

Minutes
Loudon County Solid Waste Disposal Commission
May 12, 2015

The Loudon County Solid Waste Disposal Commission (Commission) met on May 12, 2015 at 6:30 p.m. at the Loudon County Courthouse Annex. The Commission was represented by Steve Field, Larry Jameson, Robert Harrison, Kelly Littleton-Brewster, John Watkins, Art Stewart and Bruce Hamilton. Other attendees included Attorney Kevin Stevens; Loudon County Convenience Center Director Chris Parks; Santek representatives Cheryl Dunson and Raymond Givens; residents Betty Jo McAllister, Pat Hunter, Aileen Longmire and Kaye Wallace; and several unidentified residents.

Mr. Field called the meeting to order at 6:30 p.m.

Mr. Jameson led the Commission in the Pledge of Allegiance and the invocation.

MOTION: Ms. Littleton-Brewster made a motion to accept the corrected minutes of April 14, 2015. Mr. Harrison seconded the motion. The minutes were approved unanimously.

There were no Items of Public Concern.

Ms. Dunson presented the April Cash Report and Santek's Operations Report. Mr. Field asked Ms. Dunson if she expects the Kimberly-Clark paper waste to continue at its current volume. She said she would talk to David Hollinshead and report back to him following the meeting. Mr. Jameson thanked Santek for completing the construction of the truck wash.

At the Commission's request, Ms. Dunson presented the Commission with a spreadsheet detailing the potential extension of time on Santek's contract if it accepted Santek's offer to live fund the Commission's closure/post-closure accrual. The spreadsheet was broken down in 100-ton-per-day increments from 100 tons to the contractual cap of 800 tons. Mr. Field said the proposal would obligate Loudon County and the Commission to Santek for a long time. He encouraged all commissioners to consider consulting with their constituents about obligating the landfill's stakeholders for a longer period of time.

Mr. Watkins said he had a different concern related to the legality of extending Santek's contract without undertaking a procurement process. Mr. Stevens said he's been concerned with the same issue for some time and said he had recently completed some additional legal research regarding this issue. He said he found a recent ruling from the Tennessee Court of Appeals that could potentially allow the Commission to consider an extension of Santek's contract without undertaking a procurement process. Mr. Stevens said this recent ruling from the Tennessee Court of Appeals in August of 2014 provides some insight as to how procurement laws would apply to the Commission in the event of an extension of Santek's contract. This particular ruling involved a claim by Rock Tenn against the City of Memphis in which Rock Tenn asserted that the City improperly extended an existing recycling contract with a competitor, FCR Tennessee, LLC ("FCR"), for a period of 10 years without undertaking a procurement process. Pursuant to the existing recycling contract, the City did not pay FCR for the recycling services but merely received a portion of the revenue generated by the recycling services. The court ruled that the City was not subject to procurement laws in extending the existing recycling contract because it did not expend any money for the recycling services provided thereunder. Mr. Stevens said this situation was analogous to the Commission's current contract arrangement with Santek. He said the ruling gives guidance that procurement requirements are intended for purchasing and spending public funds only. He said the ruling provides the Commission with a reasonable legal basis to consider an extension of Santek's without undertaking a procurement process. He also pointed to another recent Court of Appeals ruling in which the Court found that contracts requiring scientific knowledge and professional skills, such as the disposal

of solid waste, may not be subject to procurement requirements either. Despite the Tennessee case law cited by Mr. Stevens, he cautioned the Commission that any extension of Santek's contract could still be challenged legally. Accordingly, as an additional precaution, Mr. Stevens said he would still recommend that any contract extension include an agreement by Santek to indemnify and defend the Commission in the event of any legal challenge to the contract extension. Further, he would also recommend that any contract extension include a clause making clear that the amended contract would resort back to the old contract in the event of any successful legal challenge.

Regarding the spreadsheet presented by Santek, Mr. Stevens questioned Ms. Dunson about the discrepancy between the 8 years of remaining life reflected on the spreadsheet and the remaining contract term of 12 years. Ms. Dunson said she would talk to Ron Vail in the morning and if the number affected the timelines, she would re-issue the spreadsheet for the Commission's review.

During the Attorney's Report, Mr. Stevens said the auditor had removed all equipment from the asset schedule on the audit as it was either disposed of or no longer functional. He stated that the auditor noted that the removal of the equipment didn't make any material change to the audit as it did not affect the total asset balance. He said the auditor would be providing the Commission with final bound copies of the audit.

MOTION: During the Chairman's Report, Mr. Field made a motion to allow individual commissioners to opt out of taking the monthly stipend. Mr. Stewart seconded the motion. Mr. Hamilton said he has a problem with the motion because it signifies some people are taking the money and some aren't. He said commissioners need to be all in or all out. Mr. Watkins said the Loudon County Mayor asked the Commission to reconsider reinstating the stipend. Mr. Jameson noted that the original vote on the stipend was to help the Commission's financial situation. The motion failed with 1 yes vote by Mr. Field and six no votes.

Mr. Field referred commissioners to a letter in their packet about the Poplar Springs Landfill from the Tennessee Department of Environment and Conservation. The letter was addressed to Loudon Mayor Jim Greenway and property owner Chad Newton. The letter instructed the city and the property owner to provide a plan of action to make improvements to drainage, leachate leakage and erosion control by June 10, 2015. Mr. Harrison asked which entity was going to pay for the plan and which entity was going to hire an engineering firm to put the plan together. Ms. Littleton-Brewster said the county was looking at securing a grant to pay for the work. Mr. Harrison said the entity which is putting the plan together needs to come before the Commission and request funds since the Commission has the jurisdiction for the Poplar Spring Closure/Post-closure subfund. Ms. Littleton-Brewster said she didn't believe any funds from the subfund were going to be used to put the plan together because the County was seeking a grant.

Mr. Field said he received two invoices for payment: Mr. Stevens' monthly legal bill of \$2,500 and a \$159 bill from the News-Herald for advertising the Commission's meeting.

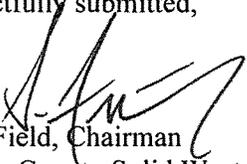
Mr. Field asked Mr. Harrison if he'd had an opportunity to talk to Loudon County Trustee Chip Miller about an investment plan for the Commission's funds. Mr. Harrison said he hadn't yet, but was planning to see Mr. Miller soon.

As the Commission's new secretary, Ms. Littleton-Brewster asked Mr. Field if he was still wanting her to put together an expense report and policies. Mr. Field said the Commission needed a budget, and asked Ms. Littleton-Brewster to create a document and present it to the Commission at its next meeting.

MOTION: Ms. Littleton-Brewster made a motion to adjourn the meeting at 7:25 p.m. Mr. Watkins seconded the motion and it passed unanimously.

The Commission's next regularly scheduled meeting is June 9, 2015 at 6:30 p.m. at the Courthouse Annex.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Field', written over the printed name.

Steve Field, Chairman
Loudon County Solid Waste Disposal Commission