

RESOLUTION NO. 10-29

RESOLUTION OF THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST AUTHORIZING AND ADOPTING POST ISSUANCE COMPLIANCE POLICIES FOR TAX-EXEMPT BONDS AND TAX CREDIT BONDS THAT HAVE BEEN, AND WILL BE, ISSUED BY THE TRUST, SUCH POLICIES INTENDED TO ENSURE THAT THE REQUIREMENTS IMPOSED UPON THE TRUST PURSUANT TO THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, WILL BE SATISFIED BY THE TRUST

WHEREAS, the New Jersey Environmental Infrastructure Trust is a public body corporate and politic with corporate succession (the “Trust”), duly created and validly existing under the laws of the State of New Jersey (the “State”), including, without limitation, the “New Jersey Environmental Infrastructure Trust Act”, constituting Chapter 334 of the Pamphlet Laws of 1985 of the State (codified at N.J.S.A. 58:11B-1 *et seq.*), as the same may be amended and supplemented from time to time (the “Act”); and

WHEREAS, the Trust previously has issued series of bonds (the “Tax-Exempt Bonds”) the interest on which is excluded from gross income of the owners thereof pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, the Trust intends to issue additional series of Tax-Exempt Bonds in the future; and

WHEREAS, the Trust may, in the future, issue series of bonds (the “Tax Credit Bonds”; the Tax-Exempt Bonds and the Tax Credit Bonds shall be referred to collectively herein as the “Tax Advantaged Bonds”) that entitle the Trust, the owners of the Tax Credit Bonds, or another party to either a credit against federal income tax liability or a refundable credit from the United States Treasury; and

WHEREAS, in connection with the issuance of each series of Tax-Exempt Bonds, the Trust has executed or will execute certificates wherein the Trust represents that it expects and intends to be able to comply with and will, to the extent permitted by law, comply with the provisions and procedures set forth in such certificate and will do and perform all acts and things necessary or desirable in order to assure that the interest on the series of Tax-Exempt Bonds to which such certificate relates will, for purposes of federal income taxation, be excluded from gross income of the owners thereof; and

WHEREAS, in connection with the issuance of each series of Tax Credit Bonds, the Trust will execute certificates wherein the Trust will represents that it expects and intends to be able to comply with and will, to the extent permitted by law, comply with the provisions and procedures set forth in such certificate and will do and perform all acts and things necessary or

desirable in order to assure that the Tax Credit Bonds to which such certificate relates will remain eligible for the applicable federal income tax credit; and

WHEREAS, upon the advice of Bond Counsel to the Trust, (i) to ensure that interest on the Tax-Exempt Bonds will continue to be excluded from gross income of the owners thereof for purposes of federal income taxation, (ii) to ensure that the Tax Credit Bonds will remain eligible for the applicable federal income tax credit, and (iii) to ensure compliance with its certifications relating to the Tax Advantaged Bonds, the Trust has determined that it is advantageous and in the best interests of the Trust, the State, the borrowers of the proceeds of the Tax Advantaged Bonds, and the owners of the Tax Advantaged Bonds to adopt certain post-issuance compliance policies in the form attached hereto as Exhibit A and made a part hereof (the “Post-Issuance Compliance Policies”).

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the New Jersey Environmental Infrastructure Trust (the “Board”), as follows:

Section 1. The Board hereby approves and adopts the Post-Issuance Compliance Policies.

Section 2. The Board hereby authorizes and directs the Chairman, the Vice Chairman, the Executive Director of the Trust and the Acting Executive Director of the Trust (each, an “Authorized Officer”) to take such actions as any such Authorized Officer, after appropriate consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State, deems necessary, appropriate or desirable to effect the implementation of the Post-Issuance Compliance Policies.

Section 3. This Resolution shall take effect immediately, subject to applicable estoppel periods as provided by the terms and provisions of the Act.

Adopted Date: June 10, 2010

Motion Made By: Mr. Cach

Motion Seconded By: Mr. Victor

Ayes: 6

Nays: 0

Abstentions: 0

EXHIBIT A
POST-ISSUANCE COMPLIANCE POLICIES

POST-ISSUANCE COMPLIANCE POLICIES

New Jersey Environmental Infrastructure Trust

Adopted June 10, 2010

POST-ISSUANCE COMPLIANCE POLICIES

Policy:

The purpose of these post-issuance compliance policies for tax-exempt bonds and tax credit

bonds that have been, and will be, issued by the New Jersey Environmental Infrastructure Trust (“Trust”) is to ensure that the requirements imposed pursuant to the Internal Revenue Code of

1986, as amended (the “Code”), will be satisfied with respect to (i) the Trust’s tax-exempt bonds

and other obligations (“bonds”) after the bonds are issued so that interest on such tax-exempt

bonds will be and remain excluded from gross income, and (ii) any tax credit bonds continue to be eligible for any applicable federal income tax credit.

Scope:

The Executive Director has the overall, final responsibility for monitoring whether the Trust’s

tax-exempt bonds and any tax credit bonds continue to comply with post-issuance federal tax

requirements. However, the Executive Director may assign to a Tax Compliance Officer the primary operating responsibility to monitor the Trust’s compliance with federal tax requirements

for the Trust’s tax-exempt bonds and any tax credit bonds.

1. Arbitrage Yield Restriction and Rebate Requirements. The Tax Compliance Officer shall create and maintain, or cause to be created and maintained, records of:

a. Purchases or sales of investments made with bond proceeds (including amounts treated as “gross proceeds” of bonds under section 148 of the Code) and receipts of earnings on those investments;

b. The final allocation of the proceeds (including investment earnings on bond proceeds), of both (i) obligations issued by the Trust to make loans and (ii) loans extended by the New Jersey Department of Environment Protection, to expenditures for the purposes of the bonds, such as for the costs of purchasing, constructing and/or renovating property and facilities;

c. Information, when applicable, showing that borrowers (the “borrowers”) from the Trust were eligible to be treated as “small issuers” with respect to bonds issued in that calendar year, because any such borrower did not reasonably expect to issue more than

\$5,000,000 of tax-exempt bonds in that calendar year;

d. Information, when applicable, that will be sufficient to demonstrate to the Internal Revenue Service (“IRS”) upon an audit of a bond issue that the bond issue has complied with one or more available spending exceptions to the arbitrage rebate requirement with respect of that bond issue;

e. Information and calculations, when applicable, that will be sufficient to demonstrate to the IRS upon an audit of a bond issue, for which an exception to the arbitrage rebate requirement was not applicable, that the rebate amount, if any, that was payable to the United States of America with respect to investments made with gross

proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed

with the IRS; and

f. Information and records showing that (i) investments held in yield-restricted

advance refunding or defeasance escrows for bonds, and (ii) investments made with

unspent bond proceeds after the expiration of the applicable temporary period, were not invested in higher-yielding investments.

2. Restrictions on Private Business Use, Private Loans and Use of Proceeds. The Tax Compliance Officer shall adopt procedures that assure that any restrictions imposed upon the expenditure of bond proceeds or upon the use of land, buildings, facilities and equipment

(“property”) that are financed with proceeds of tax-exempt bonds and/or any tax credit

bonds, including restrictions on private business use, that apply to that property after the bonds have been issued, will be complied with during the time periods described in the tax certificates for the particular issue of bonds. The Tax Compliance Officer shall also adopt

procedures that assure that any restriction on the use of proceeds of tax-exempt bonds and

any tax credit bonds to make or finance any loan to any person other than a state or local government unit are complied with. Further, the Tax Compliance Officer shall adopt procedures that assure appropriate application of proceeds and the use of property financed with proceeds of any “qualified private activity bonds” (within the meaning of Section 103 of the Code).

In particular, following the issuance of any tax-exempt bonds and any tax credit bonds, the Tax Compliance Officer shall annually solicit from each borrower, in the form of a questionnaire, the following information:

- a. with respect to bonds, other than qualified private activity bonds, information regarding any “private business use” of property financed with proceeds of a particular issue of tax-exempt bonds or tax credit bonds for the benefit of the borrower;
- b. with respect to bonds, other than qualified private activity bonds, information regarding any use of bond proceeds to make or finance a loan to any person other than a state or local government unit;
- c. with respect to all bonds, information regarding the continued use and ownership of the property financed with the issue; and
- d. with respect to qualified private activity bonds, information regarding the use of bond proceeds or property for purposes other than the purposes for which the particular qualified private activity bonds are permitted under the applicable provisions of the Code.

In connection with any deviation from a permissible use of bond proceeds or property, the Tax Compliance Officer shall consult with bond counsel to the Trust as may be necessary to obtain federal tax advice regarding whether: (a) the use in question will, in case of an issue of tax-exempt bonds, adversely affect the exclusion of interest on the bonds from gross income; (b) the use in question will, in case of tax credit bonds, impair eligibility of bonds for the applicable federal income tax credit, and (c) any “remedial action” permitted under section 141 of the Code may be taken by the Trust as a means of enabling such use to be put into effect without adversely affecting the exclusion of interest on the bonds from gross income or the eligibility of bonds for the applicable federal income tax credit.

3. Records to be Maintained for Tax-Exempt Bonds and Tax Credit Bonds. It is the policy

of the Trust that written records (which may be in electronic form) will be maintained with respect to each issue of tax-exempt bonds and tax credit bonds for as long as such bonds remain outstanding, plus three years. For this purpose, such bonds include refunding bonds that refund the original bonds and thereby refinance the property that was financed by the original bonds.

The records to be maintained are to include:

- a. The official Transcript of Proceedings for the original issuance of the bonds;
- b. Records showing how the bond proceeds were invested, as described in 1(a) above;
- c. Records showing how the bond proceeds were spent, as described in 1(b) above, including purchase contracts, construction contracts, progress payment requests, invoices, cancelled checks, payment of bond issuance costs, and records of “allocations” of bond proceeds to make reimbursement of project expenditures made before the bonds were actually issued, and any special allocations of bond proceeds;
- d. Information, records and calculations showing that, with respect to each bond issue, whether any of the borrowers were eligible for the “small issuer” exception or one of the spending exceptions to the arbitrage rebate requirement or, if not, that the rebate amount, if any, that was payable to the United States of America with respect to investments made with gross proceeds of that bond issue was calculated and timely paid

with Form 8038-T timely filed with the IRS, as described in 1(c), (d) and (e) above;

e. Records describing: (1) any use arrangements, affecting bond-financed property,

which result in private business use of property financed with proceeds of bonds, other than qualified private activity bonds; (2) any use of proceeds of bonds, other than qualified private activity bonds, to make or finance loans to any person other than a state or local government unit; and (3) any use of proceeds of qualified private activity bonds for purposes other than the purposes for which the particular qualified private activity bonds are permitted under the applicable provisions of the Code, as described in 2 above; and

f. Any remedial actions taken with respect to a bond issue, as described in 2 above.

The basic purpose of the foregoing record retention policy for the Trust's tax-exempt bonds

and tax credit bonds is to enable the Trust to readily demonstrate to the IRS upon an audit of any tax exempt bond issue and bonds eligible for any federal income tax credit that the Trust and the borrowers have fully complied with all federal tax requirements that must be satisfied after the issue date of such bonds so that, as applicable, interest on those bonds continues to

be tax-exempt under section 103 of the Code or such bonds continue to be eligible for the

applicable federal income tax credit.

4. Education Policy With Respect to Federal Tax Requirements for its Bonds. It is the policy of the Trust that the Tax Compliance Officer and his or her staff, as well as the principal operating officials of the borrowers for which property is financed with proceeds of

tax-exempt bonds and/or bonds eligible for any federal income tax credit, should be provided

with education and training on federal tax requirements applicable to such bonds. The Trust recognizes that education and training is vital as a means of helping to ensure that the bonds remains in compliance with the federal tax requirements with respect to its bonds.