

**MONTGOMERY-OTSEGO-SCHOHARIE SOLID WASTE MANAGEMENT  
AUTHORITY  
BOARD MEETING #11**

**DATE:** November 6, 2008

**LOCATION:** Howes Cave Administrative Complex

**Members Present**

Martha Clarvoe  
John Mattas  
Meredith McNeil  
David Parker  
Olga Podmajersky  
Phil Skowfoe  
John Thayer  
Edward Wesnofske

**Members Absent**

**Others Present**

Gilbert Chichester  
Barbara Corrigan  
Robin Loske  
Chris Chale  
Psalm Wyckoff

**1. Opening**

Chairman Wesnofske opened the meeting at 4:40 p.m.

**2. Adoption of Agenda**

Meredith McNeil motioned to accept the Agenda. John Thayer seconded the motion.

John Thayer stated that he would like to discuss the letter sent to Montgomery County relative to a lawsuit regarding the GAT shortfall.

John Mattas stated that he would like to discuss the March management increases.

Philip Skowfoe stated that he would like to discuss a memo he received relative to the Oneonta Transfer Station.

Chairman Wesnofske stated that Mr. Thayer's and Mr. Mattas's subject will be discussed under "Other Business" and Mr. Skowfoe's subject could be discussed during the consideration of Resolution Number 62 dealing with the Oneonta Transfer Station.

On voice call the Agenda was approved.

**3. Privilege of the Floor**

Chairman Wesnofske offered privilege of the floor. No one came forth.

**4. Minutes of Prior Meetings**

David Parker motioned to accept the minutes of the September 18<sup>th</sup> meeting as written. Martha Clarvoe seconded the motion and on voice call the motion was unanimously approved.

Meredith McNeil motioned to accept the minutes of the October 1<sup>st</sup> meeting as written. David Parker seconded the motion and on voice call the motion was unanimously approved.

Meredith McNeil motioned to accept the minutes of the October 29<sup>th</sup> meeting with a change in the third paragraph to reflect that the Board went into executive session to discuss pending litigation with counsel. David Parker seconded the motion and on voice call the motion was approved with seven members voting in favor and one member (Thayer) abstaining because he was not at the meeting.

**5. Reports**

**Chairman's Report**

Chairman Wesnofske stated that he would like to discuss the pending litigation between MOSA and Montgomery County and asked Chris Chale, the Authority's legal counsel, to address the issue.

Ms. Chale stated the Board should go into executive session to discuss any pending litigation.

Philip Skowfoe motioned to go into executive session to discuss pending litigation. The motion was seconded by John Thayer.

Chairman Wesnofske stated that he did not think citing pending litigation is a proper reason to go into executive session. Mr. Wesnofske explained that after looking at information regarding open meetings, the purpose of entering into executive session is designed to protect the litigation strategy from being known by the adversary. He felt that MOSA has a peculiar situation because there is a member of the Board of the adversary that serves on the MOSA Board. He felt that under the circumstances there would be no need to enter into executive session.

Ms. Chale stated that if there is a need to enter into executive session and if that Board member feels that he has a conflict with his ability to maintain confidential communication with counsel over the litigation matter that MOSA has commenced then he needs to recuse himself from one or both Boards.

Mr. Wesnofske stated that Ms. Chale raised a legitimate point. He pointed out that the party has not volunteered to recuse himself from the issues at hand in the litigation. Mr. Wesnofske felt that the offering of a settlement is not litigation strategy.

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Ms. Chale responded that it does involve litigation strategy – it has to.

Mr. Wesnofske reiterated that an offer of settlement is not litigation strategy. He stated that whether the Authority accepts an offer or not is a matter of public record. Mr. Wesnofske stated it is also important for the Counties, who appoint the MOSA Board members, to know what the positions of their own appointees are and that is why it is not easy just to slip into executive session in order to discuss the issue.

Ms. Chale responded that there is nothing easy about an executive session. She stated that she could not have a settlement discussion without having a private session with the Board.

John Thayer took the floor and offered to recues himself from the executive session. Prior to going into executive session Mr. Thayer wanted to state that he knows that Montgomery County has cut the check to pay the outstanding shortfall. The check was cut immediately after the Montgomery County Board of Supervisors passed a resolution authorizing the same. Mr. Thayer felt that it was not proper for the MOSA Board to want Montgomery County to pay legal fees because this matter did not go to court. He pointed out that the MOSA Board authorized getting a second opinion on the matter and it was their decision to incur that cost.

Mr. Thayer stated that the MOSA Board was trying to get itself out of a pickle that the Chair put them in. Mr. Thayer pointed out that he was the one who offered the motion for a second opinion which was adopted by the MOSA Board. The pickle was that there were members of the MOSA Board who said they were having problems with the Service Agreement. Under the circumstances, Mr. Thayer did not think it was proper to ask Montgomery County to pay legal fees and interest. Mr. Thayer stated that the check has been cut and signed and all that the Montgomery County Board of Supervisors is asking for is a release from pending litigation.

Mr. Thayer stated that if the MOSA Board chooses to go into executive session he would recues himself from said executive session.

Mr. Wesnofske responded that it is not just an issue of legal fees for the second opinion. He stated that the fees are for the actual filing of the case which was at least \$7,500 and the other \$6,000 for the second opinion could be discussed or debated.

Mr. Thayer pointed out that the MOSA Board did not allow the Montgomery County Board of Supervisors the opportunity of enough time to get their second opinion. Once they received their second opinion, and on the advice of counsel, the Montgomery County Board passed a resolution to pay the remaining balance of the shortfall.

Both Mr. Skowfoe and Mr. Thayer recanted their motion to go into executive session.

David Parker motioned to go into executive session to discuss the pending litigation. Martha Clarvoe seconded the motion and on voice call the motion was approved with six

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members voting “aye”, one member (Skowfoe) voting “nay” and one member (Thayer) “abstaining”.

The executive session began at 4:57 p.m. The meeting reconvened at 5:27 p.m.

Philip Skowfoe motioned to accept, from Montgomery County, the settlement payment for the remainder of the 2007 GAT shortfall and forego the legal and interest fees. John Thayer seconded the motion.

Mr. Wesnofske stated that there is still the issue with the interest owed. He pointed out that Montgomery County’s shortfall would have been greater if it were not for Otsego and Schoharie Counties.

Mr. Thayer stated that he was not aware that MOSA had filed a suit against Montgomery County and was approached by the Board of Supervisors when walking into a meeting that MOSA was suing the County. He felt there was a lack of communication and also a timing issue relative to this matter.

John Mattas motioned to amend Mr. Skowfoe’s motion to accept half of the amount owed for legal and interest fees. David Parker seconded the motion and on roll call the motion was defeated with two members (Mattas, Parker) voting “aye”, five members voting “nay” and one member (Thayer) “abstaining”.

The original motion offered by Mr. Skowfoe was defeated with three members (Mattas, Podmajersky, Skowfoe) voting “aye”, four members voting “nay” and one member (Thayer) “abstaining”.

Mr. Thayer stressed that the whole situation was a lack of communication and a timing issue.

Mr. Thayer motioned to reconsider the motion to accept the settlement payment from Montgomery County for the remainder of the 2007 GAT shortfall. Philip Skowfoe seconded the motion and on roll call the motion was approved with five members voting “aye”, two members (McNeil, Wesnofske) voting “nay” and one member (Thayer) “abstaining”.

**Executive Director’s Report**

Mr. Chichester distributed a written report of his current activities as attached hereto.

Mr. Wesnofske asked the status of the GBB report. Mr. Chichester responded that GBB is moving forward within the prescribed time.

**Financial Report**

Ms. Corrigan reported that she has made transfers between accounts and there will be more budget transfers.

Ms. Corrigan indicated that she would like to reformat the report by dividing it into two parts and adding graphs. She felt that the GAT portion should be represented in a separate report from the financial information. She hoped to have this accomplished by the end of the year.

Mr. Parker noted that Montgomery County's GAT tonnages increased for September.

Chairman Wesnofske suggested moving forward with the Resolutions before the Committee reports because Mr. Thayer had to leave by a certain time. All members agreed to move forward with the Resolutions.

**6. Resolutions**

**Resolution Number 58 Authorizing the Transfer of Budget Funds} Sponsored by Meredith McNeil – Seconded by John Thayer**

The Resolution authorized the following transfers:

| <b>From:</b>                     | <b>To:</b>                                   | <b>Amount:</b> |
|----------------------------------|--|----------------|
| 9099-61-061 – Contingency        | 4210-50-063 – Landfill Repairs & Maintenance | \$4,077.73     |
| 4214-50-063 – Asphalt Surface    | 4204-50-063 – Leachate Cleaning              | \$6,106.00     |
| 9099-61-061 – Contingency        | 4291-61-061 – Legal Aid                      | \$9,729.71     |
| 0206-00-000 – Rate Stabilization | 4291-61-061 – Legal Aid (Res 35 7-24-08)     | \$5,270.29     |
| 9099-61-061 – Contingency        | 4291-61-061 – Legal Aid                      | \$5,000.00     |

On voice call the Resolution was unanimously adopted.

**Resolution Number 59 Authorizing Paid Leave Time for Breast and Prostate Cancer Screening for Full Time Authority Personnel} Sponsored by Martha Clarvoe – Seconded by John Thayer**

The Resolution authorized any full time employee of the Authority to be paid for up to four hours of leave time for the purpose of being screened for either breast or prostate cancer each year so long as no court decision impacts this right.

On voice call the Resolution was unanimously adopted.

**Resolution Number 60 Authorizing the Restructuring of the Buildings & Grounds and the Equipment Maintenance Functions into a Maintenance Division Encompassing all Maintenance Functions} Sponsored by John Thayer – Seconded by David Parker**

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The Resolution established the following positions to be allocated in the 2009 Operating Budget:

| <b>Title</b>                   | <b>Classification</b> |
|--------------------------------|-----------------------|
| Fleet & Facilities Manager     | Management            |
| Buildings & Grounds Specialist | Grade K               |
| Heavy Equipment Mechanic       | Grade M               |
| Maintenance Technician         | Grade I               |

Mr. Thayer asked if this would allow extra help for the Buildings and Grounds person since this person has been responsible for all the building and grounds functions by himself. Mr. Chichester responded that the Maintenance Technician will help the Buildings and Grounds Specialist.

On voice call the Resolution was unanimously adopted.

**Resolution Number 61 Establishing the Discrimination and Harassment Policy} Sponsored by John Thayer – Seconded by John Mattas**

Philip Skowfoe referred to page 2 of the Policy – “Supervisory Responsibility”. In the last sentence it states that any and all complaints should be reported to the Executive Director or his/her designee. Mr. Skowfoe felt that any violation of the policy should be reported to the Board or the Personnel Officer. Mr. Wesnofske responded that it is a question of interpretation.

Meredith McNeil motioned to postpone the Resolution and send it back to the Personnel Committee for further review. Philip Skowfoe seconded the motion and on voice call the motion was unanimously approved.

At this point, Mr. Thayer left the meeting.

**Resolution Number 62 Authorizing Executive Director to Approve Change Order for the Protection and Stability of the Oneonta Transfer Station} Sponsored by David Parker – Seconded by Meredith McNeil**

The Resolution authorized the Executive Director to execute Change Order #2 with Tioga Building Company, Inc. to immediately take the recommended actions to protect and stabilize the transfer building at the Oneonta Transfer Station. The Executive Director would also be authorized to engage John P. Stopen Engineering Partnership to develop plans for repairing and stabilizing the skirting/deflector at the tip wall of the Oneonta Transfer Station and solicit estimates for Change Order #3 for such repairs. The Operations Committee will be responsible for reviewing Change Order #3 and taking the appropriate action.

Mr. Skowfoe referred to a memo that he received from the MOSA Chairman of the Board, which indicated that the cleanup work had already been started at the Oneonta Transfer

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Station when in fact it had not. Mr. Wesnofske apologized and stated that when he wrote the memo he was under the impression that the work had started.

Mr. Chichester explained the need for the repairs as reflected in the attached memo addressed to the Operations Committee.

On roll call the Resolution was adopted with five members voting “aye”, two members (Mattas, Skowfoe) voting “nay” and one member (Thayer) “absent”.

**Resolution Number 63 Revising the Budget Transfer Policy} Sponsored by Meredith McNeil – Seconded by Martha Clarvoe**

The proposed Policy would change some wording and increase the amount from \$1,000 to \$5,000 for budget transfers before it would need to be approved by the Board (attached hereto).

Ms. Podmajersky motioned to leave the amount at \$1,000. Philip Skowfoe seconded the motion and on voice call the motion was defeated with four members (Clarvoe, McNeil, Parker, Wesnofske) voting “nay”, three members (Mattas, Podmajersky, Skowfoe) voting “aye” and one member (Thayer) “absent”.

On roll call the Resolution was defeated with three members (Clarvoe, McNeil, Parker) voting “aye”, four members (Mattas, Podmajersky, Skowfoe, Wesnofske) voting “nay” and one member (Thayer) “absent”.

**Resolution Number 64 Revising the Purchase Order Policy} Sponsored by Meredith McNeil – Seconded by Martha Clarvoe**

Due to changes in the Department of Finance and Administration the current Purchase Order Policy is outdated. The proposed changes to the policy are attached hereto.

Olga Podmajersky motioned to amend to leave the amount of \$5,000 in Section I, item 3 and Section III, item 2. John Mattas seconded the motion and on voice call the motion was approved with four members (Mattas, Podmajersky, Skowfoe, Wesnofske) voting “aye”, three members (Clarvoe, McNeil, Parker) voting “nay” and one member (Thayer) “absent”.

On roll call the Resolution was adopted as amended with six members voting “aye”, one member (McNeil) voting “nay” and one member (Thayer) “absent”

**Resolution Number 65 Authorizing the Executive Director to Take the Necessary Steps to Solicit Bids for Repairs to the Central and Eastern Landfills} Sponsored by Meredith McNeil – Seconded by Martha Clarvoe**

The Resolution authorized the Executive Director to take the necessary steps, including entering into an agreement with Golder Associates, to prepare bid documents and solicit proposals for implementing repairs to the Eastern and Central Landfills.

Mr. Mattas asked if the Montgomery County DPW could perform some of the repairs. Mr. Skowfoe stated that he did not think that County DPW's can do work for other municipalities.

Mr. Chichester responded that the Counties can do work for other municipalities through an inter-municipal agreement. Mr. Chichester indicated that by talking to the Commissioner of the Montgomery County Public Works in the past, he has the feeling that the DPW is already shorthanded and very busy with its own work. Mr. Chichester pointed out that the repairs on the landfill need to be addressed in the appropriate manner as to prevent future washout, etc., which should be performed by engineering professionals.

Meredith McNeil motioned to amend the Resolution to add the following words to the first "Resolved" clause "for a cost not to exceed \$20,000 without further Board approval". David Parker seconded the motion and on voice call the motion was unanimously approved.

On roll call the Resolution was unanimously adopted as amended.

**Resolution Number 66 Authorizing the Executive Director to Engage Professional Services Relative to Post Closure Maintenance and Monitoring Costs for all Landfills Owned by the Authority} Sponsored by David Parker – Seconded by Meredith McNeil**

The Resolution authorized the Executive Director to engage Golder Associates to perform a review of the long term needs for the closed landfills, develop a plan for the required long term post closure maintenance and monitoring and estimate the cost of implementing said plan.

Olga Podmajersky motioned to amend the first "Resolved" clause by adding the words "for a cost not to exceed \$25,000 without further Board approval". David Parker seconded the motion and on voice call the motion was unanimously approved.

On roll call the Resolution was unanimously adopted as amended.

**Resolution Number 67 Authorizing Payment for Scale Indicators from Equipment Replacement Fund} Sponsored by Meredith McNeil – Seconded by Martha Clarvoe**

Ms. Corrigan explained that the scale indicators were needed because of the upgrade to the scale accounting system so that they would be compatible.

Mr. Chichester indicated that funds had been set aside in the Equipment Replacement Fund for this purpose. Thus it seemed appropriate to use these funds rather than other resources.

On voice call the Resolution was unanimously adopted.

**7. Committee Reports**

**Finance Committee**

Mr. McNeil reported that the Finance Committee met on November 5<sup>th</sup> and reviewed the Capital Budget. To comply with the Public Authority Reporting Information System (PARIS) the Board should extend the Capital Budget through 2013 and formally approve the budget. Other matters that the Committee reviewed were addressed in the above resolutions.

**Planning Committee**

Ms. Clarvoe stated that the Committee has not met since the last Board meeting. She did report that she and others visited the Waste-to-Energy Plant operating in conjunction with OCRRA and would put something together regarding the tour and present it to the Board.

**Operations Committee**

Mr. Parker reported that the Operations Committee has not met since the last Board meeting and had nothing new to report.

**Personnel Committee**

Mr. Skowfoe reported that the Personnel Committee met for a short meeting before the three County meeting on October 29<sup>th</sup>. The new Harassment Policy was distributed to the Committee but was not discussed.

**Governance & Ethics Committee**

Mr. Wesnofske reported, in the absence of John Thayer, that the Governance & Ethics Committee has not met since the last Board meeting and has nothing to report.

**Audit Committee**

Ms. Podmajersky stated that the Audit Committee has not met since the last Board meeting.

Ms. Podmajersky reported that the Independent Auditors had been in the main office to start their preliminary work for the 2008 Audit. The Auditors have indicated that they would like to meet with the Audit Committee and Ms. Podmajersky asked members to come up with three tentative dates for this meeting. The members chose November 25<sup>th</sup>, December 2<sup>nd</sup> and 3<sup>rd</sup>.

Ms. Podmajersky also reported that the Fraud Investigator, Paul Zereki, would like to meet with two of the Board members for about half hour on December 2<sup>nd</sup>, 9<sup>th</sup> or 10<sup>th</sup> at 2:00 p.m. She indicated that she would like to be one of the Board members to meet with him.

**8. Other Business**

**Management Increases**

John Mattas stated that he would like to discuss the management salary increases that were authorized by the Executive Director.

Mr. Parker stated that the matter should be addressed in a Personnel Committee meeting.

Mr. Skowfoe stated that the Executive Director was in violation of the MOSA Employee Handbook by authorizing the increases. He referred to page 600-1, section 601, and read that the rate of pay and merit increases will be established by the Board.

Mr. Chichester responded that there was an opinion prepared and presented on this matter that should be reviewed by the Personnel Committee.

**Otsego County Cleanup**

Mr. Parker stated that 102 tons of waste was received at the Cooperstown Transfer Station for the Otsego County Cleanup, which is intended to help raise the GAT tonnages.

**Flow Control**

Mr. Parker reported that Otsego County was going to hold a flow control meeting on November 18<sup>th</sup> and haulers were invited to attend.

Mr. Parker also distributed a newspaper article from the Daily Star, which indicated that flow control would help (attached hereto).

**9. Closing**

Meredith McNeil motioned to adjourn the meeting. David Parker seconded the motion.

The meeting adjourned at 8:15 p.m.

Respectfully Submitted,

Robin Loske  
Confidential Secretary