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HOUSATONIC RESOURCES RECOVERY AUTHORITY

REGULAR MEETING MINUTES

Thursday, February 19, 2009, 10:30 a.m.

Room 133, Brookfield Town Hall

Members or Alternates Present and Voting:

Brookfield, Joni Park	7
Danbury, Mark Boughton/Joel Urice	35
Kent, Dolores Schiesel	1
New Fairfield, Mike Gill	6
New Milford, Suzanne Von Holt	13
Newtown, Herbert Rosenthal	12
Redding, Natalie Ketcham	4
Ridgefield, Rudolph Marconi	11
Sherman, Andrea O'Connor	<u>2</u>
	91

Others Present:

Ed Hayes, Sherman Alternate
Cheryl Reedy, HRRR Director
Bob Metzler, HRRR Counsel
Les Pinter, Danbury Corp. Counsel
Dan Casagrande, Danbury Counsel
Rob Pedersen, WCI
Dave Dunleavy, AWD
Lynn Waller, Public
Representative of All American Waste

Members Not Present

Bridgewater, William Stuart
Bethel, Robert Burke

Call to Order: The meeting was called to order by Chairman Gill at 10:33 a.m. with a quorum of 80 votes present from eight towns. R. Marconi and A. O'Connor entered the meeting at 10:35 a.m. during the Chairman's comments and before any votes were taken. M. Boughton entered the meeting at 11:00 a.m. during agenda item 6 b. and became the voting member from Danbury for the rest of the items on the agenda, with the exception of item 7(c) RTI tip fee, on which J. Urice cast Danbury's vote when the Mayor stepped out of the meeting for a few minutes.

Public Comment

Lynn Waller thanked the HRRR for supporting Danbury's efforts to gain ownership of the White Street transfer station. There was no other public comment.

Chairman's and Members' Comments

Chairman Gill commented on the following: (R. Marconi and A. O'Connor entered the meeting during this item, and A. O'Connor replaced alternate E. Hayes as the voting member from Sherman.)

- Appointed J. Urice, J. Park and S. Von Holt as the HRRR Nominating Committee to propose a slate of officers for consideration and vote at the Authority's annual meeting in June.
- Noted that the terms of HRRR members and alternates from Bridgewater, Bethel, Danbury, Kent and Redding are either expiring on June 30, 2009 or have already expired. Under the HRRR

bylaws members and alternates continue to serve, however, until replacements are appointed. There is also a vacancy for the Ridgefield alternate.

- Reminded the municipalities who have not yet passed a resolution in support of Danbury's ownership of the transfer station, i.e. Bridgewater, Bethel, New Milford and Ridgefield, to please consider doing so and send a copy to HRRRA.

There were no comments from Members other than the Chair.

Director's Report

C. Reedy noted that the most important issue in the report was for Members to understand that the weak economy has resulted in declining MSW tonnage over the past year. While tonnage for 2008 was down about 4%, the decline in the first month of 2009 was about 13% from the prior year. Recycling tonnage is down as well, but more importantly recycling commodity revenues remain only about one-quarter of what they were in the prior year. This will not affect the HRRRA budget for 2009-10 but will have a very serious effect on the 2010-11 budget if the revenues do not recover somewhat during 2009. Members took note of the complaints received and enforcement action taken during the past month, including the cooperation from New Fairfield Sanitation in addressing an ongoing issue with curbside recycling collection on one route in the Town of Brookfield. S. Von Holt asked about the bottle bill legislation. C. Reedy responded that her understanding was that the State Legislature already approved a bill taking the unclaimed bottle deposits (escheats) from the current bottle bill into the general fund to help balance the current year's budget. In addition there is legislation pending to expand the bottle bill to include water bottles, to include water bottles and other containers such as ice tea, fruit juice, etc., to raise the deposit to \$.10 per bottle and to increase the handling fee for retailers to \$.03 per bottle. One or all of these proposals is expected to come to a floor vote and likely pass during the current session because of a new Speaker who favors such expansion of the bottle bill and because the State needs the revenue. Members expressed their frustration that despite repeated requests over the last few years from HRRRA and other recycling regions for the State to take the escheats and use at least some of the money to support local and state recycling efforts, the only time the legislators seriously considered the issue was when the State needed money.

Consent Action Items

Motion by H. Rosenthal, second by S. Von Holt to approve the consent action items, i.e. minutes of December 19, 2008, financial statements to January 31, 2009 and a transfer of \$100 from Professional Services to Audit. **Vote:** All in favor.

Old Business:

- E-waste Regional Plan* – **Motion** by D. Schiesel, second by A. O'Connor to approve submission of the regional e-waste plan as presented with one correction showing that the Town of Kent will have a permanent collection program. **Vote:** All in favor. C. Reedy noted that local transfer stations will need to update their permits with DEP if e-waste is not already included in their permit and reminded the Chief Elected Officials that HRRRA must receive a letter of agreement from each municipality wanting to be covered under the regional plan in a form substantially similar to the draft proposed ASAP in order to meet the March 1, 2009 filing deadline with the State.
- Regional E-waste Vendor RFP* – **Motion** by H. Rosenthal, second by A. O'Connor to approve the regional e-waste vendor RFP substantially as presented with the inclusion of an option for a special one day collection each year in municipalities who choose to do so. **Vote:** All in favor. (M. Boughton entered during this agenda item and replaced J. Urice as the voting member from Danbury.)
- Update from City of Danbury on Acquisition of White Street Transfer Station* – M. Boughton reported that the City has put out a RFQ looking for private firms with which to partner in the event that the City bids on the transfer station assets. There was a pre-SOQ meeting held in City Hall on February 18, 2009 which was attended by about 40 people representing some of the biggest names in the waste management business in the country as well as smaller and more local companies. The RFQs are due

back on February 26th. The City may partner with several different entities and/or submit a number of bids in the federal auction. Addressing concerns raised by at least one member community that Danbury will get all the revenue from the transfer station if successful in its ownership bid, the Mayor noted that the City and the Danbury Solid Waste Authority (DSWA) are assuming some risk in this endeavor and will incur costs for site control and site improvements. While there is not a lot of revenue in the operation right now, there is the potential for more revenue generation in the future if the transfer station is expanded to its maximum permitted capacity. As the host community, Danbury is the municipality that must deal with the traffic generated by the transfer station, the maintenance and upkeep required on local roads, any environmental risks generated at the site and issues of litter, odor, dust, etc. that arise in the abutting neighborhood. The federal government is still not talking with the City directly, and the U.S. Attorney wrote an Op Ed in Sunday's NewsTimes in which she seemed to argue that the government will serve the public interest in the sale by giving half the proceeds to the CT State Police. Volunteers to serve on the DSWA have exceeded the Mayor's expectations and include a local attorney, a resident from the transfer station neighborhood, a former carter, a representative of those residents most impacted by environmental justice issues, a resident with experience in solid waste transfer station planning outside of CT, etc. The DSWA will be officially created 30 days after publication of the ordinance creating the Authority, i.e. during the first week of March. After the Authority gets organized and up to speed on all the issues over which it will have jurisdiction, the HERRA and the DSWA will collaborate on a Memorandum of Understanding that better clarifies the role of each in the solid waste management system in the City. The Authority did not enter into executive session during discussion of this agenda item.

New Business:

- a. *City of Danbury and HERRA Joint Petition on Victim Compensation to the U. S. Attorney General* – D. Schiesel disclosed for the record that she is a member of the same law firm as Attorney Dan Casagrande, who wrote the petition, but stated that she had not participated in the development of the petition. Not wanting to give even the appearance of a conflict of interest, all other Members were asked if they agreed that Ms. Schiesel could participate in this agenda item and vote, if required. There was unanimous consent with no reservations noted for the record that Ms. Schiesel could participate.

Attorney Dan Casagrande, who developed the petition on behalf of the City, with the assistance of Bob Metzler representing HERRA, explained the petition and the reasons for it. In asset forfeiture cases such as the current one there is a process by which victims can claim compensation for losses suffered from the proceeds of the asset sale. The requirements for this victim compensation process are quite stringent and require the victim to prove the exact amount lost and produce evidence in the form of receipts or other written documentation of such loss. Due to the nature of the property rights scheme that limited competition for trash collection in the region for, by the federal government's claim, twenty some years, it is virtually impossible for any victim to meet that burden of proof, even though many all residents, businesses and municipalities in the region, by the government's claims in its sentencing document, suffered from this lack of competition and paid higher prices for collection than they would otherwise have paid. However, there is another section in the law that allows the U.S. Attorney General to take other action to protect innocent persons or action that is in the interest of justice in dealing with assets forfeited under federal law. This petition asks Attorney General Eric Holder to award ownership of the White Street transfer station to the City of Danbury or the DSWA as partial compensation for the losses suffered by the residents, businesses and municipalities of the HERRA region as a result of the property rights scheme. Those losses are estimated to be in the \$14 million range for the HERRA region and in the \$32 million range for the entire area served by the transfer station.

If approved, the petition will be filed today with the U. S. Attorney's Office and posted on the HRRRA website. The USAO will forward it to the U. S. Marshal's Service for their review and comment. It will then return to the USAO for their review and comment. And all comments will be sent finally to Attorney General Holder's office with a recommendation on disposition from the USAO and USMS. To date there have been no proposals from either federal or state authorities to compensate any victims of the crimes to which all or virtually all of the 29 defendants have thus far pleaded guilty.

R. Metzler noted for the record that D. Casagrande did a great job putting the petition together and making a compelling case. H. Rosenthal suggested that the HRRRA ask for the endorsement of Sen. Dodd, Sen. Lieberman, Cong. Murphy and Cong. Himes on the petition. D. Casagrande suggested that officials from the City and/or HRRRA seek a meeting with the Attorney General in Washington, D.C. to make their case on the petition in person.

Motion by H. Rosenthal, second by R. Marconi to approve the resolution entitled HRRRA Resolution to Approve a Joint Petition to the United States Attorney General to Transfer Ownership of the White Street Transfer Station to the City of Danbury or its Solid Waste Authority (a copy of which is attached to these minutes). **Vote:** All in favor. The Authority did not enter into executive session for discussion of any of this agenda item.

Motion by J. Park, second by R. Marconi, to move item (c) under New Business (RTI tip fee) up to become item (b) so that the public in attendance would not have to wait through an anticipated executive session on the old item (b), i.e. contract default issues with RTI, to hear the outcome of the RTI tip fee. **Vote:** All in favor. (M. Boughton stepped out of the meeting at this point on the agenda, and J. Urice took over as the voting member from Danbury.)

b. *RTI Tip Fee for 2009-10* – **Motion** by J. Park, second by J. Urice, to set the RTI tip fee for 2009-10 to remain at \$39 per ton. **Vote:** All in favor.

c. *Contract Default Claim Against RTI* – **Motion** by D. Schiesel, second by A. O'Connor to go into executive session and invite in all HRRRA Members and Alternates, HRRRA legal counsel, HRRRA Director, City of Danbury Corporation Counsel, and City of Danbury Counsel, for the purposes of discussion of pending litigation with respect to a contract default claim against RTI. **Vote:** All in favor. The Authority entered executive session at 11:45 a.m. and came out of executive session at 12:00 noon. **Motion** by R. Marconi, second by A. O'Connor, to approve the resolution entitled HRRRA Resolution with Respect to Recycling Technologies, Inc. (a copy of which is attached to these minutes). **Vote:** All in favor. S. Von Holt asked, on behalf of Mayor Pat Murphy who was unable to attend the meeting, why HRRRA had not taken this action before. C. Reedy, M. Gill, M. Boughton and H. Rosenthal all reviewed the history of the dispute as well as the resources available to HRRRA. D. Schiesel asked that the Director and Chairman memorialize the reasons in a letter to Mayor Murphy. (M. Boughton re-entered the meeting during this agenda item and was the voting member from Danbury on this item.)

Adjournment

Motion by H. Rosenthal, second by R. Marconi, to adjourn the meeting at 12:03 p.m. **Vote:** No one opposed.

Respectfully submitted,

Cheryl D. Reedy
HRRRA Director

**HRRRA Resolution to
Approve a Joint Petition to the United States Attorney General to
Transfer Ownership of the White Street Transfer Station to
the City of Danbury or its Solid Waste Authority**

Whereas, the Housatonic Resources Recovery Authority (HRRRA) is a regional resources recovery authority created in 1986 by concurrent ordinances in all its member municipalities, including Bethel, Bridgewater, Brookfield, Danbury, Kent, New Fairfield, New Milford, Newtown, Redding, Ridgefield and Sherman, under Section 103b of the Connecticut General Statutes, which municipalities constitute the “HRRRA Region”, and

Whereas, the White Street transfer station currently transfers 85% of all municipal solid waste (MSW), processes approximately 55% of the recyclables, and transfers by rail at least 80% of the construction and demolition debris (C&D) generated within the HRRRA Region, and

Whereas, the HRRRA has existing contracts requiring recyclables and MSW to flow through the White Street transfer station until 2013 and 2019 respectively, and

Whereas, the White Street transfer station is the only C&D and recycling facility in the HRRRA Region and the dominant MSW transfer station in the HRRRA Region and, due to zoning regulations throughout the HRRRA Region, it is unlikely that other transfer stations can be sited in the HRRRA Region in the future, thus creating a transfer station monopoly at White Street, and

Whereas, in June 2006 a federal grand jury returned a 117 count indictment against 29 individuals, and 10 corporate defendants charging the majority with racketeering, racketeering conspiracy, mail and wire fraud, obstruction of justice, and tax evasion, as well as alleging a “property rights system” in the waste hauling industry in Connecticut and New York controlled and enforced by James Galante and Thomas Milo, the White Street transfer station owners, in association with La Cosa Nostra, and

Whereas, as of December 19, 2008 all or almost all of the defendants have pleaded guilty and most have been sentenced, including the White Street transfer station owners, and

Whereas, the Honorable Ellen Bree Burns, the United States Judge for the District of Connecticut, has entered a Final Order of Forfeiture dated February 10, 2009 condemning and forfeiting the interests of James Galante and Thomas Milo in numerous assets including Transfer Systems, Inc., Recycling Technologies, Inc., Greensphere, Inc., Advanced Recycling Corp., and 307 White Street Corp. (collectively, the “Transfer Station Companies”), which are involved either directly or indirectly in the operation of the White Street transfer station, and

Whereas, the HRRRA passed a resolution on June 3, 2008 finding it in the public interest that the White Street transfer station operations and facilities be owned by HRRRA on behalf of the residents and taxpayers of member communities and communicated that finding in writing to the U. S. Attorney’s Office on June 5, 2008 and September 9, 2008 without response, and

Whereas, the HRRRA passed a resolution on December 19, 2008 supporting the City of Danbury’s ownership of the Transfer Station Companies and the real property on which their business operations are located; and

Whereas, the HRRRA members reaffirm that it is in the public interest that the White Street transfer station operations and facilities be publicly owned for the following reasons:

1. Connecticut law mandates that municipalities designate a permitted location for the disposal of all solid waste generated within their borders, and the White Street transfer station is an integral and indispensable part of the HRRRA municipalities’ compliance with that mandate, and
2. Organized crime must not be permitted to regain a toehold in the HRRRA Region’s solid waste disposal system ever again, and

3. HRRAs' operations at the White Street transfer station for MSW and recycling were NOT implicated in the federal indictments, showing that government oversight of those operations helped protect against the influence of organized crime, and
4. A non-public owner of all forfeited assets would immediately have a legal, dominant solid waste collection market share and a legal monopoly on solid waste transfer and processing in the HRRAs region that would do little to increase competition to consumers' benefit or to protect against the reemergence of organized crime in the HRRAs Region's solid waste system, and
5. Public ownership of the White Street transfer station will provide a level playing field to allow fair and increased competition for private solid waste collection companies, the piece of the solid waste system implicated in the federal indictment, and
6. Public ownership of the White Street transfer station will insure that the transfer station owner is not also a solid waste collector, posing a conflict of interest and the potential for unfair and anti-competitive treatment of private collectors, and
7. Local public ownership will insure that the HRRAs Region's MSW and recycling contracts are not impaired costing HRRAs and its member municipalities unnecessary legal and negotiating fees, and
8. Local public ownership of the White Street transfer station will allow local control of a necessary and essential public health, environmental and litter services at the facility, and
9. Local public ownership of the White Street transfer station will allow local control over traffic generated by the facility, and
10. Local public ownership of the White Street transfer station will support and encourage the HRRAs Region's recycling efforts and compliance with the State's Solid Waste Management Plan goals for a 58% MSW diversion rate by 2010, and
11. Local public ownership of the White Street transfer station will provide the opportunity to increase solid waste services such as electronics recycling, bulky waste collection, more household hazardous waste collections, etc., and
12. Local public ownership of the White Street transfer station will insure that the Danbury Mom & Pop Recycle Center continues to operate unimpeded for benefit of the taxpayers of Danbury, and
13. Local public ownership of the White Street transfer station would insure that the public in the HRRAs Region, who were victimized and overcharged as a result of the influence of organized crime, would rightfully share in the fruits of the federal government's successful prosecution of those responsible, and is a reasonable and fair way to provide compensation to the residents, businesses and municipalities of the HRRAs Region who paid inflated prices for MSW collection under the alleged property rights system for the last twenty plus years, and

Whereas, the United States is currently proceeding to dispose of the property forfeited to the United States in accordance with the Final Order of Forfeiture; and

Whereas, the Attorney General of the United States has the authority under 18 U.S.C. §1963(g)(1) of the United States Code to take action to protect the rights of innocent persons; and

Whereas, the Members of HRRAs believe that the most appropriate manner by which the United States Attorney General to protect the rights of the innocent residents of the HRRAs municipalities is to transfer ownership of the Transfer Station Companies to Public ownership; and

Whereas, the City of Danbury and its residents are more directly affected by the ownership and operation of the White Street transfer station than any other HRRAs municipality, and

Whereas, the City of Danbury, through its Mayor, has indicated a willingness to proceed with public ownership of the White Street transfer station to benefit the City and the entire HRRR Region, and

Whereas, the City of Danbury would be entitled to reap the financial benefits of public ownership of the White Street transfer station and its operation for its taxpayers if the City does obtain ownership, and

Whereas, the City of Danbury and the HRRR share a mutual interest in public ownership of the White Street transfer station and have a long history of working cooperatively to find and implement mutually beneficial solid waste and recycling services and solutions that serve the interest of both the City and the HRRR.

Now therefore, be it resolved by the members of the HRRR as follows:

RESOLVED: That it is in the public interest of the HRRR Region that the City of Danbury or the Danbury Solid Waste Authority own and operate the Transfer Station Companies and that HRRR support ownership of the Transfer Station Companies by Danbury or the Danbury Solid Waste Authority.

RESOLVED: That it is in the public interest of the HRRR Region for HRRR to work cooperatively with the City of Danbury, in order to insure that the transfer station is operated for and on behalf of the public and that all the benefits of local public ownership inure to the benefit of the City of Danbury and the HRRR Region.

RESOLVED: That HRRR be and it hereby is authorized and directed to join with the City of Danbury in a Petition to the United States Attorney General in form and substance substantially similar to that presented to HRRR at its meeting on February 19, 2009, that he exercise his discretion under the provisions of 18 U.S.C. §1963(g)(1) of the United States Code to convey the Transfer Station Companies to the City of Danbury's Solid Waste Authority for nominal consideration (the "Petition").

RESOLVED: That the HRRR's Counsel, Robert J. Metzler II, Esq., of Hinckley, Allen & Snyder, LLP be and he hereby authorized to execute the Petition on behalf of HRRR and to take all actions necessary and prudent, within available appropriations, to seek approval of the Petition by the United States Attorney General to foster the goal of local public ownership for the White Street transfer station to be operated for and on behalf of the public interest of the residents of the HRRR Region.

**HRRRA Resolution With Respect to
Recycling Technologies, Inc.**

Whereas, the members of Housatonic Resources Recovery Authority (“HRRRA”) have determined that Recycling Technologies, Inc (“RTI”) and Automated Waste Disposal, Inc. (“AWD”) are not performing their obligations under the Regional Recycling Center Service Agreement by and between HRRRA and RTI dated as of March 13, 1991 (the “Recycling Service Agreement”), as amended, and the Parent Company Agreement Supplement No. 1 between HRRRA and AWD dated as of October 21, 1994 (the “Parent Company Agreement”), respectively; and

Whereas, the members of HRRRA believe it to be in the best interest of HRRRA to insist that RTI and AWD fulfill their contractual obligations to HRRRA in accordance with the terms of the Recycling Service Agreement and the Parent Company Agreement, respectively; and

Whereas, the members of HRRRA desire that RTI and AWD be put on notice of their respective violations and defaults under the Recycling Service Agreement and the Parent Company Agreement, respectively, as set forth in a certain proposed letter reviewed by the members of HRRRA at its meeting on February 19, 2009 (the “Default Letter”).

Now therefore, be it resolved by the members of the HRRRA as follows:

RESOLVED: That HRRRA be and it hereby is authorized to send to RTI and AWD notice of their defaults and violations of the Recycling Service Agreement and the Parent Company Agreement, respectively, in form and substance substantially similar to the Default Letter.

RESOLVED: That HRRRA’s Chairman be and he hereby is authorized and directed to sign and cause to be sent to RTI and AWD on behalf of HRRRA such notice of defaults and violations, in form and substance substantially similar to the Default Letter.