

DRAFT  
MINUTES OF MEETING  
DELAWARE SOLID WASTE AUTHORITY  
BOARD OF DIRECTORS

DATE: October 14, 2009  
LOCATION: 1128 S. Bradford Street  
Dover, DE 19901  
TIME: 5:00 p.m.

ATTENDEES:

DIRECTORS

Richard V. Pryor  
Ronald G. McCabe  
William J. DiMondi (arrived 5:05)  
Gerard L. Esposito  
Theodore W. Ryan  
Timothy P. Sheldon

STAFF

Pasquale S. Canzano  
Richard P. Watson  
Anne M. Germain  
John J. Lechner  
Logan V. Miller

LEGAL COUNSEL

F. Michael Parkowski  
Michael W. Teichman

GENERAL PUBLIC

(See List Attached)

REGULAR BOARD MEETING

The Chairman, Richard V. Pryor called the three hundredth and seventeenth regular meeting of the Delaware Solid Waste Authority Board of Directors to order on Wednesday, October 14, 2009. 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 September 17, 2009 Board of Directors’ meeting of the Delaware Solid Waste Authority be accepted as written.”

**Second** – Mr. Ryan

**Vote** – (Esposito, Ryan,  
Sheldon, McCabe, Pryor)

**Motion Adopted**  
(unanimous)

**Report of Citizens Affairs Committee**

**B. ELECTRONIC GOODS RECYCLING  
CONTRACT S-07-586-SW**

**Motion B** – Moved by Mr. Ryan

“The Committee recommends the Board approve an amendment to the CDM Electronic Goods Recycling contract for a one year extension as recommended by staff.”

**Second** – Mr. McCabe

Mr. Canzano stated that DSWA has a contract with Computer Donations Management (CDM) for the recycling of our electronic goods and it is a two year contract with an option for a third year. As we approach the third year, staff is recommending that we move ahead with the third year subject to the condition that CDM provide us payment for about \$130,000 they owe us. At the time they bid this, they were only one of two that offered to pay us, but as you know the recycling market tanked at the end of 2008, including electronic goods, and they were not able to make the payments timely as required under the contract. However, they did continue to take our electronic goods and they did in fact, recycle the material and it didn’t cost us any additional money. We see this as an opportunity to work out a payment arrangement, because prices are recovering, albeit very slowly. They are indicating that they would be willing to continue the third year at

zero cost to us, meaning they won't charge us anything but they won't pay us anything either.

Rich Vonstetten, Sr. Manager of Recycling, has contacted some other recyclers and as you can see in the memo, the prices they are charging range from \$0.03 to \$0.20 cents a pound. The markets are still negative and we think, for the next year, this is a good deal for DSWA. Staff recommends proceeding with the third year in accordance with the amendment attached to the board package.

Mr. DiMondi - Yes  
Mr. Esposito - Yes  
Mr. Ryan - Yes  
Mr. Sheldon - Yes  
Mr. McCabe - Yes  
Mr. Pryor - Yes

Motion Adopted  
(6 Yes 1 absent 0 No)

#### Report of Technical/Facilities Management Committee

#### C. CHERRY ISLAND LANDFILL EXPANSION CHANGE ORDER CONTRACT C-06-562-NC

**Motion C** - Mr. DiMondi

"The Committee recommends the Board approve Change Order No. 24 to Contract C-06-562-NC in the amount of \$55,661.00 to Severson Environmental Services Inc. for the Type II Liner Tie-In and the relocation of the temporary high voltage line at the Cherry Island Landfill."

**Second** - Mr. Sheldon

Mr. Canzano stated that the difference between the Type 1 and Type 2 liners is Type 1 doesn't require any excavation of trash whereas Type 2 does. We were hoping to resolve this at the last meeting, but staff was working on getting a credit for us. The amount of Type 1 material turned out to be less than what we estimated. The Type 2 tie-in amount was actually greater than what we estimated. Anne Germain and Lynsey Kocenko worked on getting a better credit on the Type 1 material, and they negotiated down from \$78,000 down to \$55,661. Staff recommends proceeding with the Change Order in the amount of \$55,661.00.

Mr. DiMondi - Yes  
Mr. Esposito - Yes  
Mr. Ryan - Yes  
Mr. Sheldon - Yes  
Mr. McCabe - Yes  
Mr. Pryor - Yes

Motion Adopted  
(6 Yes 1 absent 0 No)

D. AREA A/B WETLANDS AND LANDFILL PHYTOCAP  
CENTRAL SOLID WASTE MANAGEMENT CENTER  
CONTRACT C-06-567A-CS

**Motion D** – Mr. DiMondi

“Be it Resolved, that the Chief Executive Officer, Pasquale S. Canzano, of the Delaware Solid Waste Authority (DSWA) be and is hereby authorized, empowered, and directed to enter into and otherwise execute on behalf of DSWA any document or documents necessary to implement the settlement agreement reached by the parties Tetra Tech EC, Inc., Geosyntec Consultants, Inc., and DSWA in Civil Action NO. 07C-10-034 RBY, Kent County Superior Court, State of Delaware, the terms of said agreement being summarized in the memorandum of October 14, 2009 from Michael Parkowski, Esquire to the DSWA Board of Directors.”

(See attached signed Resolution)

**Second** – Mr. Ryan

Mr. Parkowski stated that this issue has been much discussed. The bottom line in all of this is that it started as a \$1.1 million claim and we are now down to \$700,000. Out of that \$700,000, DSWA admitted owing \$425,000 which left a gap of \$275,000. Of that 275,000, Geosyntec picked up \$218,000 and DSWA only ended up paying \$57,000.

Mr. Canzano commended staff, in particular Lynsey Kocenko. She did a superb job of documenting the meetings, and the mediation process. She did an outstanding job in handling this, her efforts made it a lot easier for legal counsel to deal with some of the other major issues.

Mr. DiMondi - Yes  
Mr. Esposito - Yes  
Mr. Ryan - Yes

Mr. Sheldon - Yes  
Mr. McCabe - Yes  
Mr. Pryor - Yes

Motion Adopted  
(6 Yes 1 absent 0 No)

## Report of Administrative Affairs Committee

### E. REGULATORY FLOW CONTROL PROGRAM

Mr. Pryor stated that pursuant to agenda item E., Flow Control, we've had a process of public hearings on the proposed change in our statewide solid waste management plan and regulatory changes.

**Motion E1** - Mr. McCabe

**See attached resolution**

**Second** - Mr. Ryan

Mr. Parkowski stated that there are two resolutions being considered tonight. The first one is for the amendment to the Statewide Solid Waste Management Plan and the second being an amendment to DSWA's regulations. For the last ten years, DSWA has been operating using a contract system to have waste delivered to a DSWA facility. Those contracts have certain economic terms attached to them and the haulers were required to sign the contracts to deliver all of their waste to a DSWA facility with some exceptions that were specified. This has been in place for ten years, providing us with a great deal of stability for both DSWA and the haulers. One of the benefits the hauling industry got out of this was set prices for a five-year period. Recognizing that these contracts were going to expire as of July 1, 2010, it was necessary to see if it was possible to continue on with the same contractual approach. Starting in July, we have been seeking to get the two major haulers, who haul most of the waste in the state, to sign the new DDF. Unfortunately, those attempts to try and get a similar agreement with a new pricing structure were unsuccessful. One of the major haulers was not willing to enter into the agreement. The other option that DSWA has, in order to satisfy its financial needs and to support all of the programs, in reference to the Resolutions, is to adopt a regulatory flow control system, which would require the licensed haulers to bring their waste to DSWA facilities. To do that, it is necessary to not only amend the Plan but to also amend the regulations. With the proposed recommendations

being made by the staff, the plan amendment and the regulations amendment, if approved, would go to the Register of Regulations at the beginning of November and then 10 days thereafter, would become a final regulation. That is the track that we are on. But I will mention that, if for some reason, there is a signed agreement with the two major haulers, there is always the ability to suspend the amendments to allow for the contractual approach. As it stands right now, the path forward clearly is to approve the amendment to the plan and to adopt this regulations as being necessary to satisfy DSWA's needs. A great deal of care has been made to make sure that the Board has been fully briefed and a lot of information has been provided, the transcripts from the hearings and the background information that resulted from the public hearings. The Board is in a stage to consider this, recognizing that the path forward at this point is regulatory flow control. A lot of people would like us to stay with contractual flow control. The bottom line in all of this is whether it's contractual flow control or regulatory flow control, the numbers aren't going to change in terms of what it takes for DSWA to support its budget.

Mr. Pryor added that this has been a question that we have been grappling with for a long time and has been extensively discussed in the Administrative Affairs Committee.

Mr. DiMondi commented that he feels very comfortable being in a position to rely on the transcripts of testimony that was developed in the context of the presentation from our contracted hearing officer and her preparation of the summary that you proposed including the proposed order and recommendations. Tying all that together, he feels very comfortable that this is the right way to go and it gives the Board the opportunity to rely upon a wealth of information that has been developed and we have reached an appropriate conclusion as recommended by counsel.

Mr. McCabe commented that he agrees with Mr. DiMondi, he attended the hearing to support the staff. He has reviewed and supports the document as presented.

Mr. Ryan commented that he also attended the hearing. There were a lot of small contractors and they all spoke out with their concerns. He is satisfied that this is the way to go.

Mr. DiMondi - Yes  
Mr. Esposito - Yes  
Mr. Ryan - Yes

Mr. Sheldon - Yes  
Mr. McCabe - Yes  
Mr. Pryor - Yes

**Motion Adopted**  
**(6 Yes 1 absent 0 No)**

**Motion E2 – Mr. Ryan**

**See attached resolution**

**Second – Mr. McCabe**

Mr. Parkowski commented that this is the regulation that will implement a flow control program and all the comments that I made previously apply to this resolution also.

Mr. Pryor asked if the comments made by the other directors would likewise be made applicable to this resolution. The directors confirmed that would be applicable.

Mr. DiMondi - Yes  
Mr. Esposito - Yes  
Mr. Ryan - Yes  
Mr. Sheldon - Yes  
Mr. McCabe - Yes  
Mr. Pryor - Yes

**Motion Adopted**  
**(6 Yes 1 absent 0 No)**

Mr. Pryor thanked staff and counsel for all of the work that has been put into this. The Board does not take that the plan lightly, it is our bible, we are bound by it and always a serious task when we alter the plan.

Mr. Pryor announced the sad news that Mr. Earp Jennings passed away last Saturday and there was a very lengthy obituary in the paper. Earp was a great guy, he served with him for four years. He stayed in touch with DSWA, he was just a wonderful gentleman.

Mr. Canzano added that Earp was the kind of guy that enjoyed life and if you read his obituary, it was just tremendous. He was a learned man, a bright man, he served on the Board from 1977-1993. From 1991 - 1993 he served as the Chairman of our Board. He was a practical guy, he was Chief Engineer for the Hercules Company and he really contributed to our technical discussions. He had

the savvy, and business acumen, a tremendous asset to the Board and to the staff. He commended his efforts to the contribution that he made to DSWA. He will be greatly missed.

## PUBLIC COMMENT

Mike Stang from Mid-Shore Environmental Services commented that he was the General Manager for BFI when he came here in 1995, so he has been on both sides, a large corporation and a small hauler. In 1995, flow control was in place and he worked with Mike, Pat and NC to work towards contractual flow control and the DDF. Now we're looking at flow control again, we got away from it the first time and the relationship over the last ten years with DSWA staff has been wonderful. I wouldn't say the first five years was wonderful, but the last ten years have been. He thinks this is because there is a mutual need, sometime when you're in negotiations with someone and they have everything behind them, they don't have to negotiate – which flow control can do – it keeps DSWA from having to negotiate with the haulers, negotiations tend to break down. When you are forced in a room to negotiate with two parties, it goes much better if one of the parties don't have to negotiate if they don't want to. That is his concern. With the DDF, both parties need to negotiate, and were willing to sit down, hash it out and come to an agreement. Now we're going to sit down and there is probably one side of it, just my opinion, where when we agreed that flow control was an option, the negotiations won't be as strong and both parties must negotiate. He has had conversations with P. Canzano and realizes he still wants to move forward, but it is very important to the haulers of this state, that they are definitely more in favor of negotiations than the flow control.

Mr. Pryor thanked Mr. Stang for his comments, and stated they do reflect a lot of the discussions that the Board has had. Mr. Canzano clarified that Mr. Stang is referring to contractual flow control negotiations versus regulatory flow control. Mr. Parkowski added that he recalled when DSWA did sit down with BFI and Waste Management and ended up with the structure of the DDF program. It was the cooperation of those two companies that made this possible. Our problem is not wanting to deviate from the stability that has existed for the last ten years, our problem is that it is a voluntary agreement. The structure of the proposed agreement is not much different than the one that has been in place for ten years. There are a lot of people that are concerned about the economics of the agreement, but then again, DSWA is faced with budgetary needs just like everyone else. DSWA has to satisfy bond obligations and debt service ratios and those types of things. He gets the sense that there is a feeling that you can have contractual flow control without the two major companies involved, forget it. A lot of the concern that has been expressed would be better directed at Allied – Republic in

terms of if you really want to change the system. Right now, he thinks the one particular company is changing the system.

Mr. Stang understands and realizes that DSWA needs both major companies. He is asking that DSWA move forward with negotiations more than anything else.

**Motion** – Mr. Sheldon

“The Board Meeting is adjourned.”

**Second:** Mr. Esposito

**Vote** – (DiMondi, Esposito, Ryan,  
Sheldon, McCabe, Pryor)

**Motion Adopted**  
(unanimous)

Respectfully submitted,

Libby J. Kelley

Meeting Adjourned: 5:50