

# DUTCHESS COUNTY RESOURCE RECOVERY AGENCY

## FEBRUARY 18<sup>th</sup>, 2010 – MEETING MINUTES

A meeting of the Dutchess County Resource Recovery Agency convened at 5:00 p.m. at the offices of the Agency located at 96 Sand Dock Road, Poughkeepsie, New York. Those present included W. Conners, Chairman; R. Mosca, Secretary; Board Members, E. Mills, T. E. LeGrand and R. Stephen Lynch; Agency Staff, W. J. Calogero, D. Walsh and C. Tamney; Agency Counsel, J. Nelson; D. Leibnitz, HDR; R. Chance, Covanta Hudson Valley Renewable Energy LLC; A. Surman and S. Goldberg, Dutchess County Legislators; O. Plokhii, Millbrook Independent.

1. **Regular Session** – W. Conners called the meeting to order at 5:12 pm.
2. **Minutes** – W. Conners presented the minutes of the January 21, 2010 Board Meeting. D. Leibnitz was able to speak with S. Mills of HDR. The fee HDR charges for working on the new compliance certification under the Part 360 Permit, which is due the end of February, is estimated to be \$2,000.00. D. Leibnitz stated that the full renewal of the Part 360 permit is not due until September 2011; however, the format should be in place and to the NYSDEC by March 2011. The first and biggest task necessary to start is the revision of the operations and maintenance manual, most of which is done by Covanta with the assistance of HDR, and that has an estimated HDR fee of \$4,300.00. A motion to approve the minutes was made by R. Mosca, seconded by T. E. LeGrand, and unanimously approved. E. Mills abstained.

### 3. **Operating Report – D. Walsh**

D. Walsh informed the Board that Covanta has set this year's tonnage budget for 147,000 tons. The Facility received a total of 13,066 tons of incoming waste for January which is 2,300 tons over the monthly budget. Electricity generated for the month was outstanding, 4,876,910 kwh for a total revenue amount of \$292,614.60.

Recycling tonnage at the MRF Facility was low. There was a total of 879 tons of material for January. The revenue for tipping fees was \$7,420.00. The fiber market has increased significantly. The revenue sharing came from the fiber sales only, no commingled sales, and that amount was \$6,245.00.

### 4. **Clean Air Update – D. Leibnitz**

Facility operations have been excellent. Unit No. 2 went down for a tube leak repair this morning and should be back in service before the end of the day. Excluding today's unscheduled outage on Unit No. 2, the Facility performance year-to-date has been 97.4% availability on Unit No. 1 and 100% availability on Unit No. 2. Turbine generator availability has been 100%. Since the last Board Meeting, excluding today, all units have had 100% availability.

The target steam rate for both units has been raised from the 45,000 pph set point reported last month to 48,000 pph, the normal set point is 52,000 pph. Covanta will be managing the steam flow and MSW burn rate to control the pit volume in preparation for the scheduled March outage.

The replacement oil filled transformer has been rescheduled for the Fall outage in September 2010.

The Facility completed its annual relative accuracy test audit on the continuous emissions monitoring system yesterday. The testing firm reported verbally to Covanta that all the tests have passed. Covanta has also reported that they have completed their recertification for ISO 14001 environmental compliance standards.

HDR has drafted a preliminary letter to the USEPA, on behalf of the Agency, stating that the Facility should be subjected to the USEPA "tier two" calculation methodology, which is an estimating method and will not require the purchase of supplemental stack monitoring equipment. This is due to the new regulation 40 CFR 98 that requires a report of the mass emissions of carbon dioxide in 2010.

The next scheduled outage will take place March 14<sup>th</sup> for 15<sup>th</sup>. Unit No. 1 will be down for seven days followed by a seven day outage for Unit No. 2. The repair of the flues inside the stack will be performed during the March outage. Covanta will also replace all of the bags and their tube sheets in both baghouses during this outage.

D. Leibnitz informed T.E. LeGrand about the emissions on both units and presented the data for the CEMS (CO, NOx, SO2 emissions, and SO2 reduction efficiency) levels from the last four years. T.E. LeGrand seemed to recall that Unit No. 2 was running consistently high on CO emissions than Unit No. 1. D. Leibnitz replied that it is not necessarily true as viewing the data Unit No. 1 in 2007 and in 2008 was higher than Unit No. 2, but then in 2009, Unit No. 2 came through with a higher reading. There is no pattern, no specific trend, as it varies upon the operating parameter. For instance, if a unit went through a boiler wash then it tends to run cooler and emit more CO. It is just a matter of what state the units are in when this testing takes place. It was further recognized that both units ultimately run well below the acceptable limit.

W. Conners raised the question of availability times and why we don't we use the same methodology as other facilities when reporting this information. R. Chance replied that it depends upon the operator of the facility and depends if you are reporting to the NYSDEC, which will be the same methodology as all other NYSDEC regulated plants in New York, or you are reporting internal numbers. Montenay did not include stand by time and Covanta does. The stand by time refers to times when the boilers are available for use, but due to other circumstances are unable to be used. This could be a shortage of trash or anything else that is not boiler related. R. Stephen Lynch concluded the discussion by stating that the higher the utilization the less loss the Agency will incur and the lower the subsidies we would need to obtain from the County through user fees, etc. The capacity utilization is an important number that affects the bottom line that should be managed.

## **5. Agency Financial Report – C. Tamney**

C. Tamney presented the payables in the amount of \$1,055,785.71. Dalton Investigative Services was questioned about their payment. Payment is made to Dalton from monies received from the carters under the license processing fees. W. Connors mentioned that at some point in the future he would like to see the Agency not hold on to that money. He would rather see the Office of the Commissioner of Solid Waste or the County Law Department hold on to that money. The Agency does not control the licensing process and therefore should not be responsible to hold on to that money. W. Calogero recalled the reason why it was passed on to the Agency. The County did not have a mechanism for doing this procedure especially since the licensing process takes such a long time and it further become a major problem when crossing years. It was decided to speak with C. Bogle, the Assistant County Attorney, regarding the licensing monies issue. Also asked was the payment for Selective Insurance. This payment is for the vehicle insurance. C. Tamney replied that by switching from Travelers to Selective Insurance the Agency saved roughly \$3,000.00.

A motion to approve the payables in the amount of \$1,055,785.71 was made by E.Mills, seconded by T. E. LeGrand and unanimously approved.

W. Calogero proceeded to speak on the issue of the letter of credit. The letter of credit was renewed under Veolia around the same time that the Covanta transition took place in August 2009. At the time the Agency was informed that the letter of credit was in effect until August 2010. After one month with Covanta, the issue of the letter of credit came up again. The Agency has been paying, over the past years, a little more than \$60,000.00 a year for the letter of credit. Suddenly that letter of credit was to increase to \$175,000.00 per year. The Agency should not be responsible for that differential, at least not this year. It is presently in negotiation with attorneys. W. Calogero informed the Board that the difference in money came through in this month's payables, through Covanta's pass through invoice charges. It has been taken off and will not be paid until the matter is resolved.

## **6. Committee Reports**

E. Mills spoke for the Governance Committee and of the final drafts put together back in December for the Board's consideration on both the Ethics Policy and the Harassment Policy. He would like to finalize the policies and would appreciate any additional comments back from the Board by March 11, 2010.

## **7. Other Business**

J. Nelson presented copies of the proposed Metals Resolution and proposed Metals Contract. E. Mills noticed that there are no levels of insurance coverage listed in the contract. J. Nelson responded that the Agency is getting a certificate of insurance from the Contractor, but rather

than reprint the numerous pages of insurance limits and types, what the document recites is what was published in the RFP; what the limits of the insurance are, and that the Contractor has provided to the Agency proof of insurance to the limits. E. Mills felt that it is necessary to provide a similar paragraph in the contract that binds the Contractor to issuing certain certificates including the discussion of workers compensation. R. Stephen Lynch confirmed with counsel that this information is included by reference to the RFP and that it has the same legal and binding effect as if in the contract. R. Stephen Lynch asked what would be the revenue today from this Contractor under the proposed formula. W. Calogero responded that the present average monthly composite price for the AMM #1 HMS price is \$296.67, and under the proposed formula, the Agency would be paid \$178.00 per ton. The Agency produces an average of 543 tons of metal per month which would bring in a total monthly revenue of \$96,655.00.

J. Nelson continued to explain the details of the metals contract. It is a three-year contract with two one-year options. The Contractor is willing to put up \$100,000.00 by way of a deposit into a bank account against which the Agency can draw bi-monthly payments and on three days notice with the provision of that account be funded back to \$100,000.00 when it reaches the point of \$50,000.00. J. Nelson read the paragraph regarding the advance payment procedure and suggested to add the following statement, "The Agency may also draw against the account if the Contractor has received a notice of breach of contract which as remained uncured for ten days." Also discussed were the materials in the metals containers. It was decided in addition to how the materials in the containers are processed into marketable metals to add into auto fluff as well. W. Calogero remarked on the new Contractor, Upstate Shredding. He found the company to have excellent references, no financial problems, and to have good business relationships among all landfills, vendors, and contractors.

Before entering into Attorney/Client session, W. Conners announced that normally there would have been a reorganization of the Board today; however, over discussions with the Chairman of the Legislature, the Legislature is planning in their March 8, 2010 meeting to make appointments to this Board. It was also heard that the Legislature may be planning to have a three to five member committee to interact with the Agency for regular discussions twice a month. A letter was presented to all Board members from the Chairman of the Legislature asking to reappoint W. Conners as interim Chairman while the Dutchess County Legislature appoints new members. In view of this request, W. Conners would be available to stay on as Chairman of the Board for the Resource Recovery Agency. It was concluded that the election of the Resource Recovery Board officers can be done at the next regularly scheduled March 18, 2010 Board meeting. A motion was made by E. Mills, seconded by R. Mosca and unanimously approved to defer this annual reorganization meeting until March 18, 2010 when new officers for 2010 will be elected by the Board and committee appointments will be made.

## **8. Public Comment**

O. Plokhii asked if the ABO Report will be discussed after Attorney/Client session. W. Conners responded that it is very possible.

A motion to move into Attorney/Client Session at 6:35 pm to discuss a contractual issue and advice from counsel on a pending decision regarding the approach to the ABO Draft Report was made by E. Mills, seconded by R. Mosca and unanimously approved.

Resumed regular session at 6:55 p.m.

T. E. LeGrand made a motion to adopt the metals contract with the proposed changes, seconded by E. Mills and unanimously approved. He would like both W. Conners and W. Calogero to review the final contract before being sent out to the Contractor.

W. Conners also mentioned that a background investigation was done on A. Weitsman, a principal of Upstate Shredding, LLC and it was determined that there is no risk to the Agency. All of the Board members are aware of what those particular issues were. It was decided to move forward with the Contract.

### **Resolution No. 695 – Metals Contract**

This Resolution authorizes the Executive Director to execute the amended metals contract adopted on behalf of the Agency. A motion to approve Resolution No. 695 was made by T. E. LeGrand, seconded by E. Mills and unanimously approved.

A discussion began about the ABO Draft Report. R. Stephen Lynch began with his personal comments regarding the ABO Draft Report. He feels the RRA has been seriously mismanaged for many years although he feels the State's report was very critical of the Agency. W. Conners remarked that he wants to move forward and respond to all of the points the ABO made.

E. Mills commented on the material facts that the ABO needs to be re-educated on. For instance, under the Operational Review results, the ABO stated that prior to 2008 the Agency did not impose a tipping fee on haulers who delivered materials to the MRF Facility. This statement is simply not true and the RRA needs to better educate the ABO about the history of the MRF tipping fees prior to 2008. R. Mosca added that the Agency needs to find anything that was documented and printed that set those tipping fees, make copies, and send it back with the response.

On Page 8, Paragraph 2, Settlement of contract penalties. The ABO says the Agency should settle these monthly. If our contract with the operator specifies that penalties can only be settled at year-end, then the RRA needs to document that with the ABO. This is a contractual issue and that is why it is done. The Agency can only do what the contract allows.

Page 8, Paragraph 3, Covering overtime costs to allow the WTE facility to be open during off-hours. If the Facility is open during off-hours to accommodate a municipality's clean up day or other public need, imposing higher tip fees does not necessarily further the public good. The WTE plant cannot always be operated for revenue production, but sometimes has to be open beyond regular business hours in order to provide a service to the community, which is the role government and public agencies must play sometimes.

Page 10, Paragraph 3, Making payments to the Town of Poughkeepsie that the RRA is not obligated to make. The RRA Board approved the host community benefit payment for the recycling facility in 2009 only upon advice and recommendation of its outside legal counsel. The RRA withheld its 2009 host community benefit payment for the WTE payment for the WTE Facility upon advice and recommendations of its outside counsel despite the public pressure the Town was placing on the Agency through the media.

Page 12, Paragraph 1, The RRA has made more than \$3,000.00 in payments that appear to be inappropriate. It would be helpful for the RRA Board to review that list in order to better understand what items should rise to a level of concern and action. With respect to credit card late fees, perhaps a negotiation for a different billing date with the Agency's credit card issuer to better correspond with the Agency's payment schedule can be done. T. E. LeGrand also suggested a policy on the price limit for bereavement flowers.

Page 13, Paragraph 3, The RRA Board missed inappropriate expenditures. It was this Board whom had followed through on challenging and successfully grieving the Town of Poughkeepsie water district tax which the RRA had been paying for years. It was this Board that brought in the special outside counsel to investigate and challenge the Town of Poughkeepsie host community benefit. The Board should be recognized for trying over the past two and a half years to address and remedy the problems of the past which were inherited. W. Conners agreed with the ABO statement simply because the Board made payments when the host community contracts expired.

Page 16, Paragraph 1, The RRA Governance Committee did not meet in 2008 and only met twice during 2009. This is not correct. The Governance Committee met four times in 2008 (3/13, 4/25, 6/10, 7/15) and four times in 2009 (6/1, 8/13, 9/14, 10/15). The Board is making a decision regarding recording of said minutes whether it will be via paper or audio.

T. E. LeGrand provided his comments regarding the ABO Draft Report. Under the Governance recommendations to Dutchess County officials, the Agency has recommended returning to flow control or other methods of MSW control for several years. The final decision is up to the County, not the Agency. The same is true for enforcement. This is the responsibility of the County, not the Agency. They also recommend the County Executive and County Legislature follow an appointment process that conforms to the Agency's enabling statute. He believes the County is correct on the appointment issues.

Under recommendations to the Agency, raising the tipping fees without flow control will create a significantly larger deficit to the County. The Agency has to remain competitive in order to attract waste. As far as achieving the maximum permitted volume of 164,000 tons, considering the current economic situation and the Agency tip fee, it will be impossible to attract that additional waste. With outages and normal downtime the maximum volume would be impossible to achieve.

The issues regarding contracts cannot be unilaterally changed without an agreement by both parties. To enact penalties and cost recoveries on a monthly basis rather than year end for the Facility operator is not practical due to repairs, etc. and to consider Central Hudson to make payments to the Agency on a monthly basis for all revenues due from excess electricity generated again would have to be mutually agreed. It was attempted several times and Central Hudson had no interest.

The adoption of a written salary and compensation policy applicable to all staff and management is certainly agreeable. The Agency should revise and update its job descriptions to accurately reflect staff duties. This function should be done by the Executive Director. The vacation and sick days should be the same as the County. The assurance that valid written agreements are in place should be assigned to one person that could monitor and oversee those terms and assure conditions are being met.

To have the policy on license permit stickers changed by having all stickers numbered so that the Agency can account for all issued stickers is agreeable. It should also be considered to have a modified license for those companies that solely take out loads from the Facility.

As far as reviewing the charges included as pass through costs by the Facility operator to ensure that sales tax is paid only for items that are appropriate charges in accordance with the contract terms, it would be a good idea to have Sedore come in and assist with the review.

To adopt and submit the annual budget sixty days prior to the end of the fiscal year can only be possible if it works with the timeframe of the Agency's annual audit schedule.

Some of the side issues mentioned were of the internal controls over scale operations at the recycling facility. This is presently being done by the operator not the Agency. It has been an issue which needs to be further addressed.

The License Advisory Committee has never been a Board function. It has been an independent group comprised of some Board members but has never been part of the Board meeting.

The suggestion to select a new audit firm on a competitive basis since the same audit firm has performed the independent audit for the Agency for the past five years should be considered. W. Connors added to the discussion that the internal auditor fees have not been raised in years. T. E. LeGrand also recalled how the Agency received much better service with Sedore than the previous audit firm, Coopers and Lybrand, and at half the cost. It was decided that after completion of the 2009 audit to proceed with an RFP for services starting with the 2010 audit.

T. E. LeGrand noted that many policies can be obtained from the County and the Agency can mirror them into their policies. The Water Authority and/or Dutchess Community College can also be of assistance to supply copies of similar policies that the Agency can follow.

R. Stephen Lynch asked if there was going to be any response to the ABO's position of how two directors are in violation of the two-term limit. W. Conners responded that it has been addressed and that we are not the appointing Authority.

A motion was made by E. Mills, seconded by T. E. LeGrand and majority approved to have the Executive Director prepare these responses, forward them to the ABO tomorrow and have it electronically sent to all Board members. R. Stephen Lynch opposed.

With no further business to discuss the meeting was adjourned at 8:45 pm.

Respectfully submitted,

William J. Calogero  
Executive Director