RAHWAY VALLEY SEWERAGE AUTHORITY
Engineering Committee Meeting
Minutes
April 12, 2012

The Committee Chairman called the meeting to order at 8:07 p.m. (immediately after the Finance Committee Meeting).

The Chairman read the statement on “Open Public Meetings Law”.
“In accordance with the requirements of the Open Public Meetings Act, State of New Jersey, adequate notice of this meeting has been provided by the inclusion of the date, time and place in a Notice forwarded to The Star Ledger, the Home News Tribune and the Clerk of each of the eleven member municipalities on February, 9 and again April 10, 2012.

If any member of this body believes that this meeting is being held in violation of the provisions of the Open Public Meetings Act, please state your objection and the reasons for same at this time.’”

…. Hearing no objections, we shall proceed with our regularly scheduled meeting.

Roll Call
The following members were present:
   Rene Dierkes for the Borough of Mountainside
   Stephen J. Eisenberg for the Township of Springfield
   Stephen Greet for the Borough of Garwood
   Randall T. Hering for the City of Rahway
   Robert LaCosta for the Township of Scotch Plains
   Richard LoForte for the Borough of Kenilworth
   * Robert G. Luban for the Township of Woodbridge
   ** Frank G. Mazzarella for the Township of Clark
   James J. Murphy for the Township of Cranford
   Attilio S. Venturo for the Borough of Roselle Park

The following member was absent:
   Allen Chin for the Town of Westfield

The following were also present:
   James J. Meehan Executive Director
   Robert J. Materna Secretary-Treasurer
   Joanne Grimes Office Admin./Board Secretary
   Bryan Atieh, P.E. Hazen & Sawyer
   Brian Hak, Esq. Weiner Lesniak, LLP
The following were also present:

- Robert Valent          Superintendent
- Dan Ward               Manager of Plant Maintenance
- Anthony Gencarelli     Manager of Regulatory Compliance
- John Buonocore         Staff Engineer

**New Business**

**Contract #1224 – Ultraviolet System Replacement Parts**
A Notice to Bidders was advertised in the Star Ledger and was posted on the Authority’s website. Seven companies purchased bid packages and on Tuesday, April 3, 2012, the following bids were received:

<table>
<thead>
<tr>
<th>Company</th>
<th>Amount Bid</th>
</tr>
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<tbody>
<tr>
<td>Emperor Aquatic</td>
<td>$117,000.00 (Only bid on Items 2 &amp; 3)</td>
</tr>
<tr>
<td>Pottstown, PA</td>
<td></td>
</tr>
<tr>
<td>Xylem Water Solutions</td>
<td>$546,686.00</td>
</tr>
<tr>
<td>Charlotte, NC</td>
<td></td>
</tr>
<tr>
<td>Turtle &amp; Hughes</td>
<td>$598,307.93</td>
</tr>
<tr>
<td>Linden, NJ</td>
<td></td>
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Based on the review of the documents as outlined in a memo from Joanne Grimes, a copy of which was distributed to the Commissioners, I recommend the Authority award the contract to Xylem Water Solutions of Charlotte, NC.

**Capital Plan**
Jim Meehan discussed his proposed 5-Year Capital Plan with the Commissioners.

**Occidental Litigation**
The Authority has received its first payment from an insurer with regard to the Occidental Litigation. Counsel advised that these funds must be kept in an Escrow Account until the lawsuit is settled. He added that the payments are being made with the reservation of rights. Additionally with regard to this matter, Counsel will be attending a meeting in the Township of Clark on Friday April 13, in which the NJDEP will also be in attendance.

**Litigation Support Services**
As discussed at the March meetings, proposals were received from Cipolla & Co., Marsh Associates and Gearoid Foley of Integrated CHP Systems for additional Litigation Support Services on the Contract #105 – Cogen/Sludge Dryer Litigation. The amounts requested are noted below.

<table>
<thead>
<tr>
<th></th>
<th>Approved To Date</th>
<th>Additional Proposed</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cipolla &amp; Co</td>
<td>$2,650,957.57</td>
<td>$310,000.00</td>
<td>$2,960,957.57</td>
</tr>
<tr>
<td>Marsh Associates</td>
<td>$25,000.00</td>
<td>$175,000.00</td>
<td>$200,000.00</td>
</tr>
<tr>
<td>Integrated CHP Sys.</td>
<td>$25,000.00</td>
<td>$75,000.00</td>
<td>$100,000.00</td>
</tr>
</tbody>
</table>
The Board did not discuss this matter and deferred it to a later date.

**Monthly Reports**
The following reports were received and distributed to the Commissioners:
- Hazen & Sawyer’s monthly Report
- Operations Monthly Report
- Engineering Bills & Claims Listing
- Litigation Cost Summary Update

**Report of Consulting Engineer**
Retainer Fee Services:

**A. Meeting Attendance**
Hazen & Sawyer attended the Engineering Committee Meeting on March 8, 2012 and the Regular Meeting held March 15, 2012.

**B. Outfall Inspection**
Hazen and Sawyer performed the outfall inspection with RVSA engineering staff on March 29th and will provide an inspection report shortly.

**On-Call Professional Engineering Services**
**Evaluation of Public-Private Partnership Opportunities for O&M of Solids Handling and Electric Generation Facilities**
The Authority is considering a public-private partnership in order to operate and maintain the existing Dewatering, Sludge Drying and Cogeneration Facilities. RVSA recently solicited Letters of Interest (LOI) and received six responses. The Authority’s present objective is to issue a Request for Proposal (RFP) for operating RVSA’s solids handling and cogeneration facilities. On March 1st, the Executive Director asked Hazen & Sawyer to submit a proposal to provide services to assist RVSA efforts to develop the RFP and review responses. Hazen & Sawyer offered a draft proposal for review at RVSA’s Engineering Committee meeting on March 8th. A finalized proposal was transmitted to the Executive Director on March 12th. The Board approved the proposal as an amendment to the existing annual services contract at the Regular Meeting on March 15th. Hazen & Sawyer will commence work under this subtask once the contract amendment is executed.

**Report of Counsel**
The following is a summary of all General Counsel services that have been provided by this office to the Rahway Valley Sewerage Authority for the time period covering March 13, 2012 through April 9, 2012.
CSP Improvements & related issues

Contract #155 – Plant Upgrade
The Authority’s staff is continuing to review design issues relative to this contract.

Contract #105 - Cogeneration Facility
On September 9, 2010 the Authority and Caterpillar, Inc. and Foley Power Systems (“CAT/Foley”) were named as respondents in a Demand for Arbitration filed with the American Arbitration Association (“AAA”) by J.H. Reid (“Reid”), the general contractor in which Reid makes several claims against the Authority. On December 23, 2010 the Authority filed a Counterclaim against Reid and a Crossclaim against CAT/Foley asserting various claims including claims for liquidated damages and breach of contract. On January 4, 2011 the Authority also filed a 3rd Party Claim against its consultants PS&S and CCMS alleging its right to indemnification/contribution based on Reid’s and CAT/Foley’s claims against the Authority. On November 23, 2011 CAT/Foley filed crossclaims against the Authority and PS&S in the approximate amount of $4 million in which they allege that the explosions that occurred in March and April of 2007 were really the result of defects in the design of the facility rather than due to defects associated with the engines themselves. A panel of 3 arbitrators has been appointed to hear the case.

On June 17, 2011 this office filed an Amended Demand for Arbitration with the AAA on behalf of the Authority asserting claims against various other parties. The Authority also requested that other parties with whom the Authority does not have an arbitration agreement be joined and that the matter be consolidated with the arbitration that has been filed by Reid. A special arbitrator was appointed for purposes of deciding the joinder and consolidation issues.

On November 10, 2011 a preliminary hearing conference call was held with the special arbitrator at which time it was agreed that the consolidation proceeding be held in abeyance pending the Authority obtaining a court order on the joinder issue through a summary proceeding to be filed in the Superior Court of New Jersey, Union County, Chancery Division. Pursuant to the authorizing resolution that was adopted by the Board on November 17, 2011, this office filed the summary proceeding with the court on December 13, 2011 by way of Order to Show Cause. The matter was fully briefed by all parties and oral argument was held before the court on February 9, 2012. On April 3, 2012 the court rendered its decision in which it denied the Authority’s request to join the other parties to its arbitration. Essentially, the court ruled that only parties with whom the Authority has an arbitration agreement, i.e. PS&S and CCMS, can be compelled to arbitrate with the Authority.

Finally, this office is coordinating with Authority staff in order to organize all documents that will have to be provided to the other parties during the discovery phase of the arbitration.

This matter will be discussed in Executive Session.

Miscellaneous

NJDEP v. Occidental Chemical Corp. et al. (Passaic River Litigation)
The RVSA and all of its constituent municipalities have been named as Third Party Defendants
by the original defendants to this lawsuit. The original lawsuit was filed in 2005 by NJDEP against several chemical companies that had an interest in a piece of property located in Newark alleging that the companies had polluted the Passaic River with various hazardous chemicals including DDT and TCDD, some of the most hazardous dioxins known to man. The Complaint alleges that as a result of the defendants practices of dumping these chemicals into the river between 1940 and 1971 the entire Newark Bay Complex, defined as the lower 17 miles of the Passaic River, Newark Bay, the lower reaches of the Hackensack River, the Arthur Kill, the Kill van Kull, and adjacent waters, have become polluted and seeks to have the original defendants pay for the cost of the clean up. The original defendants in their Third Party Complaint allege that approximately 73 public entities such as various municipalities and sewerage authorities, including the RVSA and its constituent municipalities, should share in the liability for the cleanup due to their alleged practices of discharging hazardous chemicals into the Newark Bay Complex. The Authority filed its Answer to the Third Party Complaint on September 25, 2009.

On May 5, 2011 the trial court approved a trial plan for the case. According to the trial plan the liability phase of the case would take place in April 2013 and on damages in January 2014.

Members of the Third Party Public Entity Group, which includes the Authority, have filed a direct appeal with the Appellate Division in order to challenge the validity of NJDEP's Sewage Exemption regulation under the New Jersey Spill Act. The parties that have so far participated in the appeal in addition to the Authority are the Linden Roselle Sewerage Authority, the Cities of Elizabeth and Linden, The Port Authority of New York and New Jersey, The Joint Meeting of Essex and Union Counties, The Jersey City Municipal Utilities Authority, and the Passaic Valley Sewerage Commissioners. We have requested the participation of other public entities in the appeal.

This is an important appeal. Many of the third party public defendant parties, including the Authority, have been joined in this case based upon the generalized assertion that the wastewater passing through the sewerage systems is contaminated by hazardous substances under the N.J. Spill Act. We believe that, in passing the Spill Act, the Legislature never intended that these public entities would have liability under the Act and that NJDEP’s regulation which narrows the scope of the Act’s Sewage Exemption, is inconsistent with the statute. A successful outcome in this appeal could substantially reduce, if not eliminate, liability and damages which the public entities, including the Authority, could be assessed in this case.

The Mayors of the Township of Clark and Borough of Garwood have arranged a meeting with Cindy Randazzo, the Director of Local Government Assistance in the NJ Department of Environmental Protection to discuss the litigation and its impact upon the public entities. The meeting is scheduled for Friday, April 13, 2012 at 10:00 a.m. in the municipal chambers of the Township of Clark. A representative from this office will be attending.

This matter may be discussed in Executive Session.

Closed Session

Mr. Dierkes made a motion to go into closed session at 8:34 p.m. for discussion of legal matters specifically the ongoing litigation on Contract #105 and the proposed Public Private Partnership, based on Attorney/Client privilege. The motion was seconded by Mr. Luban and approved by
those present. Mr. Chin was absent.

Contract #170 – Public Private Partnership – Letters Of Interest (PPP-LOI)
Letters Of Interest for a Public-Private Partnership for the Operation & Maintenance of Solids Handling and Electric Generation Facilities were received on February 10, 2012. The staff and Consulting Engineer have reviewed the documents. John Buonocore made a brief presentation to the Commissioners regarding the LOI’s.

* Mr. Luban left the meeting at 8:55 p.m. during the presentation.
** Mr. Mazzarella left the meeting at 9:04 p.m. during the presentation.

Regular Order of Business
Mr. Murphy made a motion, seconded by Mr. Eisenberg, to return to the Regular Order of Business at 9:42 p.m. The motion was approved by those present. Mr. Chin, Mr. Luban and Mr. Mazzarella were absent.

Adjournment
As there was no further business, on motion of Mr. Dierkes, seconded by Mr. Murphy, the meeting adjourned at 9:45 p.m. The motion was unanimously approved by those present.

Robert J. Materna, Secretary-Treasurer