

THE DUTCHESS COUNTY LEGISLATURE

**PRELIMINARY
RECOMMENDATIONS FOR
ADDRESSING DUTCHESS COUNTY
SOLID WASTE MANAGEMENT
CHALLENGES**

RESOURCE RECOVERY AGENCY
“WORKING GROUP”

Legislators James Miccio, Dale Borchert, Gerald Hutchings,
Steve White, & Alan Surman
8/16/2010

August 16, 2010

Dutchess County Legislature
Attn: Chairman Robert G. Rolison
22 Market Street
Poughkeepsie, New York 12601

Dear Chairman,

With this letter please find the preliminary recommendations of the Resource Recovery Agency (RRA) "Working Group" (WG). Note this is not a final report, but rather a beginning with a vast amount of work still ahead of us. However, based on our initial fact-finding interviews and research we are prepared to lay out a tentative plan that will hopefully eliminate, if not at least reduce, the County subsidy or Net Service Fee (NSF) paid to the RRA.

The first and most important step is the reinstatement of a Solid Waste Commissioner for Dutchess County. The County Executive has indicated he will not fill this position unless he sees a "plan" from the Legislature. The first step in this "plan" must be to locate a qualified person to serve as the County's chief solid waste professional. Once that person is in place, the Legislature can and will investigate an equitable environmental user fee system, payments in lieu of taxes (PILOTs), and flow control as viable ways to offset the NSF demand on County taxpayers. Long-term Dutchess County must look to make the RRA self-sufficient and solvent, and if by 2014 it is not, sale of the WTE facility should be considered.

We look forward to continuing to serve on this committee. I understand you will soon make the Resource Recovery Reform Committee an official standing advisory committee. I ask that you keep its membership intact as the individuals on this WG have worked tirelessly together to produce this report. My thanks to those members who continue to diligently serve: Dale Borchert, Gerry Hutchings, Steve White, Alan Surman. Finally, thank you Chairman Rolison for your support, assistance, and confidence.

This WG will gladly take any questions, concerns, or input as to its recommendations.

Sincerely,

James Miccio, Legislator
Town & Village of Fishkill
Chairman of the RRA WG

cc:
Dutchess County Legislators
Clerk of the Dutchess County Legislature
Dutchess County Executive

Introduction

In February of 2010 Dutchess County Legislature Chairman Robert Rolison created this “Working Group” (WG) to research and vet policy solutions that address the challenges faced by the Dutchess County Resource Recovery Agency (RRA). The WG’s primary goal is the elimination of the county subsidy for the RRA that comes in the form of a Net Service Fee (NSF) while touting the environmental benefits and improving upon the mission of this waste management agency.

The WG began by meeting with licensed haulers within Dutchess County. The WG then met with the Law Department to learn more about the licensing process, this led to insurance questions that were put to the Risk Management Department. After numerous meetings gathering background information regarding the RRA and its operations we met with their Executive Director and the Board President.

As a result of our investigation we determined that the RRA was responsible for the creation of the Local Solid Waste Management Plan (SWMP), a 20 year plan to deal with solid waste management in Dutchess County, which they are diligently preparing. The RRA is charged with this responsibility, among others, by the Dutchess County Legislature which has granted the Agency the power to manage “on a county-wide basis... all solid waste generated within or coming into from outside of the County of Dutchess in order to protect the public health and safety and to improve the environment by control of air, water, and land pollution.”¹

We also met with the auditor of the RRA after reviewing past audits and compiling a list of questions. We questioned the Executive Director and the auditor in regards to the New York State Authority Budget Office (ABO) critical report.

The WG has gained a tremendous amount of knowledge about the operation of the RRA and its facilities, and about the laws governing the creation of the Agency. With all the information we have gathered, there is still an abundant amount that still needs to be learned about the complexities of managing waste disposal in Dutchess County. For that reason we feel that this should be viewed as an interim report, the first step in an ongoing process.

One thing that must be acknowledged is the tremendous foresight that former County Executive Lucille Pattison and the Legislature at the time had in organizing the RRA and attracting this state-of-the-art facility to our County. The equally exceptional vision of current County Executive William Steinhaus and subsequent Legislatures for continuing the commitment to this waste management operation should also be commended.

Finally, the WG would like to stress that we went about this task with no preconceived notions as to where it would lead us. We looked at all the information available including enabling legislation, contract agreements, licensing applications, audit reports, The Green Ribbon Task Force report, the ABO report, and the Germano & Cahill P.C. report, to name just few. We also researched the flow control law, as it existed when the RRA was created and, as it exists today. We mention the Green Ribbon Task Force report, while we do not agree with all the conclusions and

¹ Dutchess County Local Law #1 of 1984, #4 of 1990

recommendations contained in the report we do thank them for their time, effort, and input. We agree that more recycling needs to be done, more composting of food waste needs to be encouraged, and realized that zero waste, while lofty, is, none-the-less an admirable goal and we should all strive to reduce and reuse as much as possible. We advocate strong public education efforts by all involved for the good of Dutchess County and the environment.

Background

The RRA was created in the early 1980s, by state law, as an independent public benefit corporation as the governing agency responsible for the disposal of all solid waste generated within Dutchess County. At the time there were numerous landfills in operation within the County, both municipally and privately operated. There was also potential for many additional applications as gravel pits were depleted and owners looked for ways to continue generating income.

The creation of the RRA and the Waste-to-Energy (WTE) facility was advanced thinking and the goal was to eliminate the need for future landfills while closing those already in operation within Dutchess County. When the WTE facility was built and began operation flow control was enacted so the RRA could dictate the amount of waste each licensed hauler was required to deliver to the facility. With this control the fees charged per ton of waste processed (tipping fee) could be set at the level required for the facility to operate with a modest fund balance for unbudgeted emergencies or repairs. For many years the RRA operated autonomously with little or no input by the County allowing the chartered position of Commissioner of Solid Waste Management to be filled at \$1.00/year by another County employee.²

Three major events caused the RRA to begin to lose revenue leading to the current situation.

- One was the United States Supreme Court ruling in 1993 that rendered flow control unconstitutional allowing haulers in Dutchess County to freely transport waste out of the county to landfills with lower tipping fees.³ There was a subsequent lawsuit brought that reinstated flow control, but under vastly different rules.⁴ Under the new rules, the County must handle all waste generated within the county. In Dutchess County there is an estimated 250,000 tons of waste generated annually, however, the RRA facility can process only about 150,000 tons per year (yet permitted for 164,000 tons per year) leaving approximately 100,000 tons per year that the RRA would have to manage through transfer stations and hauling contracts.
- Another major event that effected RRA finances was the loss of income generated by the sale of steam to IBM due to the down-sizing Big Blue undertook in the 1990s that left the plant with excess steam that does not generate any income.

² Dutchess County Charter, Article XVII "Department of Solid Waste"

³ *C & A Carbone, Inc. v. Town of Clarkstown*, 1993

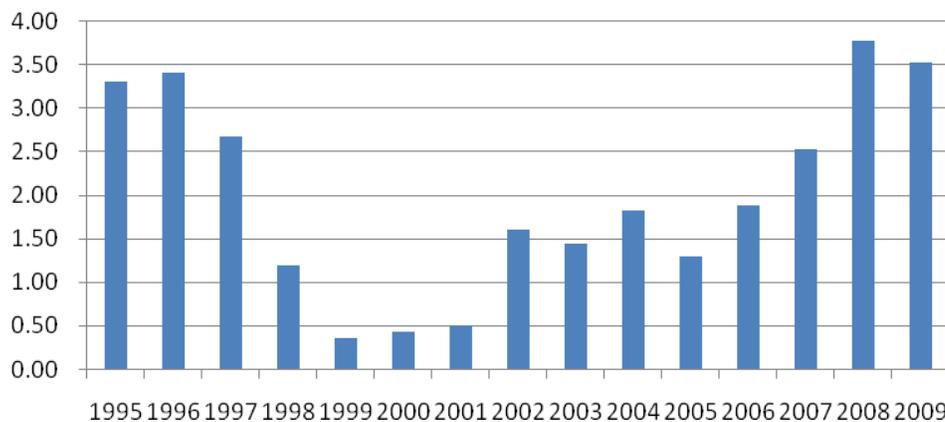
⁴ *United Haulers Inc. v. Oneida Herkimer Solid Waste Management Authority*, 2007

- The third and final major drain on the operating revenue was caused by the 2001 federal EPA required upgrades to the air discharge scrubber system that necessitated the borrowing of \$16 million, adding a substantial burden to the RRA's debt service.

While these were the three most significant causes of operational losses there were others, for example, a poorly written metal disposal contract, multiple sales of the operations contractor without opportunity to renegotiate the contract, major fluctuations in the recycles markets, etc.

Over the past three fiscal years the NSF has increased from \$2,525,336 in FY 2007 to \$3,516,584 in FY 2009. These numbers, from the agency itself, appear to be trending up after multimillion dollar subsidies in 1995, 1996, and 1997 following the abolishment of flow control. It is our responsibility, as Legislators, to see that everything possible is done to protect the taxpayers of Dutchess County by mitigating or even eliminating the NSF with a more equitable system to fund our environmentally friendly waste disposal method.

NSF in Millions



Executive Summary of Findings

As stated, this should be viewed as an interim report due to the vast amount of work still needed to be done and the multitude of questions yet to be asked and/or answered. This has been, and continues to be, a learning process, and only through a continued partnership between the Legislature, the RRA and the County Executive can we ensure successful, environmentally, and economically sound solid waste management system in Dutchess County.

2014 is the year that much will change concerning the RRA. In that year nearly half of the debt will be retired lowering the outstanding bonded indebtedness to around \$16 million - substantially cutting its debt service. Also in 2014, the current operator contract with Covanta expires allowing for renegotiation and presumably better terms. This would allow serious consideration to be given to the sale of the facility, if that is the direction chosen by the County Legislature at that time.

The WG looked at many options in an effort to reduce or eliminate the NSF that the County is required to pay to the RRA. The NSF agreement states in simple terms that the County must pay any and all outstanding debt at the end of each operating year for the RRA. Over the years this has been interpreted as requiring the County to pay the debt service two times a year in June and November. It is important to note that by contract the RRA is required to “exercise its best efforts” to repay all NSF paid by the County.⁵

The options this WG considered in an effort to end the RRA’s dependency on a County subsidy in the form of a NSF are:

1. The RRA could choose to sell the WTE facility;
2. The RRA could choose to close the WTE facility;
3. The RRA could increase tipping fees to a level required to operate without a loss;
4. The RRA can investigate adding another generator to utilize the currently unused steam to increase electric sales;
5. The County could reinstitute flow control under the current rules;
6. The county can institute an environmental disposal fee that would force nontax paying entities to contribute to the cost of the WTE facility; and
7. The County can institute a transport fee on haulers for waste generated within the county that is hauled out of the county.

We will discuss these options individually. We make recommendations based on our experience in this process, but remain open to all discussions and ideas not mentioned in this report.

Options

1. The RRA could choose to sell the WTE facility

This would certainly eliminate the NSF; however, prior to 2014 the debt service and the current contract would hinder any serious considerations and offers.

2. The RRA could choose to close the WTE facility

Again this would solve the NSF, however, the debt would still remain and the contract with Covanta would still be enforced through 2014, requiring the County to pay the entire cost of operation without the income currently generated.

3. The RRA could increase tipping fees to a level required to operate without a loss

This is a viable option. However, without also adding flow control there would be no incentive for the hauler to pay the additional fees and no way for the County to force the haulers to use the facility.

4. The RRA can investigate adding another generator to utilize the currently unused steam to increase electric sales

This is also an option embraced by the WG, we feel that this should be investigated sooner rather than later and at a minimum should be part of the new contract in 2014.

⁵ Solid Waste Disposal Service Agreement between Dutchess County and the Dutchess County Resource Recovery Agency, 1984

5. The County could reinstitute flow control under the current rules

This is a solution that needs further investigation. On the surface it appears to solve the problem, but it creates another problem of how to handle the approximately 100,000 tons of waste the RRA facility cannot process.

6. The county can institute an environmental disposal fee that would force non-tax paying entities to contribute to the cost of the RRA facility

This is a viable option that will assist in meeting the goal of eliminating the NSF, while easing the pressure on taxpayers who currently foot the entire bill for the RRA. The WG strongly urges further investigation by the County Attorney's office for a legal opinion and, if feasible, implementation guidelines.

7. The County can institute a transport fee on haulers for waste generated within the county that is hauled out of the county

This is an option that again needs further investigation and legal opinions. This fee could be tied into flow control legislation or it could be a stand-alone fee enforced using current DEC reporting requirements. The WG strongly urges further investigation by the County Attorney's office for a legal opinion and, if feasible, implementation guidelines.

After this process it is clear that there are many options that must be investigated further and some that need to be eliminated at the start. We can eliminate any thought of closing or selling the facility at least until 2014, and even then there will still be \$16 million of bonded indebtedness that would need to be paid without any income if the facility is closed. We can discuss selling at that time if an interested party could be found to take over the debt. This would take some time to investigate the legalities of a sale and what would happen to the RRA.

The WG also believes that setting the tipping fee at a rate needed to sustain the facility (estimated to be \$120.00/ton) would discourage use and only further exacerbate the problem without reinstatement of flow control.

With the remaining options, this WG has broken them down into three categories; short-term, mid-term and long-term recommendations.

Recommendations

A. Short-Term (2010)

- The Legislature must work with the County Executive to fill the Charter position of Commissioner of Solid Waste Management (CSWM) as soon as possible. We feel that the CSWM must be a full-time employee, dedicated exclusively to Dutchess County Solid Waste Management. Without this position all other recommendations become difficult, if not impossible, to implement.
 - The CSWM should work with the RRA to get the SWMP developed in a timely manner to allow review prior to submittal.
 - The CSWM should work with the RRA and the DEC to find viable solutions to ash hauling such as Beneficial Use Determinations (BUDS) or other less expensive disposal options.
 - The CSWM must enforce the current recycling laws.
- Request the Law Department review the potential alternatives to NSFs.

- Research the requirements of flow control and issue opinion as to how the County can reinstitute it.
- Investigate the possibility of charging haulers for tonnage hauled outside of the County either in conjunction with flow control or as a stand-alone law.
- Look into the possibility of imposing an environmental “user” fee similar to a PILOT to be charged to all nontaxable properties within Dutchess County in order to ensure a more equitable sharing of services.
- The Chairman should make the WG a permanent committee, with either the current members or new members in order to further the partnership between the RRA, the Legislature, and the Executive office.

B. Mid-Term (2010-2014)

- CSWM should work with RRA to investigate the feasibility of adding a second generator or increasing the size of the current generator.
- The CSWM in conjunction with the RRA should begin working on a replacement contract for operation and maintenance of the RRA facility.
- Based on the opinions issued by the Law Department, the County Legislature should work with the County Executive to determine what combination of recommendations would be an equitable replacement for the NSF – an environmental “user” fee, PILOTs, and/or flow control. This will be needed to offset the NSF request anticipated in the 2011 County budget.

C. Long-Term (Beyond 2014)

- The RRA, the County Legislature, the County Executive, and the CSWM should continue work toward a goal of minimizing waste. The CSWM should work to find viable ways to minimize the amount of food waste that enters the RRA facilities.
- The Materials Resource Facility (MRF) must be addressed and maintenance or replacement scheduled.
- Failure of the user fee, PILOTs, and/or flow control to negate the NSF, sale or closure of the WTE facility will have to be considered.

Much attention has been given to the ABO report, which we have reviewed with the Executive Director and the auditor from Sedor & Co. We are satisfied that the issues raised are being addressed. In terms of efficiency of the RRA, it is very difficult to make a judgment. In order to compare our WTE plant with other comparable facilities in the state, the variables have to be tightly controlled in order to make a valid and reliable comparison. For example, is the debt service the same, are the other plants running at capacity, is the wage structure similar, etc.? If all of these evaluations we are comparing “apples to oranges.” We do, however, anxiously await the results of the Dutchess County Comptroller’s audit of the agency that we have requested.

Appendixes: Supporting Documentation

The 4 solid Waste Management Parties in Dutchess County

➤ **Dutchess County Executive**

- Appoints the Solid Waste Management Commissioner to:
 - Develop rules and regulations for Solid Waste Management.
 - Review and decide on hauler license applications.
 - Act as liaison between Executive, Legislative and Operations branches of Government.
 - Oversee enforcement of license agreements.
- Proposes the annual budget for the Solid Waste Management Department:
- In coordination with the Solid Waste Commissioner presents a proposed annual budget to the Legislature.
- As per local laws and Charter periodically appoints members to the Resource Recovery Agency.

➤ **Dutchess County Legislature**

- Reviews and decides on the Solid Waste Management Department budget.
- Drafts Legislation to set policy and creates laws related to solid waste management.
- As per laws and Charter periodically appoints members to the resource Recovery Agency Board.
- Approves semi-annual payments to the Resource Recovery Agency for Net Service Fees as per enabling legislation.

➤ **Dutchess County Resource Recovery Agency**

- Acts as Dutchess County's planning and implementation agency for solid waste management.
- Operates the resource recovery facility and the materials recovery facility
- Sets "tipping fees" to ensure maximum revenues for the facility.
- Repays Dutchess County for all Net Service Fees paid by the county to offset operating losses.
- Develops and presents for approval Solid Waste Management Plan.

➤ **Private Haulers**

- Collect and transport solid waste within Dutchess County.
- Apply for and if approved obey all rules and regulations set forth by the Dutchess County Solid Waste Commissioner.

Current Issues facing each involved Party

➤ **County Executive**

- Does not have a Commissioner of Solid Waste Management;
 - Rules and regulations cannot be amended or enforced.
 - Hauler licenses cannot be renewed or new ones issued.

➤ **Dutchess County Legislature**

- Eliminated funding for Solid Waste Management Department
- Current flow control legislation found to be unconstitutional
- Must generate a minimum of 140,000 tons of waste to the Resource Recovery Agency per year, leaving approximately 120,000 tons of waste unaccounted for.

➤ **Dutchess County Resource Recovery Agency**

- Expenses exceed Revenues
 - Tipping fees are set too low to operate at a break-even point. Without flow control there is no incentive for haulers to transport waste to the Resource Recovery Facility.
 - Resource Recovery Agency must rely on contracts with large haulers to meet the limited waste load.
- Must redouble efforts to have a Local Solid Waste Management Plan delivered to the Legislature in a timely manner to allow review and comment prior to submission to the New York State DEC.

➤ **Private Haulers**

- Not all are licensed
- Do not transport all waste to the Resource Recovery facility or to the Materials Recovery facility.

Other Attachments:

- Dutchess County Local Law #1 of 1984
- Dutchess County Local Law #4 of 2000
- Authority Budget Office Operational Review of the DCRRA February 22, 2010
- Letter to Dutchess County Comptroller James Coughlan April 13, 2010
- Letter to Dutchess County Resource Recovery Agency Executive Director William Calogero April 20, 2010