

**MONTGOMERY-OTSEGO-SCHOHARIE SOLID WASTE MANAGEMENT AUTHORITY
SPECIAL BOARD MEETING #12**

DATE: November 4, 2009
LOCATION: MOSA Administrative Complex, Howes Cave

Members Present:

Martha Clarvoe
John Mattas
David Parker
Olga Podmajersky
Philip Skowfoe
John Thayer
Harold Vroman
Edward Wesnofske

Others Present:

Barbara Corrigan
Christine Chale
Dennis Heaton
Evelyn Lindley
Heather Nellis

1. Opening – Roll Call

Chairman Thayer called the meeting to order at 1:35 p.m. and asked for roll call.

2. Adoption of Agenda

Chairman Thayer asked for a motion to adopt the agenda. Mr. Wesnofske so moved, Ms. Clarvoe seconded and on voice call the agenda was unanimously adopted.

3. Privilege of the Floor

Chairman Thayer offered the privilege of the floor to members of the public. No one came forth.

4. Post Closure

Chairman Thayer invited Ms. Chale to take the floor and point out and explain the changes made to the post closure agreement since the last draft was reviewed.

Ms. Chale reported the following changes:

1. Purpose
 - ✓ Changed “trust fund” to “municipal guaranty”
 - ✓ Clarifying language in the last sentence
2. Representations
 - ✓ Regulatory compliance
3. Commitment & Guarantee of Montgomery, Otsego & Schoharie Counties
 - ✓ Changed language “initial post closure term” to “post closure period”
4. Allocation of Expenses
 - ✓ Added language “is reflective of estimates of land use, population, waste generation, and historic use of the landfills and”. After some discussion about this added language it was the consensus of the Board to accept the wording adding only “estimates of” as shown underlined above.
5. Designated Post Closure Manager
 - ✓ Many language changes in this section – please refer to the attached redline version of the agreement for all of them.
 - ✓ Questions arose as to who a third party manager would report to, MOSA or the Counties. Ms. Chale advised that the agreement calls for the manger to report to the Counties. After much discussion on this issue, the following points were raised:
 - Some members believe a third party manager should report to the owner, MOSA.
 - MOSA could in turn report annually to the Counties on the manager’s performance.

- Reporting to the Counties would be like having three different bosses and create confusion.
 - The Counties will choose the manager after 2014 and create a separate agreement with them.
 - If MOSA is not the manager it will have no input in how a third party manages the landfills; only the Counties will.
 - If MOSA only exists on paper the Counties are accountable for the landfills except for an attachment on MOSA's assets.
 - The Counties will control approval of the AER if MOSA is not the manager.
- ✓ Out of this discussion, the following changes in language were made:
- B. MOSA as Manager – added “When MOSA Acts” and “except items (E)(8) and (E)(9) thereof”, to the second paragraph.
 - E. Obligations of the Manager – changed the “bullets” to “numbers” in this section ,1 through 10, and added the following language to #1 “(a) If MOSA is the manager, for retaining and managing the engineer, in the conduct of the required annual site evaluation of the landfills and the preparation of the Annual Engineer’s Report (AER)” and “(b) If MOSA is not the manager,” ...
6. Annual Engineer’s Report
- ✓ Changed some procurement guidelines language.
 - ✓ Changed date of first AER to be completed no later than August 1, 2010.
7. Method of Funding
- ✓ Tip Fee Method – Some small language changes and addition of language; “MOSA will determine the monthly reconciliation and payment of any difference. In each year MOSA will determine the per ton amount properly allocable to the Post Closure Expenses for each County for this purpose.” Counties choosing this method would need a separate agreement at this time and could negotiate something else later.
 - ✓ Annual Lump Sum Method - payments to the Post Closure Operating Fund are due by February 1st.
 - ✓ Discussion of missing post closure costs such as engineering costs, vehicles, etc. Ms. Chale advised that a revised “Estimate of Post Closure Expenses for 2010” to include these costs would be attached to the agreement as a “Schedule A”.
8. Post Closure Operating Fund
- A. Establishment of Fund – added language that if MOSA is not the manager, the Counties will establish the fund as co-owners to allow for flexibility if one County leaves.
 - B. Source – language changed/added to clarify methods of payment.
 - C. Post Closure Expenses – lists types of things that come out of the Operating Fund.
 - D. Disbursements – language changed to establish that the “Manager” authorizes withdrawals from the fund for the sole purpose of paying expenses.
9. Post Closure Reserve Fund
- A. Establishment of Fund – the Counties establish this fund and control it; MOSA has no say in this.
 - B. Source – MOSA’s \$1 million from existing reserves does not belong to the Counties; it remains MOSA’s.
 - C. Interest Earnings - minor language changes.
 - D. County Approval – minor language changes.
 - E. Extraordinary Expenses – Counties control/authorize withdrawal of funds for such purpose.

10. Ownership

- ✓ Ms. Chale advised that she had reviewed the C&D Landfill deed and that it too was included in the reversionary clause along with the Northern Transfer Station.
- ✓ Discussion ensued on the history of the landfills and how this post closure agreement came to be with MOSA maintaining ownership of the landfills instead of joint ownership with the Counties. It was suggested that language be added to the agreement and/or the Resolution to adopt the agreement outlining these events. After continued discussion, it was the consensus that there was no need to elaborate on ownership in either document; that if necessary, it could be added to the resolution.

11. MOSA

- ✓ Minor language changes – no discussion.

12. Term; Amendments

- ✓ This agreement is being executed prior to defeasance and the transfer of \$1 million from MOSA.
- ✓ The agreement remains in effect until 2029 unless DEC advises otherwise.

13. Successors and Assigns – no changes; no discussion

14. Dispute Resolution – no changes; no discussion

15. Notice – no changes; no discussion

16. Indemnification – no changes; no discussion

17. Insurance

- ✓ Language has been simplified.

18. Invalidity – no changes; no discussion

19. Waiver – no changes; no discussion

20. Records – no changes; no discussion

21. Entire Agreement – no changes; no discussion

22. Headings – no changes; no discussion

23. Counterparts – no changes; no discussion

Schedule A – Estimate of Post Closure Expenses for 2010

Discussion ensued on Operating Expenses with the following points being made:

- ✓ Engineers and equipment have not been budgeted for.
- ✓ Suggestion to amend the budget to take care of this or funds could be taken from Rate Stabilization or Contingency to cover non-budgeted expenses.
- ✓ Suggestion to have the Counties ask DEC to accept a municipal agreement instead of money; if DEC accepts; you are off the hook for the actual funds.
- ✓ Need to present a model to the Counties of the type of allocations for post closure expenses – this need to be a full disclosure of all costs.
- ✓ If using the “Tip Fee Method” , a separate agreement would be necessary for each County; Ms. Chale suggested using one basic agreement with separate Riders instead.

Chairman Thayer called a short recess at 2:55 p.m. so that Ms. Chale could contact Mr. Arnold to review the changes to the agreement so that the Board might consider Resolution #62 at today’s meeting.

Chairman Thayer called the meeting back to order at 3:12 p.m.

Ms. Chale reported that she had spoken to Mr. Arnold who was agreeable to the changes in the agreement. She suggested that the Board may want to consider sharing the agreement with DEC prior to its execution. Ms. Chale advised that she would have copies of the agreement ready for the Counties by the following Tuesday (November 10th).

5. Resolutions

a. Resolution #62 – Authorizing the Execution of a Post Closure Monitoring & Maintenance Agreement with Montgomery, Otsego and Schoharie Counties

Ms. Chale read an additional “whereas” clause into the resolution. Chairman Thayer then asked for a sponsor and a second. Mr. Mattas so moved and Mr. Vroman seconded. Chairman Thayer asked Mr. Wesnofske if he wanted to add a statement of history as discussed earlier in the meeting; Mr. Wesnofske remarked that the resolution was acceptable as written. Chairman Thayer asked for discussion.

Mr. Parker commented that as long as the words “of estimates” was inserted on page 4, number 4. Allocation of Expense, he had no other changes. Ms. Chale advised that she had added this language.

On roll call vote, the resolution was unanimously adopted.

b. Resolution #63 – Resolution Authorizing the Acting Executive Director to Execute an Agreement for Financial Advisory Services with Environmental Capital, LLC

Chairman Thayer explained that this resolution was for financial services relating to the defeasance process and asked for a sponsor and a second. Mr. Wesnofske so moved and Mr. Mattas seconded. Chairman Thayer asked for discussion.

Chairman Thayer suggested adding a clause “out of pocket expenses not to exceed”. Ms. Corrigan advised that the attached was not a contract but a letter of agreement and that the Authority would be billed by the hour. Mr. Wesnofske added that validation of expenses would have to be provided for travel, etc. Chairman Thayer remarked that the resolution was acceptable as written.

On roll call vote, the resolution was unanimously adopted.

Ms. Chale will work with Mr. McCarthy and report to the Board prior to the next meeting, which is scheduled for December 10th at 2:00 p.m. Chairman Thayer suggested that Ms. Chale meet with the Finance Committee prior to the Board meeting to discuss Mr. McCarthy’s calculations. Ms. Corrigan will contact Mr. McCarthy to get an idea as to when a meeting should be scheduled.

6. Executive Director Applicants

Ms. Clarvoe made a motion to go into Executive Session to discuss the applicants; Mr. Skowfoe seconded and on voice call the motion carried. Executive Session began at 3:40 p.m.

Mr. Mattas made a motion to come out of Executive Session at 4:08 p.m.; Mr. Wesnofske seconded and on voice call the session ended.

Chairman Thayer called the meeting back to order at 4:15 p.m.

c. Resolution #64 – Naming Preferred Candidate for the Position of Executive Director and Authorizing Negotiations of Terms of Employment

Chairman Thayer asked for a sponsor and a second. Mr. Wesnofske so moved and Ms. Podmajersky seconded. Chairman Thayer asked for nominations.

Mr. Parker nominated David Decker and Mr. Wesnofske seconded. Mr. Mattas nominated Dennis Heaton and Mr. Skowfoe seconded. Chairman Thayer asked for discussion.

Mr. Parker remarked that Mr. Decker's experience speaks for itself; as a chemical engineer, with landfill maintenance and closures and with many types of project management duties. Mr. Decker currently serves as Executive Director of the Lake George Watershed Coalition and is responsible to nine local municipalities, three Counties and five State agencies, including DEC, for their multiyear program of resource conservation and water quality protection initiatives throughout the Lake George basin. Mr. Decker is the sole staff member of this multi agency organization and handles all aspects of running it, including dealing with diverse entities; he has been successful in this position for the last 10 years. He reports to the Deputy Secretary of State at the NYS Department of State. Mr. Decker's professionalism and background makes him the best candidate.

Mr. Skowfoe remarked that he only supervises himself. Mr. Parker responded that Mr. Decker is responsible for bringing consensus among nine diverse groups of people and remarked, that is supervision to him.

Chairman Thayer remarked that Mr. Decker is a strong candidate with military experience; however, he is concerned that he has no public authority experience. He went on to say that he had a hand in closing two landfills, which is a plus, but he didn't feel he had researched MOSA enough. Mr. Parker responded that Mr. Decker had done a thorough internet investigation of the Authority. Chairman Thayer remarked that from his notes, he hadn't. Ms. Podmajersky remarked that she thought he had; but her memory was not clear on it.

Chairman Thayer asked for roll call on Mr. Decker's nomination. Roll call results were Ms. Clarvoe, Mr. Parker and Mr. Wesnofske voting aye and Mr. Mattas, Ms. Podmajersky, Mr. Skowfoe, Mr. Thayer and Mr. Vroman voting nay.

Chairman Thayer asked for discussion on Mr. Heaton.

Mr. Wesnofske asked if members had copies of the memo he sent to them, which included a report on the business credentials of Mr. Heaton. Mr. Wesnofske summarized from the memo as written below, a complete copy of which is attached to these minutes:

“Attached you will find public documents from the NYS Department of State filings under NYS Uniform Commercial Code.

These documents record some of the business history and practices of Mr. Heaton's Sunset Refuse before his liquidation of the Company's assets in the sale to County Waste.

They provide evidence of business practices that are irregular and irresponsible. Those practices are withholding income tax and social security payments from employee wages and not making those proper payments to US government when due.

The documents show the long term, repeated practice of Sunset Refuse to properly Make the required payments from 2000-2005.

In addition, my memory [Mr. Wesnofske's] is Sunset Refuse issued multiple bad checks to MOSA, and by Mr. Heaton's own account, to employees of Sunset Refuse. Over the years, considerable staff and legal resources were applied to getting bad checks made good and retrieving security from a Nevada bond agent of Mr. Heaton's (over Mr. Heaton's objections) at a time when he owed MOSA large amounts of money.

In managing his office in such a way as to not pay employer taxes and withholding, he exposed his office employee to legal jeopardy for calculated noncompliance with the US tax code. This is not the act of an employer thinking about his employees.

In not paying when due the Social Security taxes withheld from Sunset Refuse employees and the employers share, he risked the future social security and Medicare benefits of his employees. This is not the action of an employer thinking about his employees. Only with the sale of his business, the presence of enough final assets, and the payment of \$99,400 in the final IRS tax liens in April 2007, did that risk from multiple year of failure to pay finally disappear.

In issuing bad checks to MOSA to pay for his waste, he was acting irresponsibly. In issuing bad checks to his employees, he jeopardized their ability to pay bills and potentially experience credit and payment record problems.

I hope our Authority members can be in agreement that the image of the Authority should reflect a manager history and experience that reflects financial integrity and responsibility.

Our municipal partners desire integrity and responsibility in leadership. The State of New York has a desire for financial integrity to the Authority's operations. Our auditors would want to be confident in dealing with a management that did not make end runs around policy, procedure and the law. The respect of our employees for the Board and management requires a management person whose experience brings a mark of integrity, honesty and credibility rather than embarrassment and irresponsibility. The hauler community wants to know that the Authority will operate with financial integrity.

And finally, the public will expect the Authority to look to a person with a history of integrity in their business and professional life to lead our agency."

Mr. Wesnofske stated that for these reasons he feels he cannot support the candidacy of Mr. Heaton; as desirable as other attributes he might have, these are fatal.

Mr. Skowfoe remarked that we are from a society that if you do something wrong, you get a second chance and can prove yourself right; we should set the wrongs aside and look toward the future. He went on to say that you can't keep penalizing somebody if they had a problem, straighten things out and bring everything up to specs; he believes the documents provided by Mr. Wesnofske show everybody has been made whole. Mr. Skowfoe stated that he will support him as a candidate.

Chairman Thayer added, in Mr. Heaton's defense, it took some time, but everybody was made whole.

Mr. Parker remarked that he believes Mr. Heaton has a business model in his head and that business model perfectly fits an entrepreneurial role, not a Public Authority's role. He went on to say that he is not comfortable at all micro managing or with taking a micro managerial role in order to have the opportunity to find something wrong. Chairman Thayer responded that they had been doing that already.

Mr. Skowfoe remarked that a business plan is a good thing; it may not fit with being a public entity, but that is what we need. He went on to say if it weren't for tax payers, local governments would be broke. If a business is run right it makes money and that is where we need to go with this entity.

Chairman Thayer remarked that his personal opinion on Mr. Heaton was that he has scars but he believes he can not only run the Authority, but turn it around. He went on to say that he believes Mr. Heaton has experience, history, connections and is familiar with the players in the industry. He thinks he can fill the role and be successful in the role. The job of the Board is oversight and vision. We are remiss in our duties if we don't hold our Executive Director's feet to fire to be sure he is following the mission as we see it. There is more oversight here than most private industry will ever have. He continued, saying that Mr. Heaton has scars, but he also has accomplishments; he sold a business that had financial problems for a profit and was able to manage a good sized operation in central New York with 90 employees and \$17 million in revenue, which is almost double what we do here. Mr. Wesnofske asked if the position he held was that of Executive Director; Chairman Thayer answered that he was not the Executive Director, he was the manager. He went on to say that he supports his candidacy.

Mr. Skowfoe stated that he believes he can do it but he is under the gun to do it. He serves at the pleasure of this Board and won't be here long if he can't do the job.

Ms. Clarvoe asked Mr. Heaton if he planned on giving up his job with Montgomery County; Mr. Heaton said it was a given. Chairman Thayer remarked there was no way he could hold both positions.

Mr. Wesnofske inquired as to whether there was a time bar (6 months to a year) on taking a position with an entity with which the County (Montgomery) has had a business relationship. Chairman Thayer responded that he was not aware of any and that he believed it may have more to do with a private entity rather than a public authority doing business with the County. Ms. Podmajersky noted that there may be reference to this in the ethics policy. Mr. Skowfoe remarked that large companies may have these policies but he doesn't believe the Counties do.

Ms. Chale noted that in many public authorities and the State there are policies and requirements that an employee is not permitted to take a position for 2 years, or a lifetime bar if you were directly involved. She noted that rules are specific to a particular County. She suggested looking at Montgomery County's ethics policy for its rules.

Ms. Clarvoe asked if someone would check the ethics policy; Chairman Thayer stated that he would.

Ms. Clarvoe stated that she would like to put this out again and look for more candidates; she didn't feel we got the best there is in New York State.

Ms. Podmajersky remarked that she didn't believe we would get any different candidates; what we got was typical.

Mr. Wesnofske stated that he thought the advertizing strategy had been limited to only the Capital District and the three Counties. Ms. Corrigan remarked that there had also been internet advertising.

Chairman Thayer remarked that two of the candidates were from Virginia.

Mr. Skowfoe stated that time was of the essence if we want to move forward; if it doesn't work we can reach out again. He went on to say that he doesn't think that will happen; he believes we will be able to turn this around and make it a viable entity for all three Counties.

Chairman Thayer asked for roll call on Mr. Heaton's nomination. Roll call results were John Mattas, Olga Podmajersky, Philip Skowfoe, John Thayer and Harold Vroman voting aye and Martha Clarvoe, David Parker and Edward Wesnofske voting nay.

Chairman Thayer asked for roll call on the resolution as amended with the candidate's name included. Roll call results were John Mattas, Olga Podmajersky, Philip Skowfoe, John Thayer and Harold Vroman voting aye and Martha Clarvoe, David Parker and Edward Wesnofske voting nay.

Chairman Thayer noted that the Personnel Committee would need to set up a meeting to negotiate with Mr. Heaton.

Ms. Chale suggested changing the wording from "Employment Contract" to "Terms of Employment".

Chairman Thayer asked if anyone had objection to the change in wording; as no one did, the change will be made before the final resolution is printed for signature.

Chairman Thayer remarked that a Special Board Meeting would need to be called once the Personnel Committee had met with Mr. Heaton.

7. Other Business

Chairman Thayer asked Mr. Vroman if he had an item for other business. Mr. Vroman proposed obtaining approval of the Post Closure Agreement from all three Counties prior to sharing the agreement with DEC for review. He went on to say that the purpose of the agreement is to show that the Counties and MOSA are in agreement so when it is presented to them they will see that all four entities agree.

Ms. Chale stated that the idea is not to send the agreement to DEC for approval but to provide feedback in response to a letter received from DEC relative to post closure. Chairman Thayer asked if it would give more credence if they were given a document that all four entities had agreed to. Ms. Chale responded that she doesn't anticipate any issues from DEC and that it would be presented as a draft agreement that the involved parties were in the process of approving; she is not asking for their comments.

Mr. Vroman stated that he wanted to make his statement a motion; Mr. Skowfoe seconded.

Ms. Chale remarked that she did not think the motion was a good idea; it is a public document anyway and it would be a better idea to share it with DEC now so that they see the MOSA Board has addressed the issue and is working in good faith towards an agreement.

Mr. Wesnofske made a motion to grant Chairman Thayer the decision making strategy on when to share the agreement with DEC.

Mr. Vroman withdrew his motion and Mr. Skowfoe withdrew his second.

Mr. Skowfoe then seconded Mr. Wesnofske's motion to grant Chairman Thayer the decision making strategy on when to share the agreement with DEC; on voice call the motion was approved unanimously.

Ms. Corrigan advised that Otsego County had scheduled their special clean up days at both the Northern and Oneonta Transfer Stations. The Northern Transfer Station will be open an additional 4 days to accommodate their needs.

Chairman Thayer asked for a short Finance Committee meeting after the Board meeting to review and approved the Estimate of Post Closure Expenses for 2010.

8. Closing

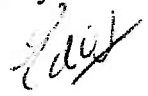
Mr. Parker made a motion to adjourn the meeting; Ms. Podmajersky seconded and on voice call the meeting was adjourned at 4:45 p.m.

Respectfully Submitted,

Judith Beeler,
Confidential Secretary

Montgomery-Otsego-Schoharie Solid Waste Authority

TO : Members of the Authority (email; fax to Skowfoe; attachment US post to Vroman); Authority Counsel; Acting Director

FROM : Ed Wesnofske 

DATE : November 3, 2009

RE : Credentials of Mr. Dennis Heaton

Attached you will find public documents from the NYS Department of State filings under NYS Uniform Commercial Code.

A UCC search can be conducted at:
http://appsext8.dos.state.ny.us/pls/ucc_public/web_search.main_frame

These documents record some of the business history and practices of Mr. Dennis Heaton's Sunset Refuse before his liquidation of the Company's assets in the sale to County Waste in the Spring of 2007.

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Form 941 are the quarterly reports of employer obligations to pay social security and withheld income taxes. Form 940 is the annual reconciling report of employer withholding and taxes for the year.

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In addition, my memory is Sunset Refuse issued multiple bad checks to MOSA, and by Mr. Heaton's own account, to employees of Sunset Refuse. Over the years, considerable staff and legal resources were applied to getting bad checks made good and to also retrieving security from a Nevada bond agent of Mr. Heaton (and over Mr. Heaton's objections) at a time when he owed MOSA large amounts of money.

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And finally, the public will expect the Authority to look to a person with a history of integrity in their business and professional life to lead our agency.

I look forward to the open and public discussion of financial responsibility and integrity issues for the Authority going forward.