

**Montgomery-Otsego-Schoharie Solid Waste Management
Authority
Finance Committee Meeting**

Date: May 12, 2009

Location: Howes Cave Administrative Complex

Members Present

Olga Podmajersky
Martha Clarvoe
John Thayer (10:08)
Edward Wesnofske (10:07)
Philip Skowfoe (10:25)

Members Absent

Others Present

Gilbert Chichester
Barbara Corrigan
Dennis Heaton
Chris Chale

1. Opening

Ms. Podmajersky opened the meeting on 10:05 a.m.

2. Minutes of Prior Meeting

Ms. Podmajersky had a correction to the April 16, 2009 minutes; there was a typographical error in #3 Investment Report, a. Attachment A – Investment Policy 1) should say 2041-j rather than 2041-i. Mr. Chichester also advised the need to correct the name of the fund on page 3 under #7 Transfers, paragraph 3 to “bond redemption and disposition proceeds”. Also the third paragraph on page 6 was reviewed with Mr. Wesnofske for clarification and the wording changed to “seemed to be willing to take over the financial liability for the closed landfills in a new Service Agreement when Montgomery County is the only county that is legally liable for the landfills”

The minutes were accepted with the above mentioned changes.

3. Review proposed Resolutions on Budget Transfer and Investment Policy changes

Ms. Podmajersky advised that she had reviewed the changes to the Investment Policy and asked Ms. Corrigan if she had reviewed the collateral agreements prior to making the changes in the policy.

Ms. Corrigan replied that the policy had been revised to follow the law as previously the policy was more restrictive than the law. She advised that she had reviewed the collateral agreements and all were in order.

Ms. Podmajersky asked if there were any other questions or comments; as there were none, the Committee agreed to recommend the changes to the Board at the next meeting.

Mr. Thayer asked what the current FDIC amount was; Ms. Corrigan advised that it is \$250,000, however, it was decided to leave the wording as the “maximum allowed” instead of having to revise it as it the current level of \$250,000 could change at any time.

Ms. Podmajersky asked if the Budget Transfer policy was as reviewed at the last meeting; Ms. Corrigan advised that it was. Ms. Podmajersky read the changes that had been agreed upon at the last meeting and the Committee agreed to recommend the changes to the Board.

Mr. Chichester brought forth Resolution 23, authorizing the transfer of budget funds from rate stabilization to the engineering account in the amount of \$4,758.83 to cover the cost of the post-closure estimates. The resolution also projected a transfer from contingency to miscellaneous equipment rental for the rental of

shoring devices at the Oneonta Transfer Station. The committee agreed to recommend the resolution to the Board.

4. Review proposed format for treasurer information and presentation

Ms. Podmajersky advised that this has to do with the abstracts and the auditor's recommendation that review of abstracts should be noted in the Board minutes.

Ms. Corrigan went on to explain the Treasurer's Report she had created for this purpose. Mr. Wesnofske asked if when Board members sign off on the abstract reviews they are signing off on a series of payments; Ms. Corrigan replied that they were. The amount listed on the report is the total of the cash disbursements, the detail of which is contained in the back up documentation for the abstract. Discussion continued regarding matching information to the abstract by itemization going forward instead of a lump sum. It was decided to break out T&D and Debt Service Payment into separate abstracts/line items going forward.

Ms. Podmajersky asked about a treasurer's report that would advise of potential problems, for example, through a "Cash Flow or Revenue Report". Ms. Corrigan stated that she reports issues in her monthly financial reporting to the Board. Ms. Podmajersky responded that it was verbal though, not written. She thinks it would be advantageous to have this type of report to look at.

5. Defeasement Approval

Mr. Chichester reported that he had received copies of resolutions regarding defeasement from both Montgomery and Otsego Counties and that Schoharie County's meeting was coming up so he expected to receive their resolution shortly.

Mr. Skowfoe advised that a motion was made at last month's Schoharie County meeting.

Mr. Chichester presented a MOSA resolution on defeasement drawn up by the Authority's counsel, Chris Chale, for review by the committee. Ms. Clarvoe asked Ms. Chale to explain the 4th paragraph of the resolution in layman's terms. Ms. Chale complied with her request explaining that it is a 4 party service agreement to which the rights to the revenues and to the contract itself are pledged to the trustee to secure the bonds.

Mr. Wesnofske suggested that the "resolves" be more explicit in response to the 1st paragraph on page 2 of the resolution, "Whereas representatives of the Counties have entered into discussions with one another and with MOSA regarding the Counties' desire to provide for defeasance of existing bonds and modifications of the existing Service Agreement..." He noted that the resolves only address the defeasance of the bonds and not consultation on the possibility of modifications to the existing Service Agreement as well. Some of that is related to the bigger questions; there is a presumption in the Gerhardt plan regarding something called "makeup payments" for things like landfill maintenance, etc., which should be thought about in the process of making changes to the Service Agreement. He suggested the need to connect the two when exploring possibilities with the Counties.

Mr. Thayer agreed saying that in the three County meetings the Counties seemed to be more interested in modifications to the Service Agreement than defeasing the bonds.

After some discussion, Ms. Chale revised the wording to include mention of "prospective modification of the Service Agreement" to the committee's satisfaction.

Mr. Wesnofske also asked about consultants for \$25,000 and what type of relationship or consultants we would need to set up arrangements for defeasing the bonds.

Ms. Chale gave a list of the type of consultants needed for just the defeasement side:

- ✓ Financial advisor – to develop the initial plan (identifies the dates, timing, proposed investments)
- ✓ Escrow agent – when ready to implement the plan; imminently (a trustee either the same or different who holds defeasance account)
- ✓ Verification agent – who will review the calculations finally of the amount that is going into the escrow account and give an opinion to the trustee; this is an accounting firm, a CPA that is experienced in these matters. There would also have to be a rebate calculation made because when you close out a bond one of your federal tax requirements is to have a finalized rebate calculation as of the close out date, with notices going out to bond holders of the defeasement. You will need to pick out a date and go with it for the calculation.
- ✓ Engineering consultant – you may have questions to pose to them regards to estimates they have provided.

Ms. Chale further explained that this amount is not based on specific quotes, but an educated guess with a limit on it.

Mr. Wesnofske asked if MOSA could use its current financial advisor or would it be necessary to hire another independent agent as there is a learning curve to understanding MOSA's finances. Ms. Chale responded that it could be the current financial advisor if he was used for crunching numbers but not if there were confidential communications between him and MOSA.

Mr. Wesnofske asked if the verification agent was the important independent look into the calculations and if it were a specialized area. Ms. Chale responded that was the case and that municipal finance tax is a very specialized area. We have used Grant Thornton in the past for rebate analysis. They are a nationwide entity and can do the work from any location. She did not recommend going ahead with engaging them at this stage in the process.

Ms. Podmajersky inquired about investing the bonds; Ms. Chale advised that you would buy treasuries that mature and gain interest, which needs to be a large enough amount to make the principal and interest payments as they come due. If they yield the same as the interest on the bonds you are will have enough to make your payments but if not you will have to add money in order to make the payments. Ms. Podmajersky remarked that this could cost us more money; Ms. Chale agreed and advised that on any given day the amount will change due to what is happening in the market. She suggested that you could get everything ready but not get into the market until it made financial sense; this is why you should have a financial advisor look into the situation for you and give you advice on the timing.

Discussion continued on the current situation of the bonds and possibilities in the future. Ms. Podmajersky commented that this resolution will be proposed to the Board on May 21. Ms. Chale indicated that when the resolution is adopted, you need to be aware that the bond holders are looking over our shoulder to see if we are moving towards defeasement because they will then trade the bonds differently. The Board needs to be aware of that and its ramifications. The bonds trade in the market place and if they are defeased the credit rating goes up because they will then be backed by treasuries. The trustee would be provided notice so as to disseminate disclosure as required by law. MOSA's Board needs to be proactive in telling them what to do.

Mr. Wesnofske's desire is to get something done by November 1st giving 2 months to work on a plan in order to be prepared for the year end shortfall subsidy requirement. He would like to have changes made to

the Service Agreement by year's end in order to escape the need to penalize the Counties with shortfall payments. His feeling is that the need for shortfall payments might cloud the Counties' ability to work together towards a new course of action and would like to avoid this if at all possible.

Ms. Podmajersky wants to change the penalty portion of the Service Agreement now. Mr. Wesnofske agrees that this needs to be changed but that it should be done while beginning the defeasement process. Ms. Chale advised that you cannot change the Service Agreement without defeasing the bonds first. All of those payments are pledged and if you reduce the amount of money available from the counties you will have affected the rights of the bond holders. Ms. Podmajersky wants to go to the bond holders and tell them we want to change the Service Agreement. She would like to have a new Service Agreement in place the minute the defeasement plan it taken care of. Mr. Wesnofske advised that Counties each have their own ideas for the future and it will take time to get a consensus on a new Service Agreement.

Ms. Podmajersky asked Ms. Chale what the next steps would be; she advised that engaging a consultant to work on the proposal for a new Service Agreement and convening a meeting with the working group would be the first steps. Mr. Thayer advised that Montgomery County had not yet had a meeting to discuss the issue; there is not a consensus to use Hans Arnold as far as he knows. Mr. Skowfoe advised that his take on the three County meeting was that they needed a person to spearhead the whole thing and there was a consensus to have Hans Arnold be that person to work on the defeasement and a new Service Agreement. Ms. Chale agreed that this was discussed at the meeting; however, each County will have to decide on its own to agree to have Mr. Arnold or someone else work on a proposal. Ms. Chale also suggested that Rick could run numbers for them if they so desired.

6. Disbursement of Assets

Ms. Chale explained the procedure for disbursement of assets in accordance with the Public Authorities Act. I understand that you adopted a policy on your website for disposition of property. The Statute requires:

1. An appraisal of assets prior to disposal
2. Most assets would be disposed of through bidding; however, you have the option to negotiate with a municipality if you sell at fair market value or you can negotiate for less than fair market value but subject to certain conditions, which include findings that there is a public purpose and is subject to Board resolutions, and findings about the specific reasons for conveying it. There is also a procedural step that requires 90 days notice of negotiated sale and notice to the comptroller and several other parties you are required to report to. The time it takes to do these things needs to be taken into account when developing a plan for the disposal of assets.

Mr. Wesnofske asked if under the auspice of a public purpose property is disposed of at less than market value to a municipality and they turn around and sell it for a fair market value and reap profits from it does MOSA have any recourse. Ms. Chale responded that you would have to weigh these issues before agreeing to sell the property and that once a municipality owned the property, wanted to privatize it and sold it for a profit, it would be their call to do so and you would not have recourse. All possible issues need to be taken into account before disposing of any property.

Ms. Podmajersky advised that she had spoken to a DEC representative at the Solid Waste Conference and about the possibility of transferring permits if the transfer stations were to be sold. He indicated that this type of thing is possible and not out of the ordinary but that once the permits come up for renewal new inspections would have to occur. Mr. Wesnofske would like to inquire about this when DEC Representatives attends the Board meeting on May 21st.

Ms. Podmajersky advised the committee that Mr. Wesnofske had requested in an e-mail to Mr. Chichester that he discontinue work on any non-essential projects such as engineering studies, tarping stations and issuing RFPs at this time due to the defeasement issue. She suggested spending only occur for emergency situations and the regular cost of doing business in order to have as much revenue as possible for defeasement and asked if everyone agreed to this plan.

Ms. Chale asked about the health and safety compliance issues that MOSA had been given notice of regarding the tarping stations; Ms. Podmajersky agreed that these issues should also be handled. Discussion of the need for the tarping stations and various other options instead of the tarping stations continued with Mr. Skowfoe suggesting that self-tarping trailers be made a part of the bid for a new T&D contract or that rolling ladders may be used instead of full blown tarping stations. Mr. Chichester remarked that because of the defeasement and what had been discussed during the meeting do you really want to go to bid for the end of 2010. Mr. Wesnofske commented that if you don't go to bid by June-July, there will not be enough time to make it happen. Mr. Chichester advised that the only project at the moment was the Oneonta Transfer Station project. Mr. Wesnofske advised we have the plans for the tarping stations and a temporary hiatus from doing the work should not be a problem. Ms. Chale reminded the committee that they need to make some decisions and think about the liability involved in not doing anything.

Ms. Clarvoe asked if Mr. Chichester was going to go ahead with getting appraisals. Ms. Chale advised that the Board needs to get a solid waste plan from the three Counties before proceeding; you don't need a full blown plan, but you need to find out their intent regarding the transfer stations. Ms. Corrigan asked about the appraisal process in regard to the Otsego County transfer stations as they revert back to the County. Mr. Chichester advised that there are some restrictions in place that would need to be considered. Ms. Chale remarked that an appraiser that specializes in utilities would need to appraise the properties. Mr. Skowfoe believes the biggest portion of the three Counties getting together was to defease the bonds in order to reduce the tipping fees and eliminate subsidies. As long as MOSA could remain competitive it could continue operating; he doesn't see the need for disbursement of assets at this time. Ms. Chale advised that disbursement of assets needs to be considered as a possibility and that at this point it is not time to do so. Mr. Chichester reminded the committee that one of the Counties, Otsego, has stated it does not want to continue even with a new Service Agreement.

Ms. Podmajersky asked if anyone had any other comments; as there were none, she asked the committee to move on to the next item, the T&D Contract.

7. T&D Contract

Mr. Chichester indicated that Mr. Riccelli wants to address the Board at its May 21st meeting. He would like to discuss the possibility of reduction of fees for the current contract in light of an ongoing or continued relationship. Mr. Chichester has told him about the defeasement plan; however, he still would like to present his plan to the Board. Ms. Podmajersky asked what type of reduction he was considering. Mr. Chichester replied that he did not know, but that it was perhaps related to a reduction in fuel costs. Currently, we only pay a fuel surcharge if diesel costs are above \$4.50 per gallon but we do pay to have this surcharge plan in place. He will speak to possibly changing this agreement as well. Ms. Podmajersky remarked that tip fees at the landfills in Western New York have dropped as well as fuel costs and she expects that he should be able to drop his fees considerably. Mr. Thayer asked if this is for the current contract or a future contract and was advised it is for both. Ms. Podmajersky asked if Seneca Meadows was an approved landfill. Mr. Chichester advised that the Pioneer project material went to Seneca Meadows as no other landfill was accepting asbestos at the time. Discussion continued as to whether or not this landfill

had been added as an approved landfill and who hauled the debris. Mr. Chichester advised it was hauled under the Riccelli contract.

8. GAT

a. 2009 GAT activities – Ms. Corrigan reported on and explained the following:

Montgomery County

- ✓ YTD GAT includes 4,458 tons of waste from special projects
- ✓ County Waste deliveries increased as of March
- ✓ Waste Management deliveries increased as of March
- ✓ Projected GAT deliveries excluding the special project waste from the projections but including it as delivered is 38,194
- ✓ Projected shortfall based on above estimated deliveries is 4,872 tons or \$516,421
- ✓ This represents an 11% shortfall from the GAT

Otsego County

- ✓ Green Del stopped delivery in the City – this tonnage is not seen coming into the system by any other hauler
- ✓ Waste Recovery deliveries are inadequate if they picked up the Green Del business
- ✓ Casella deliveries for the City of Oneonta dropped in 2009
 - 2008 range of 530-640/month
 - 2009 range of 380-540/month
- ✓ The current projected GAT deliveries need no adjustment – 37,488 tons
- ✓ Projected shortfall based on the projected delivery 3,429 tons or \$363,433
- ✓ This represents an 8% shortfall from the GAT

Schoharie County

- ✓ Actual YTD GAT shortfall almost doubled in April at 942 tons short of projections, up from 500 tons short in March
- ✓ County Waste delivered approximately 40 tons in January and February and nothing in March or April
- ✓ Fred's Sanitation delivered 352 tons in January which decreased to about 170 tons in March and April
- ✓ The current projected GAT deliveries need no adjustment – 15,023 tons
- ✓ Projected shortfall based on the projected delivery is 3,277 tons or \$347,405
- ✓ This represents an 18% shortfall from the GAT

Service Area Summary

- ✓ Projected GAT deliveries based on the note on each GAT page is 90,705 tons
- ✓ Projected GAT shortfall based on the above estimate is 11,578 tons
- ✓ Projected shortfall payment for the 2009 year \$1,226,258

Mr. Wesnofske stated that this just adds to his level of concern about getting the Service Agreement penalty out of the way. Ms. Podmajersky asked why he didn't feel this way last year when it was Montgomery County. Mr. Thayer added that he felt the same frustration because the discussion at the time of the GAT was 2 ½ %, then it miraculously was 5% and now seeing this, 5% isn't nearly enough. He asked where funds would come from to cover the new reduction in the GAT and if operating expenses would come from the rate stabilization fund. Mr. Wesnofske advised that there is no reduction in the 2009 GAT; it is for the 2010 GAT. Reduce the 2010 GAT and allow budgeting to go forward; there are a lot of other things coming up in the fall for the staff to handle. We would like to get the budget in place to some degree and get the GAT in place as another requirement. Ms. Chale clarified that he would like to achieve

defeasement by the end of the year, allowing for a new Service Agreement that would eliminate the shortfall penalty.

Ms. Podmajersky then asked if the agenda could be modified to discuss the BFI/Keymark item under “Other Business” next before going on to the 2010 GAT Calculation. As everyone agreed to the modification, it was the next item discussed by the committee.

9. Other Business

a. BFI/Keymark

Ms. Podmajersky received a letter from the Montgomery County Coordinator regarding the waste from BFI and Keymark, which she summarized for the committee.

- ✓ BFI numbers do not agree with MOSA’s numbers; these were collected through market research with BFI
- ✓ Keymark industrial sludge was accepted when landfills were open; but no longer accepted it once they were closed. DEC would allow MOSA to accept the sludge through the Randall Station; however, currently it is not being delivered.
- ✓ The County is asking for an adjustment in the BFI shortfall.
- ✓ The County is asking for an elimination of Keymark shortfall.

Mr. Chichester responded to the letter:

- ✓ BFI management indicated that routine waste is picked up; however, Bob Griffin indicated there were and have been other waste collected throughout the year and he felt the estimate MOSA had used for calculations was a fair one. Mr. Skowfoe asked if he had anything in writing or just verbal. Mr. Chichester responded that in the past he has received the information in writing but recent communications were verbal except for an e-mail.
- ✓ A couple of these “other” waste collections were a load of bad peanut butter from Target and a load of furniture that was covered with a fungus. Ms. Podmajersky called those “special events”.
- ✓ Mr. Chichester advised that these types of situations are taken into consideration in all Counties, not just Montgomery County. Mr. Chichester explained that there is a “lost tonnage” calculation done in the other Counties when it is known that all waste from a municipality is not delivered. Deliveries from other municipalities are used to make their estimates.
- ✓ Keymark is acceptable and could be brought to the Authority. It was discussed during the GAT calculation.

Mr. Skowfoe asked for a list showing who in Schoharie County was not delivering waste. Mr. Chichester responded that Ms. Corrigan had listed County Waste and Fred’s Sanitation as delivering less waste over the last few months. He also advised that we do not have a list of their customers so there is no way to know who they are no longer getting waste from other than going down the street and seeing where their containers are. Mr. Thayer remarked that County Waste was probably taking their waste outside of the system and the reduction from Fred’s could possibly be because of the economy. Mr. Wesnofske asked if there were any new haulers floating around in Schoharie County; Ms. Corrigan responded that she did not know of anyone who might have taken over some of Fred’s customers. She offered to check on new CV cards.

Mr. Heaton disagrees with BFI’s waste estimates and believes they have lost business to a number of other haulers since 2004 making the numbers in the 2004 GAT calculation unusable in figuring Montgomery County’s current GAT.

Mr. Chichester encouraged all to read the Service Agreement in regards to calculating the GAT. It is to be an estimate and specifies what we can and should look at in figuring the GAT; then look back at the Annual Reports and compare the estimates of waste generated to what was delivered. In years where the economy was good, deliveries were higher than the GAT estimates. We are not down to measuring everyone's containers; we have a method that has been used in the past. A large percentage of time, more waste was delivered than the GAT estimated; it is an estimation methodology. Mr. Heaton continued to disagree that the calculations were correct. Mr. Wesnofske added that it is up to the Board to decide if the calculations are correct. He stated that recently he got bad news from his assessor, who increased the assessment of his property by 12% and if he sells the property and doesn't get that 12%, the assessment was wrong, but it was the assessor's best guess at the time. Mr. Heaton advised this was a different situation and other things enter into the value of property. He asked once again for consideration of lowering the GAT for Montgomery County. Mr. Wesnofske brought up the fact that in 2002 when Otsego County was coming up short, he voted to raise their percentage because he knew waste was being hauled outside the area. The next year Otsego County delivered more waste; there wasn't any good historical information to go by and it took time to work out the correct numbers because the waste could not be tracked at that time. Mr. Heaton thinks there is imaginary waste being considered here, not just waste going out of the County from BFI. Mr. Wesnofske advised of a similar situation of lost waste that was never seen in Otsego County, but still figured into the GAT.

Mr. Skowfoe stated that Mr. Wesnofske's comparison is not like the GAT because there is a grievance process on property taxes, but once the GAT is set by the Board, the Counties don't have a method for grievance.

Mr. Thayer spoke about responding to and changing the way the GAT is figured if it is determined that the methodology is flawed. He believes Mr. Heaton's research to be correct on BFI and thinks that Keymark has found another vendor to handle their sludge because MOSA has not always been able to accept it. He does not think they will return to MOSA because they don't feel confident their material would always be accepted. It is his feeling that if Montgomery County was relieved of BFI's lost waste and Keymark sludge they would come across with the shortfall payment. This is not a promise, just his feeling about the matter.

10. 2010 GAT Calculation

Ms. Podmajersky stated that she thinks the big question is; what is the reduction because of the economy? With shortages in direct business deliveries, the City of Amsterdam and shortages from BFI; it is 8.4% of the GAT for Montgomery County. She believes that the GAT should be smaller for all three Counties due to the economy. Ms. Clarvoe asked Ms. Podmajersky what number she had in mind; she responded 37,469 or 36,286 tons based on calculations from 2005. Mr. Wesnofske asked what the number would be for a reduction of 5% for Otsego County and 10% for Schoharie County. Mr. Chichester advised the number would be 38,872 for Otsego County and 39,087 tons for Montgomery County, which is a reduction of 5% plus the controversial BFI and Keymark numbers. Schoharie number would be 17,385 tons. Mr. Skowfoe wants to see a breakdown of numbers from last year to this year on all larger commercial haulers before he will recommend any numbers to the Board.

Ms. Corrigan will provide Mr. Skowfoe with the reports he needs for Schoharie County on the major haulers; Fred's, Casella, DJs, County Waste, etc.

11. Executive Session

Ms. Corrigan brought forth an accounts payable question for the committee's knowledge. Ms. Chale suggested they should go into executive session to discuss. Ms. Podmajersky asked for a motion to go into executive session; Mr. Wesnofske did not think it was necessary to do so. Mr. Wesnofske does not think it is right that County Waste could ask for another hauler's records. Mr. Chichester advised he had spoken to Ms. Chale about the FOIL requests. Ms. Chale again suggested going into executive session; Ms. Podmajersky asked for a motion, Ms. Clarvoe made the motion, Mr. Wesnofske seconded.

12. Closing

The meeting adjourned at 12:35 p.m.

Respectfully submitted,

Judith Beeler
Confidential Secretary