



**MIDCOAST SOLID WASTE CORPORATION
BOARD OF DIRECTORS MEETING
February 27, 2019
MEETING**

MEMBERS PRESENT: Owen Casas (Chair) – Rockport, Debra Hall – Rockport, Alison McKellar (Treasurer) – Camden, Robert Falciani – Camden, Michael Brown (Vice-Chair) – Hope, David Barrows (Secretary) – Lincolnville, Keryn Laite – Lincolnville

MEMBERS ABSENT: Wendy Pelletier – Hope

REPRESENTATIVES PRESENT: Audra Caler-Bell, Camden Town Manager, Richard C. Bates–Rockport Town Manager

REPRESENTATIVES ABSENT: David Kinney–Lincolnville, Town Administrator, Samantha Mank – Hope Town Administrator

Guests: Lou Pizzuti, Environmental Specialist, Maine Department of Environmental Protection (DEP)
Josh Gerritsen, Chair Waste Watch Committee

Owen Casas, Chair, called the meeting to order at 6:37 pm.

A. PUBLIC COMMENT: None

B. DIRECTOR COMMENTS AND UPDATES: None

C. AGENDA ADJUSTMENTS: McKellar suggested that the scheduled conference call with Matt Manahan should be adjusted. A brief discussion on the call and the pending budget discussion for work performed by Pierce Atwood were held and McKellar suggested it be tabled. Casas agreed to entertain that suggestion when the item came up. Casas suggested the discussion on Item K will produce direction from the documentation provided and recommended that a conference call with Manahan not occur. Hall agreed with Casas that the materials are sufficient for discussion purposes. Gibbons was instructed to call Manahan and cancel the call.

D. APPROVE MINUTES OF January 23, 2019 MEETING:

Chair Casas entertained a motion. Barrows motioned to approve the minutes of January 23rd as written. McKellar seconded. No further discussion. Motion passed unanimously 6-0-0.

E. WASTE WATCH COMMITTEE REPORT:

Josh Gerritsen provided no updates from Waste Watch Committee (WWC) but asked for direction on the work the Board is looking to accomplish. Falciani asked what areas and types of activities are worked on by the group. McKellar suggested the group continue to work on education programming, recycling flyer be updated, along with altering the current video to include composting area information. McKellar added that the WWC

could coordinate feedback on the composting program and assist with getting the word out better in addition to the significant advertising done. McKellar asked to include the employees to see how they feel it is working. Casas briefly updated the Board on a recent conversation held with Lissa Bitterman on ecomaine's education programming which is in the process of being reset following ecomaine's need to focus on the recycling business as it worked through significant marketing changes effecting the nation. Lissa will ensure that the towns we service will receive information which can be passed on to schools in an effort to begin communication on the recycling education piece of the contract. Gerritsen enforced the commitment Waste Watch has to work with ecomaine on the education material and assisting with the work through the towns. Kwiatkowski asked that the Swap Shop begin to be focused on noting that Marci Casas of the WWC was instrumental in the operation and volunteer coordination last year. Kwiatkowski will assist WWC to follow up on the spring opening information.

F. EXECUTIVE COMMITTEE REPORT: Citing time constraints, Casas moved the discussion to later in the meeting.

G. DEP SOC Agreement:

Lou Pizzuti, Environmental Specialist, Maine DEP was present to go over the process needed to create a new Schedule of Compliance (SOC). The Mid-Coast Solid Waste Corporation currently operates under a Consent Agreement and Compliance Order constructed by the four towns of Camden, Hope, Lincolnville and Rockport, the Board of Environmental Protection and the State of Maine Attorney General under the consent agreement policy of the Maine DEP. The ME DEP has requested that MCSWC withdraw an active application for a landfill license that was filed in 1996 and replace the Consent Agreement and Compliance Order executed in 1993, with a new SOC. The suggestion is in lieu of attempting to move the licensing of the facility forward in an effort to recoup landfill closure funds from the State of Maine through their current remediation program which could rebate back up to 75% of the final landfill closure costs. MCSWC must pay into the program quarterly, but is not eligible for rebates from closure from the fund because it is not a licensed landfill. Pizzuti explained MCSWC operates legally under a Consent Agreement vs. a license and presented information on why the DEP is looking to move into an SOC with MCSWC.

Pizzuti reviewed the reasoning behind the older reporting documentation from early 2000 that could be used to deny the application; while not necessarily relevant to the work accomplished to date; the information can be used to decline the application as requested. Pizzuti cautioned against MCSWC entering a legal proceeding to be licensed, based on our proposed closure date which is 5-7 years away, suggesting the option to develop a SOC. Pizzuti agreed the ideal document would be designed to encapsulate the good portions of the Consent Agreement, which protect both MCSWC and DEP into a new compliance agreement. This new document would take the facility to closure with an agreed upon engineered closure plan. Pizzuti provided the example of a final cover design directed under an SOC would assist with the geographic constraints of the quarry site and assist with post-closure costs dramatically with criteria set in a new agreement.

Casas asked if MCSWC, operating under a Consent agreement, could receive funds under current law up to 30% of the costs. A lengthy discussion took place and Pizzuti understood MCSWC could continue to work on the issue with Piece Atwood on the Attorney General's original decisions and positions on eligibility for remediation funds for closure but that should not hold up the new SOC from being developed.

McKellar was supportive of withdrawing the original application and provided historical information on the process to date.

Pizzuti noted that the closure date is flexible with the SOC vs. stringent dates for eligibility of remediation funds where closure must be accomplished by 2025. MCSWC would continue toward meeting elevations for the landfill closure involving a 3 to 1 slope and a 5% crown and include planned efforts to work out issues of settlement, compaction, and fill methods that might assist with closing cost reserves prior to closure. Under the new SOC, MCSWC and the DEP will agree to operate under the criteria included in the agreement and Chapter 400 lowering the possibility of an enforcement action which could result under the current Consent Agreement. Pizzuti noted that the 2017 Annual Report averages cite a remaining capacity of 31,600 cubic yards is able to be placed in the landfill supporting a 3-5 year timeline.

Gibbons agreed that the new SOC would be the appropriate route noting that flexibility can be added to protect both MCSWC and the DEP. He stressed the importance of pulling content from the current Consent Agreement forward into the new document. Gibbons noted that the Consent Agreement is with the Attorney General, and the DEP can weigh in on the facility at any time. He stipulated that the agreement should include language that allows continued safety from future regulations and laws that may be placed following the signing. A lengthy discussion took place on possible environmental changes. Gibbons added that special attention should be paid to the information and the continued language regarding penalties on subjects such as Lily Pond as they were addressed in the original Consent Agreement and provide guidelines on the future. Pizzuti agreed this was something to preserve in the new SOC and other items may need to be transferred such as language on monetary penalties. Pizzuti asked that the Board determine what they want in the agreement so that discussion can begin on the new SOC. Pizzuti also reviewed the timeline that occurs with a closure application noting that a closure in 2024 would need to begin in 2021.

McKellar asked Pizzuti if the licensing application should be withdrawn before the new SOC is final. Pizzuti answered not until the language of the new SOC is executed then it could be withdrawn.

Pizzuti informed the board that a new letter from Brian Beneski is being drafted to update MCSWC further on the stance of the DEP and the Attorney General. MCSWC Board should be in receipt of that letter soon.

A discussion with Pizzuti and Gibbons on why MCSWC is sometimes described as a remediation site was held. Pizzuti noted that the CD&D Fee required by the State is no longer required once the landfill is capped.

Gibbons provided information on remediation site status and the development of the initial Consent Agreement by the Water Bureau to remediate and protect Lily Pond. The initial engineering project was costly and that is why funds were allowed to be reimbursed. McKellar provided some historical references on refunds received to date.

Gibbons expressed the importance of retaining and clarifying what qualifies for remediation funds to be returned to MCSWC in the SOC agreement as it applies to treating water issues on site. Expenses for reimbursements on the installation of the wall between the southern and northern sides of Jacobs Quarry should be explored with Sevee and Maher to see if they fit the current Consent Agreement criteria. Casas asked Gibbons to clarify if funding for remediation for water was better or does MCSWC want to pursue landfill remediation. A brief discussion on the state remediation program took place with Pizzuti cautioning that Brian Wineskin is cautious and not letting additional facilities/landfills into the program because the resources and funding is not available.

After closure MCWC will be considered a non-secure landfill with leachate extraction. Pizutti described how the leachate will go toward a core depression that will pull the water in a specific direction for pumping to alleviate contamination issues in the future.

Pizzuti asked that the Board review the DRAFT SOC and set a wish list to be incorporated into the document which will become a working document. Following content and language review by an attorney, submit the draft to DEP. Pizzuti will respond to the draft working document and provide feedback. The goal is to produce a mutually agreed upon final language document that can be agreed upon between DEP and MCSWC. Casas asked Pizutti what to pay attention to for areas where DEP has no flexibility so we are aware and not looking at things we cannot change.

Pizutti has taken out a lot of language to date that was not needed. A final review of the corrective actions on p. 9 in the DRAFT SOC was held.

- 1) To be done if SOC finalized.
- 2) Within 12 months for review and approval. (can be revised/removed) the process of setting up alternative handling of CD&D and will be involved in the redesign for the transfer station license and transport system for CD&D will cover this step.
- 3) Landfill Closure Application: Pizzuti can leave in adding the qualification stipulation or acceptance of remediation funds; and alter the start date, if needed, while still meeting the December 31, 2024 date.
- 4) Paragraph 4 revised closure plan will be done so this will be removed.
- 5) Paragraph 5 will come out and be combined with other information as a Closure plan will be accomplished. Financial assurance will be included in the closure plan as well. Some paragraphs can be combined.
- 6) In the application for closure a description on maintaining the extraction well will be included. The well will need to stay to track lily pond into the future. This references some older issues that were active years ago.
- 7) Design plan for discharge of storm water from Lily pond is completed
- 8) No heat loop to be built - remove
- 9) Standard language.

Gibbons suggested Sevee and Mahar are our best resource to assist with language review for closure information on appropriate dates and elevations needed in the SOC and should be included in this process.

Pizutti supported this statement and commented they are fully versed in this work.

Put what is Beneficial in consent agreement and add to the SOC draft language presented to the DEP. Weigh heavily the cost to move a license application forward with the assistance of lawyer consultants and engineers and resubmitting information to be current vs. using those exorbitant costs on the application for closure and the documentation you will need to get that accomplished.

Casas thanked Pizutti for his time and the Board will move forward with a review of the information provided and determine the best options for MCSWC going forward.

The Board agreed to move forward with a review of the SOC document to develop an initial draft with needed current information and to review with attorney if necessary to determine what they want in the agreement by developing a working document.

H. LETTER FROM LINCOLNVILLE SELECT BOARD:

The letter from the Lincolnville Select Board was discussed. It was highlighted by several members of the Board that concerns should have come directly to the MCSWC Board and not the area Select Boards. Laite explained that the Lincolnville Select Board felt compelled to address these concerns through the Select Boards to allow representatives to return to MCSWC Board with discussion feedback.

Casas explained the perception that we were behind on recycling education was warranted, but that Ecomaine was also struggling with time commitments to their education outreach program due to the recycling market trends. Ecomaine is happy to begin engaging in work to promote this part of the contract.

Laite represented that time had passed between constructing the letter and delivery, noting that issues of importance included in the letter were considered important to share when written. Since that time it is recognized that resolutions are being worked on by the MCSWC Board. He agreed to pass on the feedback to the Lincolnville Select Board.

I. REVIEW, DISCUSSION AND APPROVAL OF CAMDEN NATIONAL WEALTH MANAGEMENT:

a. Corporate Authorization Resolution:

McKellar opened a discussion on the need for the Board to authorize signatories for work to be done with the Camden National Wealth Management (CNWM) investment firm. McKellar explained that the operation of the By-Laws and Interlocal Agreement that currently placed the Executive Committee, as a collective group, in charge of managing the facility had elected David Kinney to be the signature designee for the management team. A second signature by the Secretary post is required. This position is currently held by David Barrows who would be a cosigner.

The Finance Committee is looking to invest available funds over the next 5-7 years of landfill life. The funds will be treated conservatively and held in this manner until closure. McKellar asked the Board of Directors to consider this cosignatory strategy of authorization in order to open necessary accounts which require representatives to sign for the Corporation.

Chairman Casas entertained a motion. Bob Falciani motioned to grant powers to David Barrows and David Kinney to exercise the necessary powers to open an account and sign the Corporate Authorization Resolution so that it can be provided to Camden National Wealth Management. Keryn Laite seconded. No discussion. Motion passed unanimously.

b. Approval of the initial Investment Policy Statement (ISP):

McKellar explained that the ISP policy is being designed under the same regulations as a municipality. The status of the corporation through a search with the Secretary of State turned up questions. Paul Gibbons, Esq, added that the state statute, when the MCSWC was formed allowed a corporation to be not-for-profit but only if it is a municipality. It has been recommended by CNWM that the MCSWC Board of Directors engage counsel at the firm of DrummondWoodsum in Portland, ME to advice on the status of the Corporation with regard to future investment possibilities. Discussion on investment considerations and complying with Statutory Laws followed McKellar's comments.

Chairman Casas entertained a motion. Bob Falciani motioned to approve the ISP for Account #054885 as drafted by McKellar. Keryn Laite seconded. No discussion. Motion passed unanimously.

c. Discussion to engage services of Drummond Woodsum:

A third vote was discussed to approve the engagement of DrummondWoodsum to determine if the status of MCSWC not-for-profit is enacted under a municipality or not. McKellar clarified that this determination will clarify how taxpayer funds can be invested. There is a strong argument that the funds returned from MRC might be able to be invested with more flexibility. Additionally, if any long term perpetual care funds

can be invested with more flexibility it may be a benefit to the corporation's future costs. A brief discussion on the proposed amount to allocate to the endeavor was held.

Chairman Casas entertained a motion. Bob Falciani motioned to authorize up to \$3000 for a law firm to investigate. McKellar seconded. Hall recommended clarifying the wording of the motion. Falciani amended his original motion to authorize the Finance Committee to spend up to \$3000 for a law firm to investigate and consult on finances. McKellar's second stood. No discussion. Motion passed 6-2-0. (90.18 favored and 9.82 opposed; Falciani, McKellar, Laite, Casas, Hall and Barrows approved the motion; Brown/Pelletier opposed the motion).

J. REVIEW, DISCUSSION OF A GOVERNANCE COMMITTEE:

Debra Hall presented the work done by McKellar, Pelletier and Hall to develop a Governance Committee. Hall read aloud the drafted mission statement. The work committee suggested that a representative of each member town be placed on the committee. McKellar proposed future work on a policy to allow committees to seat citizens for non-voting positions when the subject matter would be supported by that type of input. Casas supported the idea presented and suggested the Governance Committee review and provide the Board with a recommendation on such a change at a future meeting. A discussion on the number of members needed for the committee was held. Volunteers to seat the committee included McKellar, Hall, Pelletier and Laite.

Casas entertained a motion to approve the formation of a Governance Committee. Falciani motioned to approve McKellar, Hall, Pelletier and Laite as official members of the governance committee and to accept the mission statement as drafted. Brown seconded. Motion passed unanimously 7-0-0.

K. PIERCE ATWOOD REVIEW AND DISCUSSION:

Paul Gibbons and Matt Manahan were not part of the discussion on the Pierce Atwood update. Hall provided background information on the potential of moving forward with work on the SOC agreement to replace the Consent Agreement. McKellar added that the letter in the Board Packet from Pierce Atwood was excellent and left no doubt that that it was a good opinion on our status for potential funding.

McKellar asked that any future work be carefully considered reporting that the funding amount for the attorney project has exceeded the amount approved. The final figure is not known as additional invoicing is expected from Gibbons.

Casas polled the Board members about perusing remediation funds for the landfill.

Hall agreed with Gibbons recommendations to not overlook Consent Agreement matters that are important to the Corporation.

Falciani agreed that pursuing the remediation funds was an unsubstantiated risk, and suggests waiting to read the new letter from Beneski on the matter.

Bates added that there does not appear to be a real avenue to pursue.

Barrows assimilated the information presented at the meeting solidified it would likely go no further.

Laite had concerns that dates don't coincide with what we need to accomplish in the landfill.

The general consensus was that the letter from Pierce Atwood should assist with directing the Board away from pursuing the landfill license and remediation funds under the State's landfill remediation program.

McKellar added that the Finance Committee recommends not spending more legal funds on the matter.

Falciani agreed with the Finance Committee.

Hall felt funds to determine the best Schedule of Compliance would be better spent.

The Board agreed by unanimous consensus to move forward with working on a draft of a Schedule of Compliance to present to the DEP. Caler-Bell will discuss the matter with Sevee and Mahar and Gibbons.

FY18 Audit:

McKellar reported the Finance Committee along with Jodi Hanson has worked on an extensive list of questions and provided Ron Smith and Erika McKay of RHR Smith with responses. RHR Smith now has a better understanding of the closure funding and a better understanding of the 1.3 million, returned from MRC which is held collectively by the Towns. RHR Smith has requested documentation that the \$1.5 million Landfill Closure Reserve funds and the \$1.3 million collectively held will be going toward closure representing a total of \$2.8 million for that debt. A lengthy discussion on how the reserve accounts have been built up through budgeting was held.

RHR Smith has determined that upon clarification from each Town Select Board in writing or via a Town Meeting record which acknowledges there is a restricted account for the use of future landfill costs would allow the (unfunded liability) to be removed from the books.

McKellar reminded RHR Smith that the four towns will be perpetually responsible for additional the post closure costs that will be budgeted annually as per the Interlocal Agreement and any Consent Agreement entered into. In addition, clarification that closure and post closure are treated separately for this reason was made.

Camden, Rockport and Lincolnville have agreed to return the MRC refund back to MCSWC when it has a restricted reserve and investment policy set up. Hope will be reviewing the investment ISP policy created by the Board of MCSWC to be sure there are solid constraints on the closure funds so that they cannot be used for other corporate needs prior to a decision to return the funds. Falciani cautioned the Board to include a 3% escalation factor to the \$2.4 million available to be sure it will be enough to close in 5-7 years.

A final discussion on closure dates, calculations for landfill capacity and leachate volume was held.

McKellar asked that each Select Board document what they did with the money and motion to show the course each town is willing to take with regard to the MCSWC closure costs. Documentation may come in the way of minutes that include language on the agreed upon motion for the money and that it is restricted for use in closing the landfill upon return to MCSWC.

L. INTERIM MANAGER AND MANAGER SEARCH:

Mike Brown, Vice Chair opened a discussion on the Interim Manager process. Caler-Bell discussed the need to look at possibly filling that position in the busier summer months.

Caler-bell explained a Manager's search and job description has been posted to on-line job sites and applications are being received. The Personnel Committee will review applications, set up a panel of people to assist with interviewing candidates and making recommendations then bring information forward for Board for interviews to continue.

Caler-Bell added that the executive committee is concerned that nothing be missed in the period before hiring a permanent manager. A conversation on networking and direction to promote the position was held.

Falciani and Casas discussed an earlier attempt to work on the interim manager placement.

A discussion on the daily management of the facility took place. It was determined that Executive Committee members will visit the site weekly and that Casas will work on being available on Friday's as needed and will provide staff with communications on site.

Laite asked if there were budgeted funds to hire a full time Interim Manager. Caler-Bell indicated that funding was set during the budgeting process; funds from the unassigned fund balance of were diverted for use on an interim manager; while keeping at least a 12% reserve per budgeting policy.

K. FINANCIALS:

Kwiatkowski reported that the fee schedule, voted on by the Board and all four Town Select Boards, has been reviewed with Gatehouse staff along with the policy on rate changes as set by the MCSWC Board. Kwiatkowski reported that the MSW funds continue to be recouped from the pricing problem in July is going well. Several of the customers working on a recapture payment schedule have paid in full and two customers continue to work on an agreed upon payment schedule at this time. MCSWC appreciates their assistance with this matter.

K. ADJOURN:

Casas entertained a motion to adjourn. A motioned to adjourn was made by McKellar. Hall seconded. No discussion. Motion passed unanimously 7-0-0. The meeting ended at 9:50 pm.

Respectfully Submitted,

Beth Kwiatkowski
Recording Secretary

SCHEDULED MEETINGS:

Board of Directors Meetings:

March 27, 2019, Meeting, 6:30 pm at the French Conference Room in Camden, ME

Executive Committee Meeting: TBD – Camden Town Office

Committee Meetings: TBD

Finance:

Governance:

Personnel:

Strategic & Capitol Planning: