

**MINUTES OF MEETING
DELAWARE SOLID WASTE AUTHORITY
BOARD OF DIRECTORS**

DATE: April 22, 2010

LOCATION: Rehoboth Convention Center
Rehoboth Beach, Delaware

TIME: 5:00 p.m.

ATTENDEES:

DIRECTORS

Richard V. Pryor
Ronald G. McCabe
Timothy P. Sheldon
Gerard L. Esposito
Tonda L. Parks (via tele-con)

STAFF

Pasquale S. Canzano
Richard P. Watson
John J. Lechner
Michael D. Parkowski

LEGAL COUNSEL

F. Michael Parkowski

GENERAL PUBLIC

(See List Attached)

REGULAR BOARD MEETING

The Chairman, Richard V. Pryor called the three hundredth and twenty-second regular meeting of the Delaware Solid Waste Authority Board of Directors to order on Thursday, April 22, 2010. He announced the meeting had been duly noticed and the Directors had received copies of the information to be considered.

A. MINUTES

Chairman Pryor called for additions or corrections to the draft of the Minutes of the last meeting of the Board of Directors.

Motion A – Moved by Mr. Sheldon

“The Minutes of the March 25, 2010 Board of Directors’ meeting of the Delaware Solid Waste Authority be accepted as written.”

Second – Mr. McCabe

Vote – (Esposito, Parks, Sheldon
McCabe, Pryor)

Motion Adopted
(unanimous)

Mr. Pryor suggested a change in the order of the agenda. We have with us today a bevy of municipal officials and they wish to make a presentation and also following that he asked for a moment of silence in memory of Toby Ryan’s brother.

**B. SOUTHERN SOLID WASTE MANAGEMENT CENTER (SSWMC)
CONSTRUCTION OF CELL 5 DISPOSAL AREA - CONTRACT C-07-579-SS**

Motion B – Mr. Sheldon

“The Committee recommends the Board award the contract for Construction of Cell 5 Disposal Area at the Southern Solid Waste Management Center to Penn Environmental and Remediation, Inc. at a cost of \$16,188,767.80.”

Second – Mr. McCabe

Mr. Canzano commented that we received eleven bids, the top three bids were very close in price. There was a slight error in the unit prices and that was corrected. The total bid is \$16,188,767.80, which is well within the Engineer’s estimate \$17,128,741.13. As usual, we checked the credit rating, their references and the technical aspects of the bid. Even though they are an out of state firm, a lot of the work will be performed by companies that are located in Delaware.

Mr. Esposito- Yes
Ms. Parks - Yes
Mr. Sheldon - Yes
Mr. McCabe - Yes
Mr. Pryor - Yes

Motion Adopted
(5 Yes 2 absent)

C. STATEWIDE SOLID WASTE MANAGEMENT PLAN

Motion C – Mr. Esposito

“The Board hereby approves the Statewide Solid Waste Management Plan final Order and Decision as presented.”

Second – Mr. McCabe

Mr. Canzano commented that our Statewide Solid Waste Management Plan has not been fully updated since 1994 and we all know a lot has changed. In keeping with the public law, this has gone through a very rigorous public review process. We had three workshops and a public hearing in March, and they were all duly noticed in the State News and News Journal. In addition, we have included a copy of The Hearing Officer's Report. There was a lot of outreach to many of the stakeholders and their comments and input to the document were included even before it hit the street. Michael Parkowski deserves the credit for doing such a good job with this document. We received only one comment from the public, and this was a positive comment. The Board members have all received a copy of the Plan and the Hearing Officer's Report. The real focus of the Plan compared to what we have really zeros in on more recycling and the zero waste concept, which of course is being promoted by the Governor in terms of his newly proposed legislation. We're suggesting that there be a state policy on how we deal with the other things that can't be recycled in the normal recycling channel. In addition to curbside recycling, it means you have to do some of the other things like consider other bans, extended producer responsibility, pay as you throw, etc.

Mr. Esposito- Yes
Ms. Parks - Yes
Mr. Sheldon - Yes
Mr. McCabe - Yes
Mr. Pryor - Yes

Motion Adopted
(5 Yes 2 absent)

**D. STATEWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM
CONTRACT C-10-621-SW**

Motion D – Mr. Esposito

“The Committee recommends the Board award the contract for the Statewide Household Hazardous Waste Collection Program to Clean Harbors Environmental Services for a two year contract with a one year option.”

Second – Mr. McCabe

Mr. Canzano stated Clean Harbors is the current contractor and they have done an excellent job for us. Under the original proposal, they actually submitted a cost that was approximately \$60,000 less than their current contract. These events cost us in the order of \$150,000-200,000 a year. The new contract would be for two years and 20 events at \$171,678 per year or if we add the ability to recycle batteries which is an option they are offering, the annual fee would be \$222,078 per year. We're very excited about the idea of going forward with a contract that actually is less money than the current contract as a result of going through the RFP process.

Mr. Esposito- Yes
Ms. Parks - Yes
Mr. Sheldon - Yes
Mr. McCabe - Yes
Mr. Pryor - Yes

Motion Adopted
(5 Yes 2 absent)

E. MUNICIPAL DISCOUNT DISPOSAL FEE AGREEMENT

The municipal officials introduced themselves.

Dennis McFarland, Director of Finance with the City of Newark
Rich LaPointe, Director of Public Works, City of Newark,
Cathy Thomas, City Administrator, City of New Castle
Sam Cooper, Mayor of City of Rehoboth Beach
Jim Baker, Mayor of Wilmington
Tony DePrima, City Manager of City of Dover
David Baird, Manager of Milford
Tom McLaughlin, City of Wilmington

Cathy Thomas thanked the DSWA Board for allowing them to come today and allowing them to speak about an initiative that is very important to them. They are a coalition of municipalities who directly contract with DSWA for services we provide to the residents. They provide waste hauling services to the residents and as a result we contract directly with DSWA for tipping items at the landfills and other services that are related to us providing those services to our residents. A lot of us have contracts that are running through or coming up and expiring, we are looking at individual contract with the DSWA, but now we are hoping that we could look at having a master agreement that would apply to us all in the same way as our basic class of your customer, the local municipalities who provide these services to our residents. This is our introduction, we have had five-year contracts in the past and we understand the proposal is a three-year contract. We're actually going to talk about the concept and cost of having a five year contract with you and we also want to talk about the very large item that brings us here, the 40% increase and having some kind of graduated schedule through that contract for increases versus what would be a very significant increase of 40% for all of us to absorb and ultimately pass along to our taxpayers.

Mayor Baker thanked the Board for allowing them to speak. The municipalities are mandated to work with the DSWA, it is not like we can pick up and choose how we deal with our waste, we have these agreements with you. Private haulers don't have to worry about that, they can go and do whatever they wish, we can't. All of the municipalities have been good customers to DSWA. We would like to work with your staff on a better way, for us, to handle these increases. We can't separate this out, we have to fit it into our budget, it is a \$750,000 increase and is a significant change. We have to raise taxes every time there is a change, DP&L went up 60% and now they are talking about another increase. We have to absorb those costs some kind of way. We just had another increase in gasoline when it went up several dollars and we had to amend the budget to deal with that increase. I think it is fair that we ask for a five-year agreement, where in the beginning it is less and then you graduate the cost so that we can absorb it easier into our budget. All of the Mayors would love to see that, because it makes it easy for us to look at our constituents. Right now, we are asking for a 15% increase in property and a 30% increase in the water/sewer. There is no other way for us to do it, it is either that or people. We are down to the core line, we have been cutting, cutting, cutting, trying to make ends meet. We have to keep our core services and we know this is a core service. Essentially, this is a big burden for us to take a 40% increase, we understand your problem and we just want you to understand our problem.

Dennis McFarland, Finance Director from the City of Newark stated that the purpose of his comments are to suggest that DSWA does have currently the financial strength and flexibility to accede to the municipalities' request for a five-year agreement. This five-year agreement will essentially put you in the same financial position relative to municipalities as you would be under the proposal that is already out there. Newark is obviously one of DSWA's largest municipal customers. We paid almost \$500,000 in tipping fees last year and we'll pay over \$725,000 in tipping fees in the coming year, again almost a 50% increase. Newark is on a calendar year budget, we were able to put the expenses in our budget for calendar year 2010. But we didn't have enough time to really do anything to offset those increased expenses other than to rely on a tax increase as well. In Newark's case, the \$250,000 is 3 to 3½ cents on the tax rate. We did have a 9 cents tax increase in July of this year. He was able to conduct due diligence on the agency's proposed rate increase. Staff was very gracious in providing the documents that I asked for; they were very gracious in their time in discussing those documents with me. In conclusion, after reviewing the documents, it was clear that DSWA does need a substantial rate increase due to the decrease in tonnage and the time that has passed since their last increase. In broad terms, it appears that DSWA seeks an additional \$15.8 million with this new rate proposal which would pay for about \$3.7 million of additional debt service, \$6.3 million of higher capital expenditures and \$5.5 million contributing to more of an operating surplus in 2011. He believes that reasonable arguments can be made that the proposed increase is larger than needs to be at the present time. There were three assumptions that were made in preparation for the rate proposal that caused the rate increase, at least for the municipalities, to be larger than it might otherwise be. The most significant and the most problematic is the assumption underlying the tonnage forecast. DSWA projected tonnage will decline about 9% in fiscal year 2011 and not return to the fiscal year 2010 levels until the year 2013. Were tonnage in the future to remain flat, the budgeted tonnage in 2010, the needed annual revenues would decline by about \$3.8 million. The second problematic assumption was the need to maintain debt coverage ratio of over 1.75. Your current bond indenture requires a coverage ratio of 1.1. Staff feels, based on comments they have received from the rating agency, that they need to maintain a ratio in excess of 1.75 to maintain the current AA credit rating. If DSWA merely targets the 1.1 coverage ratio, the annual revenue requirement would decline by \$9 million. He was not able to review any documents that analyze the cost and benefit of the agency maintaining its current AA credit rating. DSWA currently has an AA rating, as recently as three weeks ago, the City of Wilmington was downgraded to A rating. Last fall, the City of Newark was downgraded from an AA to a single A by Moody's. So essentially, we are now being asked to pay more money to support your AA rating.

Thirdly, the agency has supported its need to issue \$40 million in bonds to expand existing landfills. The agency chose not to bond other additional capital projects, totaling about \$33 million over the next three years which would have mitigated the magnitude of the requested increase. If bonded, the cost of the projects spread over 10 to 15 years, if they had elected to be bonded, the annual revenue required in the short term would decline by \$1 – 3 million.

With respect to cash, we reviewed that and the agency has about \$90-95 million in cash. \$31 million which is required to be in the bond funds, \$40 million required to be set aside by bond covenants for insurance losses, which leaves about \$20-25 million of operating cash, which represented about 3½ to 4½ months worth of working capital. This is more than adequate and likely more than what most municipals are operating with as we speak. Also, there was nothing that I could see that was included in the rate proposal, taken into account the recycling bill being

considered by the state assembly, which I would assume would have a beneficial effect on the agency. In summary, we agree that DSWA is justified in increasing its rates significantly and we agree that DSWA has prudently managed its operating costs. However, the assumptions used to justify the increase are obsessively conservative. Each one viewed independently is reasonable and probably if I was on your finance staff, make similar assumptions. The difficulty of this situation is we aggregate a host of conservative assumptions; you come up with an end result that is extremely conservative and basically protected yourself from any potential downside and left some upside, for example the recycling bill, available to you. Collectively, we feel this places an undue burden on municipal customers at this time. We think that with some consideration in working further with your staff, we can work a reasonable accord, which would allow for a five-year agreement, which basically makes DSWA whole by the end of the agreement.

Mr. Tony DePrima thanked the Board for giving them the opportunity to talk and thanked staff for being very open and exchanging information. The hope is that at the end of the day DSWA will work their staff and direct DSWA's staff to continue to work with us on this concept of a five-year contract. They have provided the concept back to the staff; they've had it for about a week and a half. We don't expect to hash it out here, we fully expect to sit down with the staff and hash over the details and questions.

The municipalities believe that DSWA's finances are such to accept this counter-proposal. In a nutshell, the proposal is a five-year contract and to use the rebate system to help mitigate the rate increase. The municipalities would accept the base rates over the next five years so there wouldn't have to be a two-tier rate system. Through the rebate process, allow rate relief. In essence the municipalities propose:

Year 1	\$16.00 ton instead of \$8.00 rebate
Year 2	\$12.00 ton instead of \$8.00 rebate
Year 3	\$7.00 ton instead of \$8.00
Year 4	\$4.00 less than published rebate
Year 5	\$4.00 less than published rebate

This proposal is for municipalities that don't use a transfer station. For municipalities that do use a transfer station, it would be:

Year 1	\$12.00 ton instead of \$4.00 rebate
Year 2	\$8.00 ton instead of \$4.00
Year 3	\$3.00 ton instead of \$4.00
Year 4	\$4.00 less than published rate
Year 5	\$4.00 less than published rate

Assuming that DSWA is going to keep the rebate system, which we understand in discussions is a system that private haulers like and a system that you have used for years, so we assume you will keep the rebate. We believe years 4 and 5 would make up for the rate relief in the first two years. They also proposed that the municipalities receive the rebate quarterly. The municipalities are going through a very, very tough time and have lots of fiscal constraints. Income is down, especially transfer tax, police fines, court fines, a decrease in revenues across the board. This will really help the municipalities a lot with the projections and hopefully by

years 4 and 5 we will be out of the recession and this will give us time to adjust the taxes and trash fees and to really make up the difference.

Mr. Sam Cooper, Mayor of Rehoboth Beach, presented a letter from Mr. George Wright, Executive Director of the Delaware League of Local Governments to be read in the record:

“I would like to take this opportunity to thank you for allowing our group to present our proposal to you this afternoon. Unfortunately I have a league meeting scheduled at this time. We are aware of the many concessions that your organization has made over many years to not require an increase in landfill costs. Due to the economic downturn municipalities are facing the same economic pressures as DSWA. We ask that you take a look at our proposal with the understanding that we make up only a small portion, 8% has been mentioned, of your landfill cost. I would like to once again thank you in advance for considering our proposal.”

To reiterate what has been said tonight. The municipalities understand where DSWA is, there are in the same place. They are asking for some relief in early years, so that we can all get through this together, hopefully DSWA working with us and us working with our citizens. We can keep the services we provide at something of a reasonable cost, because our people are faced with the same sorts of things that we are as a government. They are asking for some mitigation in the front end, to lessen the impact us on, in return for some increased fees at the end. Specifically, they are asking the Board authorize the staff to work with the coalition, to work out an agreement. It may not be the five-year agreement – it may be something else to lessen the burden these early years. He thanked everyone for taking their valuable time to listen to their proposal.

Mr. Pryor thanked everyone in the coalition; he has set on that side of the table and understands. This is the toughest set of decisions we have had to deal with in the 21 years he has served on the Board. We have experienced the same pressures and have made enormous cuts in our services. We are about to go back to the Bond market to discuss things with the Bond rating agencies. He expressed his appreciation to the coalition for the spirit, which they brought these concerns and asked Mr. Canzano for his thoughts.

Mr. Canzano expressed his appreciation to the coalition and to Mr. DePrima. DSWA has gone through the budget process and held workshops and a hearing, which are all open to the public. We recognize that the direction we were going with the budget, in fact was going to create a difficulty not only for us, but also for the people that we were going to have to work with and certainly the municipalities. Mr. DePrima reached out to DSWA and offered to get everybody together to have one big meeting. He doesn't think there has ever been a cooperative effort like there has been this year. It has not been a contentious gathering; everybody recognizes the mutual problem in trying to work together to get to where we are.

We basically have the same problem with raising revenue. A bigger difference between us is that the municipalities have the ability to raise taxes whereas we have to operate strictly as a business; we don't get any taxation money from the state or the federal government. At the end of the day, if we don't make it at the gate and through our user fee system, nobody ponies up and gives us money to pay our bills and sign our checks. That is a discernible difference between how DSWA operates and how the public sector operates. DSWA already has \$100 million in debt out there; we went through the bond documents with Dennis, a lot of that money is restricted. We are getting ready to sell another \$40 million in June. Part of our business is to

maintain a AA rating, because it means better interest rates. They look at us to run as a business. We've eliminated 24 positions since July 2008. We have staff doubling up and doing more with less. Our only source of revenue is the tipping fee, our tonnage is down 23% from 2006-2009 and is still dropping. Between FY 06 and 10, we reduced our budget from \$72.5 million to \$55 million. We pushed capital projects out, we've let attrition take its course, and we've done all the things that other businesses are doing, because we've had to. We've talked about the recycling legislation that is out there. We hope that you feel we've helped you. We have over \$1million in carts out to the municipalities. We hope this will help you recycle more and dispose of less. We are figuring about 850,000 tons now and going south. If the goals are achieved in this recycling bill, we're going to be headed down to 500,000 tons in ten years. We're constantly seeing an erosion of our revenues. Everybody is in this economic down spiral and unfortunately this is our only source of revenue. We are willing to go back and look at this and see if there is a way to help you through this – that will work for us. You mentioned that you think we are being financially conservative; we have to plan because no one is going to bail us out. Our bonds are not general obligation bonds of the state – they are bonds of DSWA – they are sold strictly on the financial strength of DSWA.

Mike Parkowski added that the full faith and credit of DSWA is required and that the Authority could go bankrupt; if the DSWA doesn't run on a prudent business basis. He has looked at the request to go for five years instead of three years. One of the problems we have right now, is we held our rate flat for five years, people don't look at a rate increase, they use a target five years before. They look at our rate increase from last year to this year – that was a problem for us and it was a problem with our bond ratio. We were technically in default under our ratios – or heading there with the projected revenues which prompted us to go into this rate increase cycle. That is one of the concerns about keeping the ratio at a level so that you don't run into that situation again because of the amount of trash that's going to come to the landfills is unpredictable. That is the great uncertainty out there when dealing with trash. The other concern is the ability for DSWA to deal with the private sector, where most of the waste comes from. Basically what we have been doing for many years now is economic flow contract. This is a contractual arrangement in order to capture enough of the waste so that you are able to project and sustain yourself for whatever period of time these contracts are in place. A lot of people don't realize that this only works if the companies are willing to enter into these agreements. That's why we have the rebate system, we set the tipping fee at such a level that if you don't sign it you pay a much higher than if you do sign it. People can't compete against each other with the margin of the rebate. That's been sort of the rhyme and reason behind it. We have an agreement now with the private haulers going for three years. We don't know if after three years, they are going to sign up again. If the two largest haulers decide they have business reasons to not want to deal with Delaware, that would collapse the entire system for us. We would have to go back to regulatory flow control and that is something we can do which would basically put the private sector in the same situation that you folks are in terms of having to bring the waste to DSWA. That's something we have avoided because financial markets don't like regulatory flow control. It's always difficult to float better bonds if you're telling somebody by regulation that they have to use your services. If contracts can do it, that's what they like. Part of the reasons why it's three years and not five years like before, has to do with the uncertainty of what happens after that period of time. Secondly, there is the impact of what happens if you don't raise your rates consistently, and you have a big rate increase like we have now. Thirdly, how are we going to operate in terms of which type of flow control it will be. We came very close this time around in adopting regulatory flow control. It was only at the midnight hour, before we put this system into effect that they came forward and said, we like the contractual approach.

Mr. Pryor added that the staff will take a very serious look at the proposal presented to see what they can do and get back with the municipalities in two weeks.

F. 2010 SERIES Bond

Mr. Canzano explained that we are planning to issue \$40 million in bonds in June. This will be for the Sandtown and Jones Crossroads expansion projects. As a result of the number of scenarios with our financial advisor, his suggestion is to alert the Board that we would like to maintain the flexibility to go as long as 15 years and it could possibly help us in terms of meeting our debt service ratio. We're still looking at \$39 million to finance the projects and we will have a ten-year call provision. We are still looking at the Build America Bonds, which would give us a 35% discount on the interest, and this is part of the stimulus package. These would be taxable bonds versus the municipal bonds, which are not taxable. This will be a decision that will be made at the last minute based on advice from the financial advisor. This will give us the flexibility to draw the money down as needed.

Mr. Pryor commented that the consensus of the Board is for the staff to operate as recommended by the financial advisor.

G. PINE TREE CORNERS PROPERTY

Motion G – Mr. McCabe

“The Board authorize the staff to proceed with the purchase of the 54.23 acres at Pine Tree Corners offered by Townsend Business Park LLC as set forth in the Agreement of Sale in the amount of \$500,000.”

Second – Mr. Esposito

Mr. Esposito- Yes
Ms. Parks - Yes
Mr. Sheldon - Yes
Mr. McCabe - Yes
Mr. Pryor - No

Motion Adopted
(4 Yes 1 No 2 absent)

PUBLIC COMMENT

David Stevenson from the Caesar Rodney Institute stated that they are a think tank that looks at policy decisions that the State makes and how it affects cost to the taxpayers and to the economy. The purpose of the Institute is to try to make the state more economically competitive and a better place to do business, a place where we can increase our economy and increase jobs. We look at policies and how they affect us. They will be introducing an economic development report by John Stapleford; the report will show where the economy is going, which is basically flat and we are trying to find ways to help grow the State. We found about 14 areas of state spending that are significantly higher than other states and solid waste is one of them. We will be meeting with the staff of DSWA to review this.

Moved by Mr. Esposito

“The Board of Directors go into Executive Session.”

Second – Mr. Sheldon

Vote – Unanimous
(Esposito, Parks,
Sheldon, McCabe, Pryor)

Motion Adopted
(unanimous)

Moved – Mr. Esposito

“The Board of Directors return to regular session.”

Second – Mr. Sheldon

Vote – Unanimous
(Esposito, Parks,
Sheldon, McCabe, Pryor)

Motion Adopted
(unanimous)

NEW BUSINESS

Mr. Pryor commented that Mr. Gregory V. Moore was confirmed by the Senate to serve on our Board. He will replace Mr. William DiMondi and we have the following resolution to read into the record:

“WHEREAS, Governor Thomas R. Carper appointed William J. DiMondi, to the Board of the Directors of the Delaware Solid Waste Authority on July 15, 1997; and

WHEREAS, Mr. DiMondi has provided the Authority with thirteen years of distinguished service; and

WHEREAS, Mr. DiMondi’s legal expertise, business acumen, technical ability and dedication were invaluable to the Authority; and

WHEREAS, Mr. DiMondi’s wit, good humor and fellowship maintained a great camaraderie and easy rapport amongst the Board;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors join together with the staff of the Delaware Solid Waste Authority, to extend its gratitude to Bill DiMondi and thank him for his selfless service to the citizens of Delaware.

IN WITNESS WHEREOF, WE HAVE SET OUR HANDS AND SEAL THIS 22ND DAY OF APRIL, 2010.”

By unanimous consent the Resolution is approved and will be presented to Mr. DiMondi.

Mr. Pryor added that Mr. Ryan's brother passed away this past week and this is a significant loss. He asked for a moment of silence in respect for Ray Ryan.

Moved – Mr. Esposito

“The Board Meeting is adjourned.”

Second: Mr. Sheldon

Vote – (Esposito, Parks,
Sheldon, McCabe, Pryor)

Motion Adopted
(unanimous)

Respectfully submitted,

Libby J. Kelley

Meeting Adjourned: 6:40