DAUPHIN COUNTY BOARD OF COMMISSIONERS

WORKSHOP MEETING

JULY 24, 2013
10:00 A.M.

MEMBERS PRESENT

Jeff Haste, Chairman
Mike Pries, Vice Chairman
George P. Hartwick, III, Secretary

STAFF PRESENT

Janis Creason, Treasurer; Joseph A. Curcillo, III, Esq., Solicitor; J. Scott Burford, Deputy Chief Clerk; Randy Baratucci, Director of Purchasing; Leila Brown, Solicitor’s Office; Joseph Schwalm, Commissioners’ Office; Dan Rothschild, Commissioners’ Office; Amy Harinath, Press Secretary; Dave Schreiber, Human Resources; Kay Lengle, Human Resources; Steve Libhart, Director of EMA; Fred Lighty, Esq., Human Services Director’s Office; August Memmi, Director of Community & Economic Development; Joel Rimby, Solicitor’s Office; Robert Christoff, Conservation District; Bob Sisock, Courts; Brad Winnick, Chief Public Defender; Melody Osborn, Commissioners’ Office; Julie Mackey, Commissioners’ Office and Richie-Ann Martz, Assistant Chief Clerk

GUESTS PRESENT

Jeff Frantz, Eric Epstein, Jack Sherzer, Donna Ricupero, Elise Panko and Bill Keisling

MINUTES

CALL TO ORDER

Mr. Haste, Chairman of the Board, called the meeting to order at 10:11 a.m.
MOMENT OF SILENCE

Everyone observed a moment of silence.

PLEDGE OF ALLEGIANCE

Everyone stood for the Pledge of Allegiance.

APPROVAL OF MINUTES

There are several sets of meeting minutes that will be considered at next week’s Commissioners’ Meeting.

EXECUTIVE SESSIONS HELD BETWEEN MEETINGS

Mr. Burford reported that there was one Executive Session held this morning regarding litigation.

PUBLIC PARTICIPATION

Eric Epstein commented on the Harrisburg Materials, Energy, Recycling and Resource Recovery Facility. (See Attachment A.)

The Commissioners continued dialogue on this subject. It was later asked from a legal standpoint, that if someone brings these concerns to the Board does the Board have an obligation to take any action. It was noted by the Solicitor that he did not believe it fell under the County’s obligation, but that he would take a look at it.

DEPARTMENT DIRECTORS/GUESTS

A. Robert Christoff, Conservation District

1. Presentation – Amendment to the Act 167 Stormwater Management Plan

Mr. Christoff reported on the Amendment to the Act 167 Stormwater Management Plan. The Amendment, if approved, will be submitted to DEP for review and approval. After DEP approval, municipalities will be able to select one of the options if they desire. The Commissioners will consider this Amendment at its August 14, 2013 meeting. Thirty-eight of the forty municipalities in Dauphin County have adopted the model. There were some concerns with the existing exemption language of the model. As a result of those concerns, the District developed a proposed Amendment to the exemption language. The proposed Amendment will allow municipalities flexibility in one of three proposed options. They are:

1. Maintain the current exemption language.
2. Adopt exemption language that considers not only the impervious cover created, but the separation distance between the impervious cover and features of concern such as streams, wetlands and property lines. This option is intended to relieve applicants from an undue regulatory burden in cases where there is sufficient vegetated area between proposed impervious cover to reasonably manage increased runoff. This option was the first proposed exemption developed by the District.

3. Adopt a hybrid of the two options above. This option allows municipalities to adopt exemption language that allows for the consideration of separation distance and also allows for smaller projects where separation distance may be an issue to be exempted from the full requirements. This option was developed by the District in response to municipal comments which voiced concern that the first proposed exemption would be overly restrictive on owners of small lots.

A Public Hearing was held at the District on June 11, 2013.

Mr. Haste asked if there was any public comment at the Public Hearing.

Mr. Christoff indicated that there was no public comment received.

HUMAN RESOURCES

Ms. Lengle asked if there were any questions on the Salary Board or Personnel Packets. There was none.

The Packets will be considered at next week’s Legislative Meeting.

PURCHASE ORDERS

Mr. Baratucci indicated that he has an item to add to the Packet. It is a Requisition for the Treasurer’s Office for a machine that will count money, as well as check for counterfeit money. This subject was raised by the Chief Clerk and will be addressed at the Directors’ Meeting in August. Costs & Fines held a meeting to go over counterfeiting. Some departments are requesting pens. Adult Probation is requesting to purchase a machine.

Mr. Hartwick asked what the volume is for counterfeit money.

Mr. Haste stated that it is not huge, but it is a growing problem and the County is responsible for the loss.

Mr. Baratucci indicated that the cost for the pens is $2.95. Pens are the most used device for detecting counterfeit money. They are used by most retail chains.

Ms. Creason indicated that the pens are not the best. If the bill is sprayed with hairspray, the pen is inactive. The equipment is not that expensive. It is around $400, which would most likely pay for itself in the first year.
Mr. Hartwick stated that the Departments need to get equipment that works best for them. He was surprised that Costs & Fines didn’t want equipment like the Treasurer’s Office is getting.

Mr. Haste stated that whatever is being used must be done while the person is in the office. You need to know who is passing the counterfeit money.

The MDJ Offices use the pens.

Mr. Baratucci indicated that most of the offices do not need the counting portion of the machine.

Mr. Haste stated that we should start with the pens and see where that goes.

Mr. Hartwick indicated that if pens don’t work then a further discussion can be held.

The Packet will be considered at next week’s Legislative Meeting.

**TRAINING PACKET**

It was moved by Mr. Hartwick and seconded by Mr. Pries that the Board approve Item #1 and Item #2 of the Training Packet.

**Question:** Mr. Haste – Aye; Mr. Pries – Aye and Mr. Hartwick – Aye; motion carried.

**ITEMS FOR DISCUSSION**

There was none.

**SOLICITOR’S REPORT – JOSEPH A. CURCILLO, ESQ.**

Mr. Curcillo reported that all items listed on the Solicitor’s Report are under review and will be ready for consideration at next week’s meeting. There could be some additional items added.

**REPORT FROM DEPUTY CHIEF CLERK/CHIEF OF STAFF – J. SCOTT BURFORD**

Mr. Burford reported on the following:

- Congratulations to Parks and Recreation on a successful BrewFest, which took place on Saturday, July 19th. It was a sold out event and drew 1,000 people to Fort Hunter Park. BrewFest featured 30 craft brews and live music.
- Tonight is “Dauphin County Night” at the Harrisburg City Islanders’ home game on City Island at 7:00 p.m. The commissioners and staff will be on hand distributing materials about services and answering questions.

**COMMISSIONERS’ COMMENTS**

There was none.

**PUBLIC PARTICIPATION**

There was none.

Mr. Haste noted that the Retirement Board will convene at 10:55 a.m.

**ADJOURNMENT**

There being no further business, it was moved by Mr. Pries and seconded by Mr. Hartwick that the Board adjourn.

Transcribed by: Richie-Ann Martz
Attachment A

Before the Dauphin County Commissioners
Comments of Eric Epstein
July 24, 2013

It has been almost a year since my presentation on August 1, 2012, but my journey for answers began over 25 years ago. Beginning in 1987, I have documented noncompliance issues afflicting the Harrisburg Steam Generating Faculty (“HSGF”), renamed the Harrisburg Materials, Energy, Recycling and Resource Recovery Facility (“Facility”) in 1992.

On March 11, 1974, Site A was filled beyond capacity. Six years later, on January 10, 1980, the Office of Attorney General (“AG”) filed an Equity Complaint with the Commonwealth Court against the City of Harrisburg. The AG “alleged” the HSGF continued to deposit incinerator residue at Site A and failed to have Site B properly prepared.

On September 12, 1978, DER issued Permit No. 100992 to the City of Harrisburg for the operation of Pit B-1. Almost seven years later on July 10, 1985, the Pennsylvania Department of Resources (“DER”) notified the City of Harrisburg. “The existing condition of residue disposal Sites A and B-1 causes concern for the potential impact on human health and the environment.”

On June 27, 1986, the DER issued a Notice of Violation (NOV) for the City’s failure to close Site A and maintain a leachate collection system. Similarly, Site B was issued a NOV for filling B-1 (“Mt. Ashmore”) beyond capacity and failing to maintain a leachate treatment system or diversion channel.
The City of Harrisburg replied on August 17, 1986: “The reality and economics of the situation are such that it will be virtually impossible to remove all the ash from both sites to the originally permitted levels.”

On December 20, 1988, the City agreed to close Site A by March 15, 1989, (15 years after the pit was full), and pay a $25,000 penalty.

The ash residue analysis conducted by Skelly and Loy on September 28, 1987 supported the contention that the ash residing in Pit A and B-1 is hazardous. DER conducted ash residue analysis on May 23, 1985 and August 8, 1985 which concluded that the ash residing in Pit A and B-1 is hazardous.

The City of Harrisburg did not dispose of the hazardous ash in a "hazardous" waste landfill. Harrisburg claimed an exemption to hazardous treatment for the ash residue allegedly found in the Solid Waste Management Act is identical to the language in the Resource Conservation and Recovery Act (RCRA). Changing the label does not change the content, but the cycle of playing regulatory catch-up began in the 1980s.

The fly, bottom, and combined ash streams generated by the IISGF during the years 1985 and 1987 was technically and legally classified as "hazardous" waste under the EP toxicity test used by the Environmental Protection Agency (“EPA”) and the DER to determine the hazardousness of waste. The HSGF disposed of the ash in onsite pits designated Pit A and Pit B Neither pit was qualified to receive hazardous waste.
Last year—sitting at this table I asked the same questions I asked back in 1987.

1) Have these legacy environmental issues identified over 30 years at Pit-A and Pit-B been fully and completely remediated?

If so, does the County possess the manifests and where can citizens obtain the documentation, and current status of environmental and groundwater monitoring?

2) The facility is a de facto hazardous waste site. Who or what is ultimately liable and responsible for maintaining, monitoring and remediating any future cleanup?

Does the chain of custody end with City residents or County taxpayers?

3) The reuse value as well as the taxable value of this property is linked to the cleanup standard.

Will this 20 acre property be cleaned up to a Brownfield or Greenfield standard?

4) Is there an external, segregated funding mechanism in place to ensure the cleanup of Harrisburg Materials, Energy, Recycling and Resource Recovery Facility is implemented?

How much is in the fund and who controls it? Are the investment or withdraw limitations?

It has been wild ride searching, requesting and trying to track down records related to the presence of hazardous waste and the status of an environmental review prior to the sale of the Harrisburg Materials, Energy, Recycling and Resource Recovery Facility. You can pick up the scent of the hazardous waste trail in 1990.
On April 20, 1990 it was DER’s position that certain batches of ash generated at the HSGF can be characterized as hazardous under state law and must be disposed of as such.

On October 19, 1990, the City argued the legal definition of hazardous waste, but admitted, “Indeed in nearly every technical aspect, the B-2 site is essentially the equivalent of a hazardous waste land fill both under current and proposed Pennsylvania regulations. Safety concerns will also be served by the elimination of the the need to transport the ash great distances to a hazardous waste treatment disposal facility.”

Also the City argued “...that safe disposal should be the main focus and that safety is best deserved by disposal at the City’s B-2 site, that of disposing of the ash as hazardous waste is exorbitant and a threat to the existence of an environmentally beneficial facility...” (Howard J. Wein of Klett, Leiber Rooney & Schorling, October 19, 1990.)

The argument is as follows: Although the waste on site may be hazardous waste, it is legally defined as something else. Rather than risk the health and safety of people along the transportation routes, it is more prudent to store the waste on site at a facility not designed to store hazardous waste. The economic cost outweighs the the health and safety of those who live and work next to the site.

If you accept this argument, beware of the precedent: Substitute the term “hazardous waste” for “nuclear waste” and you have an identical argument for storing radioactive waste on site at Three Mile Island.
Unfortunately, my inquiries have not yielded definitive answers or remain unanswered. After spending several days in the DEP’s document room and making Right to Know Requests to the City Receiver and the Harrisburg Authority, it appears that there is a probability the portions of the ash pits contain hazardous waste.

The City of Harrisburg’s position was identical to the stance adopted by James Warner, Executive Director of Lancaster County Solid Waste Management Authority (“LCSWMA”). Gil Smart from the Intelligence Journal reported on June 2, 2013.

LCSWMA Executive Director James Warner, dismissed concerns about potential environmental problems on the incinerator site. In the late 1980s, both the state Department of Environmental Resources and federal Environmental Protection Agency raised the possibility of soil or groundwater contamination due to the disposal of ash on the site. However, in response to questions from one activist last year, a Pennsylvania Department of Environmental Protection spokesman said none of the waste buried on the site was hazardous. Last week Warner agreed, insisting there are “no hazardous waste liability issues.”

Mr. Warner told me that the Supreme Court issued a decision in City of Chicago vs EDF that exempts municipal solid waste ash from being hazardous waste. In that 7-2 ruling on May 2, 1995, the Supreme Court interpreted this identical language of the claimed exemption to specifically not include ash residue that, but for the claimed exemption, would be classified as “hazardous.” The Court held, “An ash can be hazardous, even though the product from which it is generated is not, because in the new medium the contaminants are more concentrated and more readily leachable.”
The City of Harrisburg, in its capacity as owner of the HSGF, filed an *amicus brief* supporting the City of Chicago.

The legal argument is that waste generated by resource recovery facilities are exempted from regulation as a hazardous waste even if they are hazardous waste.

Changing the label does not change the content.

The Harrisburg Authority’s ("HA") did respond to my request relating to on-site hazardous waste - after a 30 day delay for legal review. “Our response is that no records responsive to your request exist to ‘provide documents, governmental communications, release forms and work papers that codify and confirm and document that the HSGF and its environs are not classified as a hazards waste site.’ To our knowledge, the HSGF and its environs are not classified as a hazardous." (Karen McKillip, The Harrisburg Authority, Document Manager/Right to Know officer, November 26, 2012.)

Not an affirmation but a plausibility deniability defense. The Response was copied to four different attorneys and Shannon Williams.

DEP approved a Major Permit Modification for Change of Ownership for Permits Nos. 100992 and 100759 A and B Ash Disposal sites which transferred liability to the Harrisburg Authority. I am still searching for the Environmental Impact Statement required by law and referred to as a Form D Environmental Assessment. In March 2003, William Cluck filed a Notice of Appeal with the DEP and the Harrisburg Authority arguing the required ‘Form D Environmental Assessment’ was not completed. (1)
Was an EIS conducted in 2003? If so, do you have a copy? It is possible these documents exist but I was unwilling to pay $9,150 to cover the RTK Requests. The DEP informed that was the copying estimate for the cost of the documents in a 12 page rejection letter sent on November 28, 2002 by Assistant Regional Director Robert Conrad.

I am asking you as County Commissioners for your assistance in locating an environmental review of the site. In the absence of an environmental review, the regulations require the permittee to conduct a site assessment. The permittee of record assumes most of the liabilities, but the former owner(s) of of a facility may still be liable.

Jack Lausch, Facility Director, wrote to Commissioner Haste on September 25, 2012 regarding the issues I raised on August 1, 2012. He prefaced his comments by saying the time frame of 1972-1991 is not an era where the Authority has “institutional knowledge with which to provide our response about activities at that time…”

Mr. Lausch stated:

The new permit holder assumes all liabilities from the date when the original permit was first issued. With respect to the statements required under 25 PA Code 271.221 regarding liabilities and responsibilities the permittee must assume, the permittee assumes liabilities related to past operations. DEP does not allocate liabilities between parties. However, DEP’s approval of permit reissuance to a new entity does not limit the liability, duty or obligation of past permits under the law as specified in 25 PA Code 271.221(c). (I)  (Bold face type added.)

What is the date of the original permit?
While stating a lack of institutional knowledge at the outset of his letter, Mr. Lausch inserted footnote (1). Lausch stated, “We see no need to respond to Mr. Epstein’s unilateral assertion that the facility is a “hazardous waste site.” Our silence is not not intended should not be perceived as agreement.”

I was not copied.

So who is liable and where are the facts?

I asked the Authority on October 23, 2012: “Please provide the name, location, and addresses of the corporations, entities and/or government bodies that are legally liable for cleanup and remediation costs.”

On October 26, 2012, Authority acknowledged they received the request. The HA needed additional time due to the need for a legal review of the information requested which precluded a responses within five (5) business days and detailed than an additional thirty (30) days to process the request. (Karen M. McKillip, Harrisburg Authority.)

On November 26, 2013, I was informed, “Your request is denied. A Right to Know request may request Public Records. Your request does not request Public records, but instead, requests, “Names, locations and addresses.”

We are at critical mass. The question remains: Will the sale of the Harrisburg Materials, Energy, Recycling and Resource Recovery Facility facility located in Dauphin County generate an Environmental Assessment.
In addition to securing an environmental assessment prior to the sale of the facility, it would be prudent to insist on the issuance of permit care for the post closure care of the hazardous waste landfill located at the Harrisburg Materials, Energy, Recycling and Resource Recovery Facility.


(a) Except as provided in subsection (b), an application for a municipal waste disposal or processing permit shall include an environmental assessment on a form prescribed by the Department.

(b) The following permit applications do not require an environmental assessment unless the Department determines that the facility may have a significant effect on the environment:
   (1) Permit applications for the beneficial use of municipal waste.
   (2) Permit applications for the processing of municipal waste under Subchapter I (relating to beneficial use).
   (3) Permit modification applications that are not for major modifications under § 271.144 (relating to public notice and public hearings for permit modifications).

(c) For facilities which have previously been subject to the environmental assessment process, the Department will limit the scope of review under that process to the following:
   (1) Proposed modifications to the facility.
   (2) Changes in the areas covered by the assessment that have occurred.

Dauphin County Commissioner’s Meeting, August 3, 2011:
Notification from DEP advising that they issued a draft permit to ArcelorMittal Steelton, LLC for the post closure care of their HWM-1 hazardous waste landfill located at 214 S. Front Street. DEP is accepting written comments from the public and ArcelorMittal on the draft permit for 45 days from the date of the letter (July 29, 2011).