

MINUTES OF MEETING
DELAWARE SOLID WASTE AUTHORITY
BOARD OF DIRECTORS

DATE: December 3, 2015

LOCATION: DSWA Administration Office
1128 S. Bradford Street
Dover, Delaware

TIME: 5:00 p.m.

ATTENDEES:

DIRECTORS

Gerard L. Esposito
Ronald G. McCabe
Norman D. Griffiths
Michael Paraskewich
Timothy P. Sheldon

STAFF

Richard P. Watson
Robin M. Roddy
Michael D. Parkowski
Joseph Koskey
Fred Oehler

LEGAL COUNSEL

F. Michael Parkowski
Michael Teichman

GENERAL PUBLIC

None

REGULAR BOARD MEETING

The Chairman, Gerard Esposito, called the three hundred and seventy-second regular meeting of the Delaware Solid Waste Authority Board of Directors to order on Thursday, December 3, 2015. He announced the meeting had been duly noticed and the Directors had received copies of the information to be considered.

A. MINUTES

Chairman Esposito called for additions or corrections to the draft of the Minutes of the October 29, 2015, meeting of the Board of Directors.

Motion A – moved by Mr. Sheldon

“The Minutes of the October 29, 2015, Board of Directors’ meeting of the Delaware Solid Waste Authority be accepted as written.”

Second – Mr. Griffiths

Vote – (Griffiths, Paraskewich, Sheldon
McCabe, Esposito)

Motion Adopted
(unanimous)

**B. ADOPTION OF PROPOSED AMENDMENTS TO THE STATEWIDE SOLID WASTE
MANAGEMENT PLAN OF THE DELAWARE SOLID WASTE AUTHORITY**

Motion B - moved by Mr. Sheldon

“WHEREAS, the Delaware Solid Waste Authority (the “Authority”) is a body corporate and politic constituting a public instrumentality of the State of Delaware duly established and organized under Chapter 64 of Title 7 of the Delaware Code, as amended (the “Act”); and

WHEREAS, under the Act, the Authority is charged with comprehensive responsibility for management and disposal of Delaware solid waste statewide; and

WHEREAS, in discharging its responsibilities, the Authority operates and maintains three state of the art landfills and three modern solid waste transfer stations; and

WHEREAS, under the Act, the Authority is charged with developing and implementing state wide recycling programs and resource recovery programs intended to maximize the recovery of usable materials from Delaware waste; and

WHEREAS, in furtherance of this recycling and resource recovery mission, the Authority has implemented a drop off single stream recycling program and has established the Delaware Recycling Center at Pigeon Point in New Castle County; and

WHEREAS, the Authority also manages special recycling and disposal programs, such as yard waste mulching and composting and household hazardous waste collections; and

WHEREAS, the Authority is engaged in community outreach programs at multiple events annually throughout the State; and

WHEREAS, the foregoing operations and programs are projected to result in expenditures in excess of \$45 million annually; and

WHEREAS, the Authority has projected capital expense requirements in future years in the range of an additional \$7 to \$11 million annually; and

WHEREAS, from time to time the Authority issues high quality revenue bonds, the debt service on which is expected to be \$11 million for fiscal year 2016; and

WHEREAS, the Authority’s primary source of revenue to support these expenses and debt service is tipping fees paid on the disposal of waste at the Authority’s facilities; and

WHEREAS, a stable and reliable source of revenue in future years is critical to the continuation of the Authority’s operations and programs, and the servicing of its debt; and

WHEREAS, the Authority is empowered by statute to require that all solid waste generated in Delaware be disposed of at Authority facilities; and

WHEREAS, ensuring that all Delaware solid waste is disposed of at Authority facilities will assure a consistent stream of revenue from year to year; and

WHEREAS, ensuring the delivery of Delaware solid waste to the Authority will also help ensure that Delaware solid waste is disposed of in properly designed landfills; and

WHEREAS, ensuring delivery of Delaware solid waste to the Authority will help ensure that hazardous wastes are not improperly disposed of; and

WHEREAS, ensuring the delivery of Delaware solid waste to Authority landfills will allow the Authority to better evaluate and understand the volume and composition of solid waste generated in Delaware, which understanding is needed in order for the Authority to update and keep current the Statewide Solid Waste Management Plan; and

WHEREAS, on October 1, 2015, the Authority proposed amendments to the Delaware Solid Waste Management Plan that acknowledge the desirability of directing most Delaware solid waste to Authority designated facilities; and

WHEREAS, a public hearing was held on November 2, 2015 on these proposed amendments; and

WHEREAS, the Authority's hearing officer, James D. Nutter, has issued his Proposed Order and Recommendations on the matter, and has recommended adoption of the amendments to the Statewide Solid Waste Management Plan without changes from the form of amendments proposed by the Authority; and

WHEREAS, the Authority's management has recommended that the Board of Directors adopt the amendments without change from the form first proposed by the Authority; and

WHEREAS, the Board of Directors of the Authority has considered the recommendations of management and has reviewed the hearing officer's Proposed Order and Recommendations, as well as the transcript of the hearing, and all documents admitted into evidence.

NOW THEREFORE, be it:

RESOLVED, that the Board of Directors of the Delaware Solid Waste Authority adopts the amendments to the Statewide Solid Waste Management Plan in the form proposed by the Authority on October 1, 2015, and in furtherance thereof shall execute a Final Order accomplishing same.

FURTHER RESOLVED, that management of the Delaware Solid Waste Authority shall take all steps necessary to ensure that the Final Order is published in the Delaware Register of Regulations and that the amendments to the Statewide Solid Waste Management Plan become effective on and after July 1, 2016."

Second – Mr. Griffiths

Mr. Teichman explained that this will amend the Statewide Solid Waste Management Plan (SSWMP) to reflect the changes needed in the Regulations to institute flow control. The changes are minimal because the SSWMP was amended a few years ago to allow for the possibility of flow control. All the events that were held and all the paperwork, such as the hearing and hearing officer's report and resolutions, leading up to now are the same for the Regulations and the SSWMP. The resolutions authorize the Board to execute the Final Order and Decision. This was done because the Board designated a hearing officer, James Nutter, who took the evidence and convened the hearing. He has put together a hearing officer's report and recommendation. He summarized the amendments, testimony and evidence that were received into the record. He makes findings of facts and conclusions of law and ultimately recommends the SSWMP be approved. The Final Order adopts and incorporates the hearing officer's work as the Board's own. Mr. Griffiths asked if there was an appeal period after the Board adopts the resolution. Mr. Teichman said that there is a thirty day appeal period. Mr. Griffiths wanted to know if there was any opposition to this. Mr. F. Michael Parkowski said that there were some objections that were submitted in writing that contend that flow control is unconstitutional. It's an argument you hear from industry frequently. The hearing officer's report does, in detail, address the legal issue of flow control and the various Supreme Court decisions and circuit court decisions that have been rendered. And the conclusion that the hearing officer comes up with as a result of the legal analysis is that the flow control provisions that are being proposed are valid and not unconstitutional. As a general matter industry opposes flow control. Flow Control provisions have been adopted by governmental entities across the country on a more pervasive basis since the Supreme Court decisions have favored or allowed for flow control to be utilized. We are comfortable with the position we are in on this. The hearing officer has presented that to the Board as part of his recommendation that the Regulations be adopted and they are consistent with the law. Mr. Griffiths asked that because the SSWMP is authorized by state law, doesn't the General Assembly have to act in concert with the Board or does the Board have sole authority to authorize this without them? Mr. F. M. Parkowski stated that the way the legislation was crafted that there is a broad delegation of authority to this Board to act in a quasi-independent capacity to be able to carry out all the directives that are in the legislation which is basically the broad scale management of solid waste on a statewide basis including a lot of references to recycling exercises and efforts and the provision that allows for flow control is in that enabling legislation. There is nothing that DSWA is doing that isn't specifically tied to the statutory authorization. The statute does require, if DSWA is going to adopt or amend the SSWMP, we have to go through a public hearing process, which is what we did. This statute also says if we are going to adopt or amend the Regulations, DSWA has to go through the same public hearing process. That ties into the provisions of the Administrative Procedures Act which is separate from our enabling legislation and you will see parallel provisions there. There are new procedural requirements that would come into play if we were not going to adopt these regulations in the SSWMP before January 1st. Mr. Griffiths asked who would an appellate appeal to? Mr. F. M. Parkowski said that it would be the Delaware Superior Court. Mr. Teichman said that the thirty days would run from the date the final Regulations are published in the Registry of Regulations. Mr. Esposito asked if the adoption of the SSWMP and Regulations was going to incite the three objectors. Mr. Teichman said that they had already voiced their objections. Mr. F. M. Parkowski said that the type of objection was very general, sweeping statements about unconstitutionality and violations of commerce clause. They were focused on the first Carbone decision that did strike down a number of flow control systems throughout the country. It wasn't until the Supreme Court revisited the case in *United Haulers* and said that if it is a municipal or governmental entity that is imposing flow control that the rules were different. The cases that have come up that involve direct use of flow control to cover a variety of activities similar to what DSWA does the courts have been upholding those systems. Mr. M. D. Parkowski said that

the two companies that did write in with objections are not Delaware companies that are currently doing business with DSWA. They are from Pennsylvania. Companies that have been using our facilities for many years did not write in any objections. The City of Wilmington misunderstood what they read. Their comments were about recycling material that is exempt such as waste water sludge and their recyclables which is not part of flow control. That information was clarified with the City of Wilmington after the hearing.

Mr. Griffiths	Yes
Mr. Paraskewich	Yes
Mr. Sheldon	Yes
Mr. McCabe	Yes
Mr. Esposito	Yes

Motion Adopted

(5 Yes, 0 No, 1 Absent)

C. ADOPTION OF PROPOSED AMENDMENTS TO THE REGULATIONS OF THE DELAWARE SOLID WASTE AUTHORITY

Motion B - moved by Mr. Sheldon

“WHEREAS, the Delaware Solid Waste Authority (the “Authority”) is a body corporate and politic constituting a public instrumentality of the State of Delaware duly established and organized under Chapter 64 of Title 7 of the Delaware Code, as amended (the “Act”); and

WHEREAS, under the Act, the Authority is charged with comprehensive responsibility for management and disposal of Delaware solid waste statewide; and

WHEREAS, in discharging its responsibilities, the Authority operates and maintains three state of the art landfills and three modern solid waste transfer stations; and

WHEREAS, under the Act, the Authority is charged with developing and implementing statewide recycling programs and resource recovery programs intended to maximize the recovery of usable materials from Delaware waste; and

WHEREAS, in furtherance of this recycling and resource recovery mission, the Authority has implemented a drop off single stream recycling program and has established the Delaware Recycling Center at Pigeon Point in New Castle County; and

WHEREAS, the Authority also manages special recycling and disposal programs, such as yard waste mulching and composting and household hazardous waste collections; and

WHEREAS, the Authority is engaged in community outreach programs at multiple events annually throughout the State; and

WHEREAS, the foregoing operations and programs are projected to result in expenditures in excess of \$45 million annually; and

WHEREAS, the Authority has projected capital expense requirements in future years in the range of an additional \$7 to \$11 million annually; and

WHEREAS, from time to time the Authority issues high quality revenue bonds, the debt service on which is expected to be \$11 million for fiscal year 2016; and

WHEREAS, the Authority's primary source of revenue to support these expenses and debt service is tipping fees paid on the disposal of waste at the Authority's facilities; and

WHEREAS, a stable and reliable source of revenue in future years is critical to the continuation of the Authority's operations and programs, and the servicing of its debt; and

WHEREAS, the Authority is empowered by statute to require that all solid waste generated in Delaware be disposed of at Authority facilities; and

WHEREAS, ensuring that all Delaware solid waste is disposed of at Authority facilities will assure a consistent stream of revenue from year to year; and

WHEREAS, ensuring the delivery of Delaware solid waste to the Authority will also help ensure that Delaware solid waste is disposed of in properly designed landfills; and

WHEREAS, ensuring delivery of Delaware solid waste to the Authority will help ensure that hazardous wastes are not improperly disposed of; and

WHEREAS, ensuring the delivery of Delaware solid waste to Authority landfills will allow the Authority to better evaluate and understand the volume and composition of solid waste generated in Delaware, which understanding is needed in order for the Authority to update and keep current the Statewide Solid Waste Management Plan; and

WHEREAS, on October 1, 2015, the Authority proposed amendments to its Regulations that would require most Delaware solid waste to go to a DSWA designated facility, subject to limited exceptions; and

WHEREAS, the proposed amendments to the Regulations would also impose limitations on the types of vehicles licensees may utilize, and also would impose reporting requirements in respect of the delivery of Delaware generated recyclables to out of state facilities; and

WHEREAS, a public hearing was held on November 2, 2015 on these proposed amendments; and

WHEREAS, the Authority's hearing officer, James D. Nutter, has issued his Proposed Order and Recommendations on the matter, and has recommended adoption of the amendments to the Regulations with just one non-substantive change from the form of amendments proposed by the Authority; and

WHEREAS, the Authority's management has recommended that the Board of Directors adopt the amendments with the single non-substantive change proposed by the Authority's hearing officer; and

WHEREAS, the Board of Directors of the Authority has considered the recommendations of management and has reviewed the hearing officer's Proposed Order and Recommendations, as well as the transcript of the hearing, and all documents admitted into evidence.

NOW THEREFORE, be it:

RESOLVED, that the Board of Directors of the Delaware Solid Waste Authority adopts the amendments to the Regulations of the Delaware Solid Waste Authority with just one non-substantive change from the form proposed by the Authority on October 1, 2015, and in furtherance thereof shall execute a Final Order accomplishing same.

FURTHER RESOLVED, that management of the Delaware Solid Waste Authority shall take all steps necessary to ensure that the Final Order is published in the Delaware Register of Regulations and that the amendments to the Regulations of the Delaware Solid Waste Authority become effective on July 1, 2016."

Second – Mr. Griffiths

Mr. Teichman said that Item C was essentially the same as Item B. There is the final verdict which Mr. Sheldon made a reference to in the motion that the Board will sign. Attached to the Final Order is the redlined version of the Regulations that shows the changes. The hearing officer's report and recommendation is also attached in tab C3 of the Board's package. By signing the Final Order the Board is adopting and incorporating by reference the work of the hearing officer. Back in September the Board authorized staff to publish the proposed Regulation changes in the Register of Regulations. There were three things that changed in the Regulations. The first change was that all new licensed haulers must use the proper trucks to handle solid waste. The second change deals with flow control, applying to all haulers, with certain exceptions, not just municipalities, who are currently under flow control by regulation. And the third change will require all haulers that take recyclables to out-of-state facilities to provide a report once a year to DSWA so that the DSWA will know where these recyclables are going if they are not going to a DSWA facility even though they are not subject to flow control. In the motion there is a mention of one non-substantive change that the hearing officer picked up on. There is a reference to the facility in the changes to the provisions dealing with recyclables in this new report that would suggest that this report would need to be certified by the facility. An example would be if a hauler took their recyclables to a MRF in Maryland, which they can do, does the Maryland facility have to certify the report. That was not intended. What was intended was that the hauler would, to the best of their knowledge, bring DSWA a report saying this is what they delivered and what the recovery rate was for that particular facility. DSWA didn't intend for the facility to separately certify this report. So the change that was recommended was to simply remove a couple of words, that is a non-substantive change that does not require going through the Register of Regulations and hearings again. Staff is recommending that the Board accept the changes by adopting the final order with Attachment A. Mr. Griffiths asked if DSWA was going to be the enforcement authority for making sure that the right kind of trucks are coming onto the landfill? Mr. M. D. Parkowski answered that DSWA already does that. DSWA's Compliance Officers are at all the facilities now and they have been making sure haulers are compliant with the current rules. If a violation is found, the company is notified so they can correct the issue.

Mr. Griffiths	Yes
Mr. Paraskewich	Yes
Mr. Sheldon	Yes

Mr. McCabe Yes
Mr. Esposito Yes

Motion Adopted

(5 Yes, 0 No, 1 Absent)

D. RECOMMUNITY CONTRACT A-11-671-ND AMENDMENT

Motion D - moved by Mr. Sheldon

“The Board approves a term sheet outlining the basic terms of a contemplated amendment to the ReCommunity Contract, A-11-671-ND, and senior staff is authorized to enter into and complete negotiations with ReCommunity regarding a definitive amendment document.”

Second – Mr. Griffiths

Mr. Watson explained that ReCommunity had asked DSWA for some relief because of the commodities market situation. The market has been depressed for over a year. Staff has been in discussion with ReCommunity for months and have finally come to an agreement that would work for both companies. Some of the adjustments will be to the customers that are not charged, such as the municipalities. These customers are really hurting ReCommunity. ReCommunity’s other customers have contracts that they can vary the amount they charge them. One of the bigger items that is going to change is the transportation costs from the Milford and Route 5 Transfer Stations. They are going to make it uniform statewide. DSWA will make up the difference through the alternate Differential Disposal Fee. Mr. M. D. Parkowski said that this amendment was also helping the overall recycling program and the haulers. If the markets turn around DSWA will get a larger revenue share back. Everyone is hoping that the markets will get better. Mrs. Roddy said that transportation costs don’t help ReCommunity but it is really for the haulers. Mr. Esposito remarked that we need each other for the program to work. Mr. Paraskewich commented on the national stability of recycling and asked if staff knew what was happening with Cecil County, Maryland. Mr. M. D. Parkowski said that Cecil County still had 90 days to negotiate and work out a new agreement and they were still bringing their material to ReCommunity. Mr. Paraskewich asked how likely it was that the markets would rebound. Mr. M. D. Parkowski said that nationwide there needs to be a paradigm shift if the markets don’t turn around. Companies will have to look at the business model and try to adjust to a plan that will work. One of the shifts will be that consumers will have to pay for materials to get to market. This will be a nationwide issue not just for ReCommunity. Mr. Watson said that DSWA chose ReCommunity because they are the largest strictly recycling MRF operator in the country. They had the size and strength to weather the economic situation. Mrs. Roddy said that DSWA was developing a ship wreck plan if ReCommunity had to pull out immediately, the plan would address how to move the material, how to store the material, and the evaluation of what it would take for DSWA to run the MRF. Mr. M. D. Parkowski said that at least DSWA has the trash side and we control the tipping fees. Mr. Esposito asked if there would be any effect on DSWA if Cecil County goes negative. Mr. M. D. Parkowski said there wouldn’t be. Mr. Griffiths commented on the end date of the amendment, June 2021, he wanted to know if that was the end date regardless of the commodity market. Mr. M. D. Parkowski said that all the provisions of the amendment would sunset on June 2021 except for the aspect of DSWA’s revenue share which would increase and revert back to the original terms on June 30, 2026. June 30, 2021 also coincides with the end of the new DDF contract. Mr. Griffiths asked if there was a clause in the agreement for non-assignment without DSWA’s consent. Mr. Teichman said that it was addressed in the

amendment. DSWA has right of first refusal for ReCommunity Delaware, a special purpose LLC that holds all the assets. So DSWA can interfere with the sale of the parts and pieces of the MRF. But what DSWA doesn't have the right to do is interfere or approve/disapprove of the sale of the parent company. Mr. Griffiths asked if there were more negotiations. Mr. M. D. Parkowski said that there were none at this time. There might be more talks in 2021 if the market doesn't move and a different model will have to be discussed. Mr. Griffiths wanted to know what percentage of movement would trigger DSWA to reopen this and look at the terms. Mr. M. D. Parkowski said that there is a threshold (cost to process) that is compared to the value of the material per ton and if the value is above the threshold ReCommunity would share some money but if the value is lower than the threshold DSWA would have to make up the difference. Mr. Griffiths questioned if DSWA was at the mercy of how good a negotiator ReCommunity would be. Mr. M. D. Parkowski said that in this term sheet there is a uniform agreement for all Delaware haulers and he would be going with a representative from ReCommunity and talking to all the haulers and hammer out their agreements. Mr. Teichman said there was no further negotiations between DSWA and ReCommunity. The fundamental terms will not change and if there were major changes it would come back to the Board. Mr. Esposito asked if this resolution authorized staff to sign an amendment. Mr. Teichman said that this resolution would authorize Mr. Watson to sign the amendment. If anything deviates in substance it would come back to the Board.

Mr. Griffiths	Yes
Mr. Paraskewich	Yes
Mr. Sheldon	Yes
Mr. McCabe	Yes
Mr. Esposito	Yes

Motion Adopted

(5 Yes, 0 No, 1 Absent)

E. ALTERNATIVE DISCOUNT DISPOSAL FEE AGREEMENT

Motion E – moved by Mr. Sheldon

“The Board approves the Alternative Discount Disposal Fee Agreement.”

Second – Mr. Griffiths

Mr. Watson explained that this Alternate Discount Disposal Fee (DDF) Agreement is the same as the original DDF Agreement for 2016 through 2021 except for the rebate part of it. The original starts out with a first year \$20/ton rebate at the landfills and the Alternate is \$16/ton rebate. There is a \$4.00 differential from the original DDF through the rest of the years also. This one is specifically designed for the recycling issue that was discussed in the previous agenda item. If the customer is interested in signing an agreement with DSWA instead of ReCommunity they will be offered zero dollars at the door for their recycling if they agree to take \$4.00 a ton less rebate for waste through the DDF Agreement. That would cover DSWA's costs available to customers. The haulers still have the option to sign an agreement with ReCommunity instead of DSWA if they would like. Mr. M. D. Parkowski said he and a representative of ReCommunity will go to every hauler and discuss the Alternative DDF. The hauler can sign an agreement with ReCommunity and that would satisfy the requirements of the Original DDF or they can sign the Alternative DDF. The hauler who chooses to sign the Alternative DDF with the lower rebate would not have to pay ReCommunity for recyclables. The risk is if the commodity markets turn around the hauler won't be paid for their recyclables.

Municipalities will probably take the Alternative DDF because it is a given amount of money they know they will have to pay for their waste and they are still getting a rebate and it is still less than what they are paying this year. They will have a lower waste bill than this year and they don't have to worry about the volatile commodity market with recycling. Under the Universal Recycling Law, there is a clause that says DSWA must offer a zero tipping fee option under mutually agreed upon conditions with the haulers. This fulfills that aspect of the law. Mr. Griffiths wanted to know if DSWA was interfering with contracts between ReCommunity and the haulers. Mr. Teichman said that ReCommunity was working for DSWA to provide a service. Haulers have a choice to keep their contract with ReCommunity, negotiate a new contract with ReCommunity or they can contract with DSWA to bring their recyclables to DSWA for zero, and receive a lower rebate on their solid waste. Mr. Watson said that there was a fourth choice and haulers could take it to a different MRF elsewhere.

Mr. Griffiths	Yes
Mr. Paraskewich	Yes
Mr. Sheldon	Yes
Mr. McCabe	Yes
Mr. Esposito	Yes

Motion Adopted

(5 Yes, 0 No, 1 Absent)

NEW BUSINESS

No comment.

PUBLIC COMMENT

No comment

Motion – Mr. Griffiths

“The Board Meeting is adjourned.”

Second – Mr. Sheldon

Vote – (Griffiths, Paraskewich,
Sheldon, McCabe, Esposito)

Motion Adopted
(unanimous)

Respectfully submitted,

Pamela R. Williamson

Meeting Adjourned: 6:13