

## JOINT SEWER IMA REVIEW COMMITTEE

April 17, 2014

9:00AM

### EXECUTIVE SESSION

Members Present:       Mark Jamieson  
                                  John Stone  
                                  Andy Burbine

Also Present:            Chris Petrini, Special Counsel, Abington  
                                  Jeanne White, Executive Assistant

The members opened the meeting at 9:00 a.m. Special Counsel Chris Petrini recommends that the Committee move to go into Executive Session pursuant to Chapter 30A, sections 21a(3) and (7) and Suffolk Construction v. DCAM to meet with counsel to discuss pending litigation with the City of Brockton and potential settlement proposals to resolve the same, on the grounds that the Chair has determined that the litigation position of Abington may be compromised if the discussion occurs in open session.

Mr. Jamieson moved that the Committee go into Executive Session pursuant to Chapter 30A, sections 21a(3) and (7) and Suffolk Construction v. DCAM to meet with counsel to discuss pending litigation with the City of Brockton and potential settlement proposals to resolve the same, on the grounds that the Chair has determined that the litigation position of Abington may be compromised if the discussion occurs in open session. Mr. Stone seconded. Roll call vote: Mark Jamieson aye, John Stone aye, Andy Burbine aye. Unanimous 3-0.

Mr. Petrini starts the meeting. He explains the highlights of recent negotiations with Brockton since the last meeting. He states that we are continuing to make progress but we are stuck on them penalizing us and the additional consideration that will be given to Abington if Abington is not given the right to flow up to 1.5 MGD.

Mr. Stone brings the members up to date about the meeting they had on Monday in Brockton with the EPA/DEP. He explains that Brockton will never be able to discharge more than 18 MGD and that Abington cannot increase the gallons on an expired permit so there can be no increase of Abington's 1 MGD flow limit until a new NPDES permit is issued. Mr. Jamieson asks why the permit has been expired for so long. Mr. Petrini does not think they will get a new permit by the year, despite the statement by the regulators at the recent meeting. Mr. Jamieson then asks if we can make two agreements—one with a flow of 1 MGD and a second with a flow of 1.5 MGD. Mr. Petrini thinks two agreements would be confusing to enforce and thinks that it is in Abington's best interests to try to get one agreement with appropriate compensation if the new permit is not issued or does not allow discharge of 1.5 MGD by Abington.

Mr. Petrini then asks about the Kleinfelder report and the technical capacity of the Abington system to flow 1.5 MGD. Mr. Stone explains what has to be done if we do get to the 1.5 MGD. Abington will need to upgrade a pump station but that is our responsibility and has nothing to do with Brockton. Everyone agrees to give Brockton the Kleinfelder report at the open meeting.

The Committee talks about I&I. Mr. Stone shows the committee members a spreadsheet documenting Abington's percentage of I&I on an annual basis. This document explains that Abington does not have an I&I problem. We have a tight system and the documents show that Abington is well under the current 1 MGD in terms of the sewage flowed through Brockton. Everyone agrees to give Brockton that Mr. Stone should distribute the I&I documents during the open meeting.

Chris Petrini tells the members how he will explain the documents from Mr. Thompson and our I&I report. Hopefully this explanation will end the questions that Brockton has expressed with Abington's I&I problems.

Chris explains that he can get more out of Brockton with conference calls than with email proposals. Brockton knows that they have leverage over Abington because they exercise monopoly control over an essential municipal service, the infrastructure to transport Abington's sewage to the Brockton WWTP for treatment, and they are aware that Abington is highly unlikely to win a court order requiring Brockton to allow a direct connection through Brockton to the WWTP.

The members then discuss penalties – The new permit will not have a cut off amount for Abington so what will stop Abington from flowing to 2 MGD? The members discuss when would a penalty apply, when would it stop and how would Brockton control it. Mr. Stone says at the time of billing if Abington is over 1.5 MGD based on a 365 day annual rolling average for a period of time, then the penalties will apply.

Mr. Burbine asks that since Abington is a co-permittee, can Abington push the EPA/DEP on getting the permit done sooner rather than later? If there is no limit on the new permit shouldn't it be up to Brockton on what is allowed to be discharged? Mr. Petrini states that Brockton will be able to control the limits under the new permit and that is why they say they want penalties. Mr. Petrini states we can ask Brockton if they want Abington to call the DEP/EPA but do date Brockton has asked to be able to conduct the negotiations with DEP/EPA without the involvement and direct participation by Abington.

The members discuss upcoming meetings. May 21<sup>st</sup> will be in Brockton so we will try to schedule a meeting in June around June 26 or 27 in Abington.

Andy Burbine makes a motion to go out of Executive Session to start the open meeting. Mark Jamieson seconds. Roll call vote: John Stone aye, Mark Jamison aye, Andy Burbine aye. Unanimous 3-0.

#### **JOINT SEWER IMA REVIEW COMMITTEE**

**April 17, 2014**

**11:15 AM**

#### **SECOND EXECUTIVE SESSION**

Mr. Burbine moved that the Committee go into Executive Session pursuant to Chapter 30A, sections 21a(3) and (7) and Suffolk Construction v. DCAM to meet with counsel to discuss pending litigation with the City of Brockton and potential settlement proposals to resolve the same, on the grounds that the Chair has determined that the litigation position of Abington may be compromised if the discussion occurs in open session. Mr. Stone seconded. Roll call vote: Mark Jamieson aye, John Stone aye, Andy Burbine aye. Unanimous 3-0.

Abington talks about the discussions with Brockton during the open meeting and discuss that someday they may be able to sell back some of the gallons to Brockton if Abington does not need it. The committee members agree with a penalty clause so long as it is as narrowly worded as possible and so long as it is a full fiscal year. Interest can be added at 14% over 60 days because we have never been late.

The deadline for the new NPDES permit should be June 30, 2016

Andy Burbine makes a motion to go out of Executive Session to return to the open meeting. Mark Jamieson seconds. Roll call vote: unanimous, John Stone aye, Mark Jamison aye, Andy Burbine aye. Unanimous 3-0.

#### **JOINT SEWER IMA REVIEW COMMITTEE**

**April 17, 2014**

**12:00 AM**

#### **THIRD EXECUTIVE SESSION**

Mr. Jamieson moved that the Committee go into Executive Session pursuant to Chapter 30A, sections 21a(3) and (7) and Suffolk Construction v. DCAM to meet with counsel to discuss pending litigation with the City of Brockton and potential settlement proposals to resolve the same, on the grounds that the Chair has determined that the litigation position of Abington may be compromised if the discussion occurs in open session. Mr. Burbine seconded. Roll call vote: Mark Jamieson aye, John Stone aye, Andy Burbine aye. Unanimous 3-0.

The members discuss that we need to be careful with the penalty language because even if we don't agree to a new IMA penalties can be imposed under the existing IMA if we go over 1 MGD. Mr. Petrini checks the current IMA for language on overages and penalties but cannot find anything in the current agreement that allows Brockton to impose a penalty for overages. Since Abington is NPDES co-permittee it is possible that Abington could be penalized directly by the DEP or EPA for overages but this apparently has not occurred in the past.

Mr. Stone makes a motion to go out of Executive Session to return to the open meeting for purposes of adjournment. Mr. Jamieson seconds. Roll call vote: John Stone aye, Mark Jamison aye, Andy Burbine aye. Unanimous 3-0.

Motion to adjourn open meeting by Mr. Burbine. Seconded by Mr. Jamieson. Unanimous 3-0. Meeting concludes at approximately 12:15 p.m.