

MINUTES OF THE REGULAR AUTHORITY MEETING OF THE SUSSEX COUNTY MUNICIPAL UTILITIES AUTHORITY HELD ON MAY 7, 2014 AT THE AUTHORITY'S ADMINISTRATION BUILDING, LAFAYETTE, NEW JERSEY

1. CALL TO ORDER; ROLL CALL; PLEDGE OF ALLEGIANCE

The Chairman called the meeting to order at 3:00 p.m.

The following were present: Commissioners Sowden, Madsen, Petillo, Dietz, Cocula, Meyer and Drake, Administrator Hatzelis, Chief Engineer Varro, Solid Waste Superintendent Sparnon, Wastewater Superintendent Nugent, General Counsel Matthew Giacobbe, Special Environmental Counsel Prol and Recording Secretary Kronski

Public Present: Wallis Butler, Linda Masson and Jonathan Rose

2. PUBLIC STATEMENT REGARDING SUNSHINE LAW

Chairman Petillo stated that the meeting has been duly advertised, and notice given thereof, as required by P.L. 1975, Chapter 231.

3. OPEN TO PUBLIC COMMENT

The Chairman opened the meeting to public comment. Mr. Butler introduced himself to the Board and as an Environmental Studies Associate Professor at County College of Morris; he requested the reinstatement of the Solid Waste Facility tours. He complimented the program and noted the many benefits his students receive and those who leave the Solid Waste Facility with a more positive perspective on recycling and trash issues. The Commissioners thanked Mr. Butler on his praiseful comments. Mr. Jonathan Rose, Mayor of Sussex Borough delivered a letter to the Board and read it into record [see attached]. The letter referenced past redacted Closed Session Minutes of the Authority in which he noted portions that appear to be in violation of the Open Public Meetings Act. General Counsel Matthew Giacobbe will review and respond to the Mayor's correspondence. Chairman Petillo closed the meeting to public comment.

4. AGENDA APPROVAL

Chairman Petillo asked for a motion to approve the Agenda, Commissioner Dietz moved the approval of the Agenda, seconded by Commissioner Sowden. On voice vote: Ayes (7); Nays (0). The motion carried.

5. APPROVAL OF CONSENT AGENDA

The Chairman requested a motion for approval of the Consent Agenda. Commissioner Madsen moved the approval of the Consent Agenda, seconded by Commissioner Drake. No discussions. On voice vote: Ayes (7); Nays (0). The motion carried.

6. MINUTES

Chairman Petillo requested a motion to approve the distribution of the April 16, 2014 Pending Action Summary Sheet, which was emailed to the Freeholder Board on April 17, 2014. Commissioner Cocula moved to approve the April 16, 2014 Pending Action Summary Sheet, seconded by Commissioner Dietz. On voice vote: Ayes (7); Nays (0). The motion carried.

May 7, 2014

Chairman Petillo asked for motion to approve the Open and Closed Meeting Minutes for the April 2, 2014 Regular Authority Meeting. Commissioner Cocula approved the minutes, seconded by Commissioner Sowden. On voice vote: Ayes (7); Nays (0). The motion carried.

Chairman Petillo stated that the Open & Closed Meeting Minutes for the April 16, 2014 Authority Meeting was previously emailed to the Commissioners for their review.

7. BUSINESS

a. Executive Session

At 3:11 p.m. Commissioner Meyer moved the adoption of the following resolution authorizing a Closed Executive Session seconded by Commissioner Cocula. On voice vote (7) Ayes, (0) Nays, the motion carried.

#14-062 RESOLUTION RE: AUTHORIZING CLOSED EXECUTIVE SESSION

At 3:34 p.m. Commissioner Sowden moved to adjourn the Closed Executive Session and reconvene the Open Session seconded by Commissioner Cocula. On voice vote, Ayes (7); Nays (0), the motion passed.

Chairman Petillo called for a meeting break at 3:35 p.m.

The meeting resumed at 3:45 p.m.

Chairman Petillo indicated that in Closed Executive Session items discussed as specifically set forth in the resolution were negotiations and/or litigations re: Alternate Leachate Disposal Locations and SXLE/Energenic Contract. When the need for confidentiality of these matters no longer exists they will be opened to the public.

b. Wastewater Program

Superintendent's Report

Mr. Nugent reported on the recent wet weather affect on operations at the Authority's wastewater plants. He distributed a handout showing recent effluent flow records and rain measurements for the Homestead Plant, Hampton Commons and the Upper Wallkill Facility. He also provided a graph summarizing the system participant flow increases across the board. It was noted that Sparta Twp. had an average of 71,000 gallons per day (gpd) then after rain event flows jumped to 118,000 gpd; flows in Sussex Borough on April 26th was recorded at 243,000 gpd and increased to 1.04 million gpd with a high of 1.23 million gpd on May 1st; Vernon was 236,000 gpd and the highest flows were at 310,000 gpd. A third clarifier was put on-line at the U.W. Facility to help with hydraulic operations. John reviewed total daily gallonage treated at the Upper Wallkill, which normally treats an average of 1,500,000 gpd, peaked on May 1st at over 3,500,000 gpd; the Homestead reached 30,000 gpd, usually has an average daily flow is approximately 10,000 gpd. The Hampton Commons averages 33,000 gpd and increased to 66,000 gpd on April 30th. Mr. Nugent noted all permit limits were met and wastewater staff handled the surge very well with no issues. Mr. Nugent also distributed a wastewater flow summary for Sussex Borough noting that from Dec. 1, 2013 to May 5, 2014 there have been 10 days the Borough has exceeded their allocation, with 3 of them over 1.0 million gallons per

May 7, 2014

day. Mr. Hatzelis stated that Sussex Borough and Wantage Township may work out an agreement for the installation of a new pump station along the Route 23 corridor with the design help of the Township Engineers and Developer. Flow in the Sussex Borough forcemain may be a consideration. Permit limits need to be maintained at the U.W. Plant.

Administrator's Report

Administrator Hatzelis reported on Hauled Liquid Waste Volumes & Revenues. He distributed a graph showing revenues from December 1st – April 30th, of which are approximately 27% ahead of budget projections. Connection fees are also ahead of projections for the period, at a total of \$213,000. Anticipated revenue for connection fees is \$231,000 for the year.

Mr. Hatzelis reported on the recent Sussex Borough Rate Study that was posted on the Sussex Borough website. It indicated there are approximately 701 users in the water system with revenues totaling \$1,028,000, with \$1,100,000 in expenses, equaling a loss of \$72,000. The Sewer portion noted a total of 577 users, with total revenues of \$1,092,000 and expenses of \$930,000. According their study, this equates to an excess in revenues of \$162,000, if divided by 577 customers would indicate a \$281/EDU overcharge to sewer customers. According to this report, it appears the over charges of sewer services has subsidized the water utility. Mr. Hatzelis noted that the Authority has been criticized in the past for overcharging Borough users, and this report appears to contradict this.

Mr. Hatzelis reported on the status of the Upper Walkkill Facility Bond Reserve Fund Surety. A quote was received to provide a Surety at 3.35% of total or \$48,200, this will make \$1.5 million in cash available to the authority for Capital Improvements over the next 5 – 10 years. This option is very cost efficient compared to issuing a Bond. Mr. John Cantalupo, the Authority's Bond Counsel is in the process of reviewing Assured Guarantee and policies.

Mr. Hatzelis reviewed a grant agreement between the SCMUA/Walkkill River Watershed Group and the Nature Conservancy for funds provided by The William Penn Foundation. These grant monies are for conservation projects on the restoration of the Upper Paulins Kill Watershed. The WRWVG will coordinate restoration, monitoring and landowner outreach aimed at improving water quality and watershed health. He presented a resolution authorizing the SCMUA/WRWVG to enter into this grant agreement with The Nature Conservancy. Commissioner Cocula moved the resolution, seconded by Commissioner Madsen. On roll call: Ayes (7) Commissioners Sowden, Madsen, Petillo, Dietz, Cocula, Meyer and Drake; Nays (0); Abstain (0).

#14-063 RESOLUTION RE: EXECUTION OF A GRANT AGREEMENT BETWEEN SUSSEX COUNTY MUNICIPAL UTILITIES AUTHORITY/ WALLKILL RIVER WATERSHED MANAGEMENT GROUP AND THE NATURE CONSERVANCY FOR CONSERVATION PROJECTS IN THE NEW JERSEY HIGHLANDS CLUSTER UPPER PAULINS KILL FOCUS AREA FOR IMPLEMENTATION OF THE UPPER PAULINS KILL WATERSHED RESTORATION PLAN

May 7, 2014

c. Solid Waste Program

Solid Waste Superintendent's Report

Superintendent Sparnon reported on the May 3rd Electronic Waste Recycling Event conducted with vendor Vintage Tech, which handled 500 residents between the hours of 7am – 2pm. He also indicated many county schools and agencies participated and the collected E-waste filled 3 and ½ tractor trailers. The event ended on time and Vintage Tech did an exemplary job.

Mr. Sparnon reported on the recent Earth Day celebration on April 17th at the Solid Waste Facility. The activities started at 9 am with 400 students from 7 county schools participating at 9 workstations set up by area vendors. This program gets more and more successful over the years and Mr. Sparnon noted that it is due to the time and dedication put in by the Watershed Program Staff and Recycling Coordinator Reenee Casapulla, who do an exemplary job preparing for and conducting the event.

Mr. Sparnon reported that the contract agreement between the SCMUA and the Easter Seal Society is up for renewal. The Solid Waste and Recycling Facility employs a work crew from the Highlands Workshop for litter control and light maintenance. The Agreement will be for two years and may be further extended into 2016. Commissioner Dietz moved the resolution, seconded by Commissioner Madsen. On roll call: Ayes (7) Commissioners Sowden, Madsen, Petillo, Dietz, Cocula, Meyer and Drake; Nays (0); Abstain (0).

#14-064 RESOLUTION RE: AUTHORIZING THE AWARD AND EXECUTION OF A CONTRACT AGREEMENT BETWEEN THE SUSSEX COUNTY MUNICIPAL UTILITIES AUTHORITY (SCMUA) AND HIGHLANDS WORKSHOP/EASTER SEAL SOCIETY (HIGHLANDS)

Mr. Sparnon reported on an April 30th meeting held at the County Health Department with local Solid Waste Haulers (A901). The Authority was not formally invited, but a call was made requested 2 seats be reserved for SCMUA staff. The points of discussion included Recycling Enforcement, Flow Control, and a reduction in tonnage for ID10 Household Waste, especially in Hardyston Township. Haulers were reminded of flow control obligations and taking responsibility of the contents in their containers related to recyclables. Jim noted that the State needs to clarify the definition of C&D which includes cardboard, but should be recycled, the haulers indicated that the customer should be targeted, not the haulers for separating recyclables. Discussions continued regarding industry-wide drop in ID10 and haulers that attended the meeting. Freeholder Graham attended with meeting, as well as County Administrator Eskilson. Commissioners would like to clarify to the Freeholder Board, that if there is a meeting that involves this facility, there should be an invitation extended to the Authority specifically.

Superintendent Sparnon reported an Air Permit Inspection that took place on April 22nd by the NJDEP. The Inspector reviewed documents and conducted a site inspection of the flare and tub grinder for any particulates. No issues were cited. Discussions re: Title V requirements and inspection of primarily emission sources.

Chief Engineer's Report

Mr. Varro requested to report on the wet weather operations, which was not on final agenda and Commissioners allowed. Mr. Varro reported on recent intense rain event which caused an overflow from Phase 3A to Phase 3B. It is mostly clear water but is being treated as leachate, he is still waiting on the lab results. Mr. Varro explained that usually segregation between Phases 3A and 3B occurs with the storm water runoff and Phase 3B stormwater can be pumped to the detention pond, however the pumps were off at the time. He reviewed the details regarding the biological process at the Upper Wallkill Plant, which has been compromised due to the past cold weather. Tom noted the Facility is still in permit compliance, however there is a large portion of the landfill that is open and unable to cap. Combined with the spring rainfall, a large amount of leachate has been generated, which contains a high level of ammonia. Mr. Varro reviewed the monthly averages and the recent high levels of leachate, along with the disposal of by trucking back and forth to the U.W. Plant, which has had high rain volumes as well. The Upper Wallkill MBR Facility has been utilized to treat the excess. The Authority has consulted with Hatch Mott MacDonald for management of ferric chloride and nitrifying bugs to speed up the denitrification process. Mr. Varro showed the Commissioners a chart regarding ammonia concentrations and loading in leachate compared to wastewater and the levels of leachate in each phase of the landfill. Discussions re: plans and advantages of a temporary cap on Phase 2B, which has the highest concentration of ammonia. Currently, there are two full tanks of leachate with rising levels on the landfill. Discussions re: pros and cons in adding a third tank; pretreatment at the landfill; and the cost to truck leachate to another facility or raise the rate. Mr. Varro and Mr. Nugent will consult further with Hatch Mott MacDonald re: best management options and for this leachate issue and report back to the Commissioners.

Administrator's Report

Administrator Hatzelis reported on Tonnages and Revenues for the period of Dec. 1st through April 30th. A graph/chart was previously sent to the Commissioners indicated that ID10 is down compared to the same time period last year by approximately 2.3%; ID13C&D down 16%; and 13C is bulky waste 20% - overall tonnage 5.3% less compared to last year during this time period, which equals \$250,000 in lost revenues.

d. General Authority Business

Administrator's Report

Administrator Hatzelis indicated the FY2013 Annual Audit was emailed to the Commissioners prior to the meeting. Copies were provided by Auditor Paul Cuva and he will be at the next meeting answer any questions regarding it. Mr. Hatzelis noted that audit has two findings and recommendations re: the Solid Waste R&R Fund Engineer's Certificate which required a \$350,000 contribution for equipment needs for FY2014 which was cured last month. The other issue was regarding the deficit in the Landfill Cell Closure Reserve Account, which is based on the landfill being filled by 2020, however a Solid Waste Management Plan Amendment that extends the landfill for another 20-30 years. Once the permit is issued, a financial plan will be revised to allow for more time to set funds aside for capping.

May 7, 2014

Mr. Hatzelis presented a resolution regarding a Professional Advisor Services Agreement with Phoenix Advisors, LLC for services related to Bonds or Notes for Capital Projects; Contract not to exceed \$2,500. Commissioner Cocula moved the resolution appointing Phoenix Advisors, LLC, seconded by Commissioner Drake. On roll call: Ayes (7) Commissioners Sowden, Madsen, Petillo, Dietz, Cocula, Meyer and Drake; Nays (0); Abstain (0).

#14-065 RESOLUTION RE: AUTHORIZING EXECUTION OF AN AGREEMENT FOR FINANCIAL ADVISOR SERVICES

e. Personnel Matters

Administrator's Report

Administrator Hatzelis reported on the status of the filing of Financial Disclosure Forms in which he received an email from the State that the website is up and running, and the deadline to file has been extended to June 17th.

Mr. Hatzelis recognized Wastewater Superintendent John Nugent's 30 year anniversary as an employee of the Authority. Chairman Petillo read a Service Award resolution for Mr. Nugent, noting his many promotions and dedication to the Authority over his 30 year career.

#14-066 SERVICE AWARD: WASTEWATER SUPERINTENDENT JOHN NUGENT FOR 30 YEARS OF SERVICE

8. Payment of Bills

FINANCIAL CONSENT AGENDA – Chairman Petillo asked for a motion to approve the Financial Consent Agenda (FCA). Commissioner Dietz moved the FCA, seconded by Commissioner Madsen. On roll call, the vote was as follows: Ayes (7) Commissioners Sowden, Madsen, Petillo, Dietz, Cocula, Meyer and Drake; Nays (0); Abstain (0). The resolution passed.

#14-067 RESOLUTION RE: AUTHORIZING PASSAGE OF FINANCIAL CONSENT AGENDA

9. PUBLIC COMMENT

Chairman Petillo opened the meeting to public comment. No Comment from the public. The Chairman closed the meeting to public comment.

10. COMMISSIONERS' COMMENTS/REQUEST

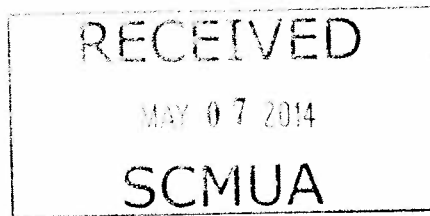
Commissioner congratulated Mr. Nugent thanked him for his exemplary efforts for the Authority. Commissioners would like staff to thank Professor Butler on his positive comments regarding the solid waste facility tours and provide him with an update on continuing the tours as soon as possible.

11. ADJOURN

Commissioner Sowden moved to adjourn the meeting, seconded by Commissioner Dietz. On voice vote, the motion passed. The meeting was adjourned at 4:43 p.m.

Respectfully submitted,

Andrea Cocula, Secretary



**Borough of Sussex
Jonathan Rose, Mayor**

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May 7, 2014

Dear Members of the Sussex County Municipality Utilities Authority,

I write, both individually and in my capacity as Mayor of Sussex Borough, regarding the extensive nonpublic (i.e., closed or executive) portions of your meetings. I have reviewed your redacted closed session minutes from December 3, 2008 through and including July 17, 2013 and offer the following comments:

- In most, if not all, of your closed session meetings, you include a portion entitled, "Chief Engineer's Report." Generally, these portions include discussions about general engineering issues and problems that you have had at your facilities. There does not appear to be a specific exemption in the Senator Byron M. Baer Open Public Meetings Act that allows this, and as such, these discussions should be held in open session.
- In most, if not all, of your closed session meetings, you include a portion entitled, "Administrator's Report." Generally, these portions include discussions about meetings that have been attended, monies owed to the authority and flow amounts into and out of your facilities. There does not appear to be a specific exemption in the Senator Byron M. Baer Open Public Meetings Act that allows this, and as such, these discussions should be held in open session.
- In most, if not all, of your closed session meetings, you include a portion entitled, "Attorney's Report." Although the Senator Byron M. Baer Open Public Meetings Act allows an exemption for, "[a]ny pending or anticipated litigation or contract negotiation ... in which the public body is, or may become a party. / Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer," it appears that most of the

discussion in this portion of the meeting revolves around permit applications and public legal filings with various courts. Although some closed session meetings had items in this section that could rightly be considered as exceptions allowable under the Senator Byron M. Baer Open Public Meetings Act, a great deal of the discussion appears not to be allowable in closed session. The discussion not covered under the narrow guidelines of the Senator Byron M. Baer Open Public Meetings Act should be held in open session.

- In several of your closed session meetings, you had presentations from your professionals, or from those applying for your professional positions. There appears to be no exception in the Senator Byron M. Baer Open Public Meetings Act that allows this, in particular for contracts that are being considered for award in a, “non-fair, non-open,” process. Most, if not all, of the presentations which your authority may have from professionals should be held in open session.
- Many of the discussions you have had in closed session regarding, “personnel,” revolved around general employee policies. There is an exemption in the Senator Byron M. Baer Open Public Meetings Act that allows, “Any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body, unless all the individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting,” but this does not cover general employment policies that the utility may have. Discussion of *specific employees* is something that could be done legally in closed session, but general employment policy discussions should be done in open session.

It appears that the Sussex County Municipality Utilities Authority has taken a broad view of the narrow exemptions to open public deliberation in the Senator Byron M. Baer Open Public Meetings Act. This broad view is contrary to the law as written by the legislature and interpreted by the courts, and I ask the utility to stop engaging in extensive and wide-ranging closed session deliberations.

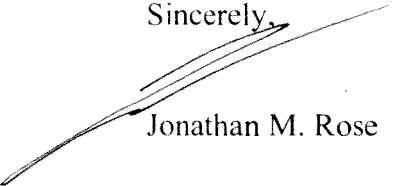
In addition to the above, I would ask the Sussex County Municipality Utilities Authority to review the decision in *McGovern v. Rutgers*, in particular regarding what it has to say about, “sequencing.” Sequencing is when a governing body starts with a short open portion of a

meeting*, and then goes into a long closed session for the purpose of discouraging the public from staying at the meeting.

Although I make no allegations at this juncture, I believe that it is possible that a reasonable person could conclude that the Sussex County Municipality Utilities Authority, by its sequencing of meetings and by its decision to hold meetings at 3:00pm on weekdays, is attempting to dissuade the public from both attending meetings and witnessing, “in full detail all phases of the deliberation, policy formulation, and decision making,” of the body (to quote the Senator Byron M. Baer Open Public Meetings Act). I hereby request that the Sussex County Municipality Utilities Authority 1) hold meetings after 5:30pm if they are to be held on weekdays, and 2) only enter into closed session at the end of their meetings, and state publicly whether action is expected to be taken after the closed session concludes.

Finally, I see no reason why this letter or its contents, should they be discussed, would be a closed session item. I hereby ask that if you discuss matters regarding the Senator Byron M. Baer Open Public Meetings Act or this letter, that that discussion be held in open session.

Sincerely,



Jonathan M. Rose