

DELAWARE COUNTY REGIONAL
WATER QUALITY CONTROL AUTHORITY
100 EAST FIFTH STREET
CHESTER, PENNSYLVANIA 19013

MINUTES

MARCH 19, 2024 (ON-SITE / VIRTUAL OPTION)

The Regular Meeting of the Delaware County Regional Water Quality Control Authority was held on Tuesday, March 19, 2024, at 3:30 P.M. The meeting was held in the Board Room of the Administration Building at 100 East Fifth Street, Chester, Pennsylvania and virtually via Zoom.com. REGULAR MEETING

Messrs. Kern, Martin, Moss, Mullen, Nagle, Schuster, and Mesdames Billings, Keffer, and Nichols Board Members, constituting a quorum were present. ROLL CALL

Messrs. Cartafalsa, Cherico, DiSantis, Garner, Hurst, Lehman, Lenton, Rice, Willert, and Mesdames Amadio, Bonnett, Byrd, Caulk, B. Garner, and Jackson were also present.

PUBLIC ATTENDANCE: The following was present: Beth Stern Fleming. No other members of the public were present. PUBLIC

Mr. Kern, Chairman, called the meeting to Order.

PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was recited by all parties present. PLEDGE OF ALLEGIANCE

ORDER OF BUSINESS

COMMENTS FROM THE PUBLIC: Mr. Kern stated that there were no comments or questions received from the public. PUBLIC COMMENT

RECOGNITION OF CUSTOMER SERVICE DEPARTMENT STAFF: Mr. Kern welcomed the staff of the Customer Service Department and thanked them for their extra efforts in improving the increase in collections recently. RECOGNITION OF CUSTOMER SERVICE DEPT. STAFF

Mr. Garner introduced his staff: Adora Purnell (8 years of service), Lakevis Reams (in first year of service), and Tracy Harris (20 years of service), Yanneisis Johnson (7 years of service). He stated that the team does an amazing job overall. He also said that the delinquency notices are handled in-house and billings are issued four times a year.

APPROVAL OF MINUTES: It was moved by Mr. Martin, seconded by Mr. Moss, and unanimously carried that the minutes of the Regular Meeting of February 20, 2024, be approved as submitted. APPROVAL OF MINUTES

REPORTS:

REPORTS

1. COMMITTEES:

COMMITTEES

a. Human Resources and Administration. Ms. Nichols stated that the Committee met on March 11, 2024. There were no additions to the meeting minutes.

Human Resources
and Administration

b. Strategic Planning and Goals. Mr. Nagle reported that the Committee met on March 11, 2024. There were no additions to the meeting minutes.

Strategic Planning
& Goals

c. Operations and Engineering. Mr. Mullen stated that the Committee met on March 12, 2024. He noted items requiring Board action would be considered later in the agenda. There were no additions to the meeting minutes.

Operations and
Engineering

d. Finance. Mr. Nagle stated that the Committee met on March 13, 2024. There were no additions to the meeting minutes.

Finance

e. Pension. Mr. Mullen stated that there was no formal meeting of the Pension Committee and had nothing to report at this time.

Pension

f. Legal Liaison. Ms. Billings requested the Legal Update Memorandum dated March 19, 2024 be attached to and made part of these meeting minutes. (See Attachment A)

Legal Liaison

2. CHAIRMAN: Mr. Kern stated that he is forming an Ad Hoc Committee with Mr. Nagle to provide an in-depth review of DELCORA's Procurement Policies and Practices. After this review, the Procurement Policies and Practices will be adopted by the Board. The purpose of this is to protect the staff from random and vague criticisms. He invited other Board members to participate if they wish.

CHAIRMAN

Mr. Kern also mentioned that DELCORA would be receiving two safety awards at the Pennsylvania Water Environment Association (PWEA) conference at State College in June. The PWEA award is for the collection system and the other safety award is issued by the Water Environment Federation. Also, he noted that Joe Centrone will be receiving the Ted Moses High Hat Award and that Mike DiSantis will be receiving the Utility Leadership Excellence Award.

3. EXECUTIVE DIRECTOR: Mr. Willert stated that there were no additions to the written report.

EXECUTIVE
DIRECTOR

4. DIRECTOR OF ENGINEERING: Mr. Hurst stated that there were no additions to the written report.

DIRECTOR OF
ENGINEERING

5. DIRECTOR OF OPERATIONS & MAINTENANCE: Mr. DiSantis stated that there were no additions to the written report.

DIRECTOR OF
OPERATIONS &
MAINTENANCE

6. SOLICITOR: Mr. Rice stated that there were no other legal updates other than what was covered in Ms. Billings' Legal Update Memorandum. He had no other items to report at this time. SOLICITOR

Mr. Martin requested that a brief Executive Session be held at the end of the meeting to discuss several legal matters.

OPERATING FUND PAYMENTS:

OPERATING
FUND PAYMENTS

1. CHIEF FINANCIAL OFFICER REPORT: Mr. Cherico stated that there were no additions to the written report. CHIEF FINANCIAL OFFICER

2. PAYMENT OF BILLS: PAYMENT OF BILLS

Approval of Operating Statement, Statement of Fund Balances and List of Bills for the month of February 2024.

It was moved by Ms. Billings, seconded by Ms. Keffer, and unanimously carried that the statement and the list of bills in the amount of \$4,672,759.84 for the month of February 2024 contained in the Monthly Financial Report be approved.

CONSTRUCTION FUND PAYMENTS:

CONSTRUCTION
FUND PAYMENTS

1. ENGINEERING ADVISOR'S REPORT: Mr. Lehman stated there were no additions to the written report. ENGINEERING ADVISOR

2. CHANGE ORDERS: Mr. Kern stated that there were no Contract Change Orders at this time. CHANGE ORDERS

3. CONTRACT CLOSEOUT AND FINAL PAYMENT APPROVAL: CONTRACT CLOSEOUT

• Contract No. SEW-2204-CO – Paving Restoration Services (A.F. Damon). Mr. Kern stated that this contract close-out was discussed at the Operations and Engineering Committee meeting, and it was the consensus of the committee to recommend Board approval. Contract No. SEW-2204-CO Paving

It was moved by Mr. Mullen, seconded by Mr. Nagle, and unanimously carried to approve the above contract close-out and final payment.

4. PAYMENT OF BILLS: PAYMENT OF BILLS

It was moved by Mr. Martin, seconded by Ms. Keffer, and unanimously carried as follows: (a) that the bills of contractors, engineers and others for construction costs, engineering services and related costs under the Renewal & Replacement Fund in the amount of \$1,143,238.04, are hereby approved; and (b) the requisitions on the Renewal & Replacement Fund under the Trust Indenture with TD Bank, in payment of said bills, are hereby

approved pending approval by the Treasurer, and the proper officers be and are hereby authorized and directed to execute same.

AUTHORIZATION TO ADVERTISE CONTRACTS: Mr. Kern stated that there were no Authorizations to Advertise Contracts at this time.

AUTHORIZATION
TO ADVERTISE
CONTRACTS

AWARD OF CONTRACTS: Mr. Kern stated that there were no Contract Awards at this time.

AWARD OF
CONTRACTS

AWARD OF PENNBID ELECTRONIC BIDDING:

AWARD OF
PENNBID

• Contract No. P2024-02 – Endimal (Odor Control). Mr. Kern stated that one bid was received via the PennBid e-Procurement Program and that the lone bidder was George S. Coyne Chemical Company, Inc. with a total bid amount of \$161,000.00. Mr. Kern stated that the bid was reviewed by the solicitor, and his comments and recommendations were received. The Solicitor recommended that the bid be rejected as non-responsive and the contract be re-bid. Mr. Kern explained that Coyne Chemical had added their own delivery terms to their bid which do not adhere to DELCORA's delivery terms in the bid specifications which require deliveries to be made within two (2) days of any order being placed by DELCORA. He also stated that the staff will re-evaluate the need for the two day delivery requirement.

Contract No.
P2024-02
Odor Control

It was moved by Ms. Billings, seconded by Ms. Nichols, and unanimously carried to reject the bid from George S. Coyne Chemical as non-responsive and to authorize the re-bid of this contract.

OLD BUSINESS: Mr. Kern stated that there was no Old Business at this time.

OLD BUSINESS

NEW BUSINESS:

NEW BUSINESS

1. Authorization for Professional Services: (Capital Funds).

Authorization for
Professional
Services

A. Brown & Caldwell - Proposal Dated March 8, 2024 – For Professional Services For Additional Technical Support For Review Of DRBC's Analysis Of Attainability To Improve Dissolved Oxygen In The Delaware River Estuary (Amendment No. 1) – Total Additional Amount Of \$3,200 For A Total Amount Not To Exceed \$20,683.00 (Capital Funds). Mr. Kern stated that this item was discussed at the Operations and Engineering Committee meeting, and it was the consensus of the committee to recommend Board approval.

Brown & Caldwell
Additional Tech
Support
DO in River Estuary
(Amendment #1)

It was moved by Mr. Mullen, seconded by Mr. Moss, and unanimously carried to approve this Professional Services proposal.

B. Carollo – Proposal Dated March 6, 2024 – For Professional Engineering Services For Ultraviolet Disinfection Pre-Purchase – Total Additional Amount Not To Exceed \$188,890.00 (Capital Funds). Mr. Kern stated that this item was discussed at the Operations and Engineering Committee meeting, and it was the consensus of the committee to recommend Board approval.

Carollo
UV Disinfection Pre-
Purchase

It was moved by Mr. Moss, seconded by Mr. Mullen, and unanimously carried to approve this Professional Services proposal.

2. Authorization for Professional Services: (Operating Funds)

Authorization for
Professional
Services

A. Cavallo Environmental Services, LLC – Proposal Dated February 15, 2024 – For Professional Services To Prepare The 2024 Pollutant Minimization Plan (PMP) Annual Report – Total Amount Not To Exceed \$15,000.00 (Operating Funds). Mr. Kern stated that this item was discussed at the Operations and Engineering Committee meeting, and it was the consensus of the committee to recommend Board approval.

Cavallo Env. Svcs.
Prepare 2024 PMP
Annual Report

It was moved by Mr. Mullen, seconded by Mr. Moss, and unanimously carried to approve this Professional Services proposal.

3. Authorization To Purchase:

Authorization to
Purchase

• Sewer & Water Evaluation & Rehabilitation Procedures – Quote Dated February 28, 2024 – For The Rehabilitation Of Three (3) Existing 8” Diameter Sanitary Sewer Lines In Park Valley, Brookhaven, PA Through PA COSTARS Contract #016-E23-330 – Total Amount Not To Exceed \$37,450.00 (Capital Funds).

Sewer & Water Eval.
& Rehab
Rehab 3 Sewer Lines
in Park Valley,
Brookhaven

Mr. Kern stated that this item was discussed at the Operations and Engineering Committee meeting, and it was the consensus of the committee to recommend Board approval.

It was moved by Ms. Keffer, seconded by Mr. Martin, and unanimously carried to approve the above purchase.

• Fieldforce Equipment Sales & Rentals, LLC – Quote #OP24016A Dated March 7, 2024 – For The Purchase Of One (1) Atlas COPCO PAC H64 JD 275HPFT4 Diesel Driven Pumpset Through PA COSTARS Vendor #0000547838 – Total Amount Not To Exceed \$126,265.00 (Capital Funds).

Fieldforce Eqpt.
One Diesel Driven
Pumpset

Mr. Kern stated that this item was discussed at the Operations and Engineering Committee meeting, and it was the consensus of the committee to recommend Board approval.

It was moved by Mr. Mullen, seconded by Mr. Moss, and unanimously carried to approve the above purchase.

- Reiner Pump Systems – Quote Dated March 11, 2024 – For The Purchase Of Two (2) Sulzer ABS Drypit Submersible Pumps For The Muckinipates Pump Station Through PA COSTARS Vendor #359913 – Total Amount Not To Exceed \$336,025.00 (Capital Funds).

Reiner Pump
Two Drypit
Submersible Pumps
for Muck PS

Mr. Kern stated that this item was discussed at the Operations and Engineering Committee meeting, and it was the consensus of the committee to recommend Board approval.

It was moved by Mr. Mullen, seconded by Mr. Moss, and unanimously carried to approve the above purchase.

- Edwin Elliot & Company – Quote Dated March 12, 2024 – For The Purchase Of Four (4) Rotork IQ3 Size 35 Electric Actuators For The Darby Creek Pump Station Through PA COSTARS Contract #016-E23-297 – Total Amount Not To Exceed \$43,920.00 (Capital Funds) (added to agenda).

Edwin Elliot
Four Electric
Actuators for
DCPS

Mr. Kern stated that this item was added to the agenda and was not previously discussed at the Operations and Engineering Committee meeting. Mr. DiSantis stated that he did not receive the quote for this item in time for the Operations and Engineering Committee meeting. He explained that the actuators open and close the valves, and that there is a long lead time for delivery.

It was the consensus of the Board to recommend approval.

It was moved by Mr. Mullen, seconded by Mr. Martin, and unanimously carried to approve the above purchase.

EXECUTIVE SESSION: There was an Executive Session held to discuss legal matters.

EXECUTIVE
SESSION

ADJOURNMENT: It was moved by Mr. Nagle, seconded by Mr. Mullen, and unanimously carried to adjourn the regular meeting after the Executive Session at 4:01 P.M.

ADJOURNMENT

ATTEST
Secretary

ATTACHMENT A

To 3/19/2024 Board Meeting
Minutes

LEGAL UPDATE MEMORANDUM

To: DELCORA Board Members
From: Legal Liaison Committee
March 19, 2024

ADMINISTRATIVE PROCEEDINGS RELATED TO THE 2019 SALE OF DELCORA TO AQUA PA

- March 2020: Application for sale approval submitted to the PUC.
- January 2021: Administrative Law Judge (ALJ) recommends disapproval of sale.
- May 2021: PUC declines to make a decision on the application until resolution of several ongoing legal issues.
- December 2022: Hearings on sale before the ALJ are reinstated and then halted due to the pending Chester bankruptcy (see below).

CITY OF CHESTER REVERSIONARY INTEREST AND BANKRUPTCY

- August 2022: Receiver for the City of Chester filed an Action for Declaratory Judgment and Injunctive Relief against DELCORA claiming DELCORA had failed to appropriately recognize Chester's reversionary interest in certain DELCORA assets that become applicable should the Authority cease to exist. Chester and DELCORA stipulated to stay until bankruptcy resolution; AQUA objected to stay and filed Preliminary Objections (POs). Receiver withdrew the complaint without prejudice at a hearing on August 28, 2023.
- November 2022: On behalf of the City of Chester, Receiver filed a petition under Chapter 9 of the U.S. Bankruptcy Code; the Debtor/Receiver filed a Motion requesting that certain parties be required to mediate various issues in the case and the Bankruptcy Court granted such motion. The mediator required DELCORA and the Debtor to enter mandatory mediation on the topic "Monetization of the sewage assets and resolution of related litigation." The issue of what specific assets are a part of the reversionary interest under the 1973 agreement between Chester and DELCORA has been raised in the mediation. The Debtor and DELCORA disagree on this issue. All PUC actions Automatically Stayed due to the pending bankruptcy.
- February 2023: The Debtor filed a motion to have the Bankruptcy Court order that the PUC action requesting the approval of the Asset Purchase Agreement between Aqua and DELCORA be stayed. Aqua filed a response to such Motion asking for the Bankruptcy Court to grant Relief from the Automatic Stay to allow the PUC proceeding to continue. The Debtor's motion to stay the PUC action was granted by Federal Bankruptcy Judge Chan and Aqua's request for relief from the automatic stay was denied. Aqua has appealed the decision; no court date has been scheduled.
- February 2024: Aqua filed a Motion for Relief from the Automatic Stay to allow the PUC proceeding to continue; This motion was denied by Federal Bankruptcy Judge Chan as already having been ruled on in relation to the Debtor's prior motion (above).

OTHER ONGOING LEGAL PROCEEDINGS

- May 2020: Delaware County filed a complaint against DELCORA relating to the legality, enforceability, and integrity of the Asset Purchase Agreement (APA) and the Rate Stabilization Fund Trust. AQUA intervened in the case. The complaint was later amended to add a count in mandamus to enforce Delaware County Ordinance 2020-04, which ordered the dissolution of DELCORA. Common Pleas Court found that all were legal and enforceable (with the Trust matter subject to PUC jurisdiction). On appeal, Commonwealth Court remanded to Common Pleas Court, finding that the trial court erred in denying the County's request for a writ of mandamus and injunctive relief. The Commonwealth Court did not make any findings on the remaining four questions that were presented. On remand, Common Pleas Court entered a substantially similar opinion, making minor changes. The County filed a request for re-argument. A hearing before the Commonwealth Court is scheduled for May 2024 (exact date TBD).
- January 2023: DELCORA filed a complaint for Declaratory Judgement against AQUA and Delaware County asking the Court to determine if DELCORA can proceed with the sale or the termination of the Authority given the conflict between the APA and county ordinance terminating DELCORA (2020-4), specifically asking which action supersedes the other. The complaint also requested that the Court determine if DELCORA is permitted to operate under the Municipalities Authorities Act (MMA) solely as a Trust. Hearing was scheduled for October 12, 2023, but was cancelled pending Commonwealth Court on the Delaware County complaint. It is not anticipated the case will be heard until the Commonwealth Court makes a final ruling on jurisdictional authority.
- June 2023: AQUA filed an action for Declaratory and Injunctive Relief stating that any extension of the length of DELCORA's Agreement with the Philadelphia Water Department (PWD) is outside of DELCORA's ordinary course of business and should be prohibited without AQUA's full participation. DELCORA responded and filed a counterclaim for interference with contractual obligations. AQUA filed a series of Preliminary Objections that have been denied; a court date is now anticipated for the near future.

TRUSTEE:

- November 2022: Univest resigned as Trustee. A Consent Order was signed by both parties in February 2024 and entered by the Court. The Order granted DELCORA 30 days to appoint a successor Trustee or one will be appointed by the Court. A scheduled trial has now been cancelled.

PFAS

- Two firms have submitted letters of interest to represent the Authority in class-action litigation related to recovery of costs that have incurred and/or will incur due to the presence of PFAS (per- and polyfluoroalkyl) chemicals in DELCORA's wastewater effluent, spray irrigation, reuse water, and biosolids. No decision by the Board.