

MINUTES OF MEETING
DELAWARE SOLID WASTE AUTHORITY
BOARD OF DIRECTORS

DATE: April 28, 2016

LOCATION: Cherry Island Landfill
Administrative Office
1706 E. 12th Street
Wilmington, Delaware

TIME: 4:00 p.m.

ATTENDEES:

DIRECTORS

Gerard L. Esposito
Ronald G. McCabe
Norman D. Griffiths
Michael R. Paraskewich
Tonda L. Parks
Timothy P. Sheldon
William J. Strickland

STAFF

Richard P. Watson
Robin M. Roddy
Michael D. Parkowski
Joseph Koskey
Jason M. Munyan
Lynsey B. Kocenko

LEGAL COUNSEL

Michael Teichman

GUESTS

Tim Frey (Saul Ewing)
Nicholas Adams (Wilmington Trust, N.A.)
Joe Parks

REGULAR BOARD MEETING

The Chairman, Gerard Esposito, called the three hundred and seventy-sixth regular meeting of the Delaware Solid Waste Authority Board of Directors to order on Thursday, April 28, 2016. 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 March 24, 2016, meeting of the Board of Directors.

Motion A – moved by Mr. Sheldon

“The Minutes of the March 24, 2016, Board of Directors’ meeting of the Delaware Solid Waste Authority be accepted as written.”

Second – Mr. Griffiths

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

Motion Adopted
(unanimous)

Report of Administrative & Citizens' Affairs Committee

B. FY2017 BUDGET

Motion B - moved by Mr. McCabe

“The Board approves the FY 2107 Proposed Budget as presented.”

Second – Ms. Parks

Mr. Koskey then stated that the budget was the same as put forth at the Committee meeting on April 14. It was presented to the public at the public workshop and hearing, with no public in attendance. He asked that the Board adopt the budget.

Mr. Griffiths	Yes
Mr. Paraskewich	Yes
Ms. Parks	Yes
Mr. Sheldon	Yes
Mr. Strickland	Yes
Mr. McCabe	Yes
Mr. Esposito	Yes

Motion Adopted

(7 Yes, 0 No, 0 Absent)

C. 2006 BOND INDENTURE MODIFICATION

Motion C - moved by Mr. McCabe

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

WHEREAS, the Authority has previously issued its Solid Waste System Revenue Bonds, Series of 2006 in the principal amount of \$95,715,000 (the “**2006 Bonds**”), Solid Waste System Revenue Bonds, Tax-Exempt Series of 2010A in the principal amount of \$24,625,000 (the “**2010A Bonds**”) and its Solid Waste System Revenue Bonds, Taxable Build America Bonds (Direct Pay), Series of 2010B in the principal amount of \$18,855,000 (the “**2010B Bonds**,” and together with the 2006 Bonds and the 2010A

Bonds, the “**Bonds**”), pursuant to a Trust Indenture dated as of December 1, 2006 (the “**Original Indenture**”) between the Authority and Wilmington Trust Company, as trustee (the “**Trustee**”), as supplemented by a First Supplemental Trust Indenture dated as of June 1, 2010 (the “**First Supplemental Indenture**,” and together with the Original Indenture, the “**Indenture**”), for the purpose of financing or refinancing various capital project of the Authority; and

WHEREAS, pursuant to the Original Indenture, the Authority created a special fund, held by the Trustee, known as the Operating, Insurance and Capital Reserve Fund (the “**OIC Reserve Fund**”); and

WHEREAS, no monies on deposit in the OIC Reserve Fund are pledged as security for the Bonds nor do such monies held therein constitute a part of the Trust Estate (as defined in the Original Indenture); and

WHEREAS, the Authority now desires to redeem all outstanding 2006 Bonds with available monies of the Authority, including all monies on deposit in the OIC Reserve Fund; and

WHEREAS, as set forth in the Original Indenture, monies held in the OIC Reserve Fund are currently not permitted to be used towards the purchase and redemption of Bonds; and

WHEREAS, the Authority now desires to authorize and approve the use of monies held in the OIC Reserve Fund for purposes of purchasing and redeeming outstanding Bonds under the Indenture and to authorize its Chairman and Vice Chairman to execute on behalf of the Authority a Second Supplemental Trust Indenture between the Authority and Trustee (the “**Second Supplemental Indenture**”) to amend the permitted use of the monies held on deposit in the OIC Reserve Fund to allow for the purchase and redemption of Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE DELAWARE SOLID WASTE AUTHORITY AS FOLLOWS:

1. Approval of Permitted Use of Monies in Operating, Insurance and Capital Reserve Fund. The Authority hereby authorizes and determines that an appropriate and permitted use of monies held on deposit in the non-pledged OIC Reserve Fund shall be to purchase and redeem outstanding Bonds of the Authority. The Authority here calls the 2006 Bonds for early redemption on June 1, 2016, or any date thereafter.

2. Authorization of Second Supplemental Indenture. The Authority is hereby authorized to enter into the Second Supplemental Indenture with the Trustee, substantially in the form presented at this meeting subject only to such changes and modifications as counsel may recommend and the Chairman or Vice Chairman may approve, which approval shall be conclusively evidenced by his execution thereof. The Authority is hereby authorized to amend the permitted uses of monies held on deposit in the OIC Reserve Fund contained in Section 5.15 of the Original Indenture to allow for such monies to be applied towards the purchase and redemption of Bonds or to allow such moneys to be transferred to the Authority to be applied as the Authority may

determine, including to the redemption of the 2006 Bonds. The form of the Second Supplemental Indenture presented at this meeting shall be attached to this Resolution and lodged with the official minutes of this meeting.

3. Execution and Delivery of Other Documents. The Chairman or Vice Chairman of the Authority is hereby authorized to execute and deliver, in the name of the Authority and on its behalf, the following documents and to approve the final form and substance thereof, and any amendments or supplements thereto before or after the initial execution and delivery thereof, such approvals to be conclusively evidenced by the execution thereof, and the Chief Executive Officer or Chief Operating Officer is hereby authorized to affix to all of the following documents the seal of the Authority and to attest to the same:

- (i) The Second Supplemental Indenture; and
- (ii) Such other documents as the executing officers determine to be reasonable and appropriate to effectuate the intent of the authorizations provided under this Resolution.

Copies of the foregoing documents, together with the other documents relating to the transactions authorized hereby, in final form as executed and delivered by the parties thereto, shall be filed in the official records of the Authority.

4. Binding Effect of Covenants and Agreements. All covenants, obligations and agreements of the Authority set forth in this Resolution and in the documents authorized hereby shall be deemed to be the covenants, obligations and agreements of the Authority to the full extent authorized or permitted by law, and all such covenants, obligations and agreements shall be binding upon the Authority and its successors from time to time and upon any board or body to which any powers or duties affecting the same shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Authority or the members thereof by the provisions of this Resolution or the documents authorized hereby shall be exercised or performed by such members, officers or other representatives of the Authority as may be required or permitted by law to exercise or perform the same. No covenant, obligation or agreement herein contained or contained in any documents authorized hereby shall be deemed to be a covenant, obligation or agreement of any member, officer, agent or employee of the Authority in his or her individual capacity and neither the members of the Authority nor any officer executing the Second Supplemental Indenture or other documents authorized by this Resolution shall be liable personally thereunder or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

5. Authorized Representatives of the Authority. The Chief Executive Officer, Chief Financial Officer and Chief Operating Officer of the Authority shall each constitute an Authorized Representative of the Authority for purposes of the Indenture.

6. Further Action. Any director of the Authority, the Chief Executive Officer and the Chief Financial Officer of the Authority is hereby authorized and directed to

execute such further documents and do such further things as may be necessary or proper to carry out the intent and purpose of this Resolution or any document herein authorized.

7. Repeal of Inconsistent Resolutions. All prior resolutions of this Authority or portions thereof which are inconsistent with this Resolution are hereby repealed.

8. Effective Date. This Resolution shall take effect immediately.”

Second – Mr. Strickland

Mr. Koskey explained that this modification will allow DSWA to use the Operating, Insurance and Capital Reserve Fund (OIC) to be used for the early redemption of the 2006 Bonds. The OIC Fund, along with other additional monies, was created to use as surplus for operations over the years. The OIC was not pledged as security for the bond holders but there were restricted uses for the OIC of which the anticipated need for use in the early bond redemption was not one of those allowable uses. The purpose of this modification is to add back the early bond redemption as an allowable use of the OIC with the anticipation that DSWA will use \$51 to \$52 million of it for the early redemption of the 2006 Bonds. Mr. Frey said the purpose of this modification was so that DSWA could call for early bond redemption on or after June 1, 2016. It also authorizes the Authority to enter into a second supplemental indenture and that has an amendment to the section related to the OIC which states that it is a proper use of monies in that fund to be used for the redemption of the bonds. Mr. Koskey said that this first step is to get permission to add to the allowable uses of the OIC for early redemption of the bonds. Mr. Frey said that there will be a thirty day notice sent to the bond holders to allow them to find a substitute. Mr. Griffiths asked if the bond holders had a right to challenge, negotiate or object. Mr. Frey answered that they didn't. Mr. Esposito asked how Item D would relate to Item C. Mr. Koskey said that Item D is final resolution and if Item C was not adopted DSWA would have to figure out another way to fill in the gap for funding the bond redemption. Mr. Teichman then read the resolution that appears above.

Mr. Griffiths	Yes
Mr. Paraskewich	Yes
Ms. Parks	Yes
Mr. Sheldon	Yes
Mr. Strickland	Yes
Mr. McCabe	Yes
Mr. Esposito	Yes

Motion Adopted

(7 Yes, 0 No, 0 Absent)

D. 2006 BOND EARLY REDEMPTION

Motion C - moved by Mr. McCabe

“The Board approves the early redemption of all outstanding 2006 Bonds and approves a June 1, 2016 redemption date. The Authority’s management is authorized to expend

such funds from the OIC Reserve Fund, the 2006 Account of the Debt Service and Sinking Fund, and the 2006 Account of the Debt Service Reserve Fund as are necessary to redeem all outstanding 2006 Bonds.”

Second – Mr. Sheldon

Mr. Watson said that the early redemption of the 2006 Bonds saves \$7.9 million of annual debt service by taking this early redemption action. Mr. Koskey said that this was a follow up to Item C giving permission to use the OIC for this purpose. When the bonds were issued back in 2006 DSWA always had the right to call them back, or buy them back, in June 2016. In order to do that the total funding is around \$76 million. That funding is coming from three places, the debt service sinking fund, the debt service reserve fund and the OIC. Over the next ten years DSWA will be saving just about \$18 million in interest, from 2017 to 2026. This bond was originally used for the Cherry Island Landfill expansion project. Mr. Adams updated the Board on the liquidity of the investments in order to buy back this bond. There will still be a balance in the OIC Fund. Mr. Watson said that when planning for this started two years ago there were some projections for worst case/best case and the balance in the OIC Fund is much better than the best case scenario. Mr. Koskey noted that this was all taken into consideration when DSWA started looking at the long range forecast last summer and putting the DDF Agreement in place. Mr. Esposito asked if there were any plans for the balance of the OIC Fund. Mr. Koskey said that it most of it would be held in reserve and some would be used for capital improvements projects. Mr. Griffiths asked if this would change DSWA’s bond rating. Mr. Koskey said that DSWA would be meeting with Moodys and S&P later this year and would expect it to be better.

Mr. Griffiths	Yes
Mr. Paraskewich	Yes
Ms. Parks	Yes
Mr. Sheldon	Yes
Mr. Strickland	Yes
Mr. McCabe	Yes
Mr. Esposito	Yes

Motion Adopted

(7 Yes, 0 No, 0 Absent)

NEW BUSINESS

Ms. Roddy informed the Board that DSWA had received a Secretary’s Order from the Department of Natural Resources and Environmental Control (DNREC) regarding the transfer stations. This is a result of Notice of Violations DSWA has received over the last two years. It focuses on the leachate leaking from the transfer trailers at the sites. DSWA staff and contractors have been working on a corrective action and inspecting the trailers. DSWA staff is working with DNREC to address the conditions in the Order.

PUBLIC COMMENT

No comment

Motion – Mr. Sheldon

“The Board Meeting is adjourned.”

Second – Mr. Griffiths

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

Motion Adopted
(unanimous)

Respectfully submitted,

Pamela R. Williamson

Meeting Adjourned: 5:05