shall issue a rebate not later than the first Monday in September following the expiration of the contract year ~~September 1, 2011~~ to those municipalities qualifying for a year-end tipping fee adjustment according to the municipality's actual recorded tonnage delivered to the MRF in

Johnston, and in accordance with the provisions of the municipality's current-year signed solid waste and recycling services agreement with the corporation.

SECTION 3. This act shall take effect July 1, 2011.

REVISED

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commissioners of the corporation that any proposed contract with a Rhode Island municipality or person is in conformity with the statewide resource recovery system development plan and this chapter, and that the proposed contract will not impair the ability of the corporation to meet its contractual obligations to its bondholders and others. The contracts may have a maximum total term, including all renewals, of up to fifty (50) years.

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(c) Municipalities, along with private producers of waste which contract with the corporation for disposal of their wastes, shall continue to be free to make their own arrangements for collection of wastes at the source and/or the hauling of wastes to the designated processing and/or transfer stations, so long as those arrangements are in compliance with the provisions of chapter 18.9 of this title and with this chapter, and any municipal license relating thereto.

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MRF in Johnston, and in accordance with the provisions of the municipality's current-year signed solid waste and recycling services agreement with the corporation.

SECTION 3. This act shall take effect July 1, 2011.
