

**MINUTES OF WORKSHOP  
HORRY COUNTY SOLID WASTE AUTHORITY, INC.  
JUNE 7, 2013**

The Horry County Solid Waste Authority, Inc. held a Workshop on Friday, June 7, 2013, at 10:00 A.M., at the Authority's Administrative Office, 1886 Highway 90, Conway, South Carolina. In accordance with the Freedom of Information Act, notices setting forth the date, time, and place of the meeting were mailed to the news media.

Present were the following Board Members: Danny J. Hardee, Chairman; Basem E. Hilal, Secretary; M. Lance Thompson, Board Treasurer; and Board Members J. Michael Campbell, Dan P. Gray. Board Members John R. Long, II and Rev. James H. Cokley, Vice Chairman were absent.

Horry County Council Members Gary Loftus, Marion Foxworth, Jody Prince, Al Allen, Bob Grabowski, and Carl Schwartzkopt were present at the Workshop. Horry County Attorney Arrigo Carotti also attended the workshop. Also in attendance were W. Norfleet Jones and Pam Creech. Heather Gale of the Horry Independent represented the media in attendance.

The following individuals were also in attendance: Danny Knight, Executive Director; Donna Crump, Director; Bill Hilling, Director, Emma Ruth Brittain, SWA Staff Attorney and other staff to include Rodney Cannon, Jan Bitting, Mike Bessant, Joe Hyman, Cecil Terry and Nannette Powell.

**CALL TO ORDER**

Chairman Hardee called the workshop to order and asked Mr. Thompson to render the invocation. Following the invocation, Mr. Campbell led the group in the Pledge of Allegiance. Chairman Hardee indicated the purpose of the workshop was to receive a Flow Control update and discuss the SWA By-laws. He then asked Mr. Bessant to begin the presentation.

**FLOW CONTROL UPDATE**

Mr. Bessant thanked the Board for their attendance and indicated it was important for the SWA Board to meet and discuss the ending of this year's legislative session. He indicated that as of June 6, 2013, the General Assembly adjourned but would be back in Special Session on June 18, 2013. Mr. Bessant stated the committees from the House and Senate could compromise on amendments to bills passed by both sides of the General Assembly. He indicated Bill H3290, Anti Flow Control, was on the contested calendar in January 2014, but could become active if a rules slot was available. Mr. Bessant stated H3847, the E-Scrap bill (Electronics Landfill Ban), went to the House and Senate Bill H3290 was attached which is the Anti Flow Control legislation and was blocked by the 24-hour rule. He indicated this also stopped the E-Scrap bill from being passed this session. Mr. Bessant stated any relief the counties would have received for e-waste was put on hold because the flow control bill was attached. Mr. Bessant stated a joint resolution was introduced to impose a moratorium on DHEC's control of issuing permits to construct new, replace and expand certain class three (3) landfills. He indicated that DHEC could not issue approvals to increase the annual disposal rate and required to report on permit applications that would be affected by the moratorium until December 31, 2017. Mr. Bessant stated the Senate also introduced a budget proviso that placed a fee on any waste coming from out-of-state.

## DISCUSSION SWA OF BY-LAWS

Chairman Hardee informed the group that the IRS changed the laws regarding 501(c)(3) organizations and requirements to file 990 forms. He stated since the SWA is currently classified as 501 (c)(3) organization the classification and filing status must be changed. Mrs. Brittain stated the issue was whether the SWA wanted to file an informational return under the non-profit code or file for status where the SWA would be exempted. Mrs. Brittain indicated this process was used by non-profit organizations and the City of Myrtle Beach used this for the Convention Center and consulted with Smith, Sapp accounting firm. Mrs. Brittain indicated that legal counsel for the SWA was examining the classification issue. Mrs. Brittain stated the By-laws in the dissolution section stated that should the SWA be dissolved it must be in a way that would perpetuate the purpose that is to carry out the disposal of solid waste for Horry County. Mrs. Brittain interpreted this to mean the assets would go back to the County because they started the solid waste operations. She recommended the SWA specifically state in the dissolution section that all assets of the SWA shall be distributed to Horry County which would clarify the understanding and the intent of the By-laws. Mrs. Brittain read the new amended version of dissolution Article XIII as follows:

*Upon the dissolution of the corporation, all of the corporation's assets shall be distributed to Horry County, South Carolina (and/or to municipalities within Horry County, South Carolina) in such manner as determined by the Board of Directors of the corporation. No part of the net earnings or the corporation shall inure to the benefit of, or be distributable to, its directors, officers, trustees, employees, agents or other private shareholders or persons.*

Mrs. Brittain stated this would be presented in the form of a resolution at the next Board meeting and then presented to County Council. She informed the group that County Council would have to approve any By-law amendment. Mrs. Brittain asked if there were any questions, concerns or comments. Mrs. Brittain stated this was for clarification of the By-laws recommended by legal counsel working on the reclassification. Mr. Gray asked if the IRS required that the SWA change its status in the By-laws. Mrs. Brittain indicated based on changes in tax law the Authority was electing to request reclassification as a governmental unit. She stated there was an exception available to qualify for the exemption and the SWA needed to make a change to the By-laws. Mrs. Brittain stated making this change would clarify this issue. Mr. Gray asked what the SWA's classification was. Mrs. Brittain stated the SWA has a 501(c)(3) classification. Mrs. Brittain stated the tax law changed and the SWA needed to change its status. Mr. Gray asked if in order to proceed with this change the By-laws needed to be changed. Mrs. Brittain stated that would be correct. Mr. Gray stated the SWA needed to change the By-laws so no informational return was necessary. He commented that the SWA needed to defer to County Council about this change in the By-laws or dissolution since the SWA was part of the County. Mr. Gray stated in the dissolution of the corporation the assets would be distributed to Horry County and or to municipalities within Horry County. Mrs. Brittain stated she had consulted with Mr. Cureton, SWA Tax Attorney and this was included in the dissolution. She indicated Mr. Knight was also consulted about this provision. Mrs. Brittain stated if the Board did not agree with the verbiage then it could be removed and or Horry County Council could also ask to strike that from the dissolution. Mr. Gray indicated with this wording some of the assets could go to entities other than Horry County. Mr. Gray further stated not having to file an informational return might bring up some unintended consequences. Mr. Gray asked Mrs. Brittain if filing an informational return

was a hardship for the SWA. Mrs. Brittain stated the issue was more paper work. Mr. Knight indicated that Mr. Gray and attorneys have stated the SWA was not a governmental agency and this was for clarification purposes. Mr. Knight stated that Horry County has the right to have a landfill. He indicated the SWA was trying to qualify as a true governmental agency in another classification. Mr. Gray stated the SWA would not be a separately chartered corporation but was a true county body of Horry County government and now the SWA does not have to file an information return if this was added into the SWA By-laws. Mrs. Brittain stated she did not think that was what Mr. Knight meant. She indicated it was understood that the SWA could be dissolved and the assets would go to Horry County. Mrs. Brittain stated the real intention was parenthetical, and said the SWA could delete the part about the municipalities receiving any assets from the dissolution of the SWA. Mr. Gray stated he understood the motivational factor was that the SWA was part of Horry County Government. Chairman Hardee indicated this was to change the SWA's classification because the IRS tax laws changed. Mrs. Brittain stated for a change in classification the SWA had to qualify. Mr. Gray replied the SWA does not have to file a report if the SWA was declared a part of county government. He also stated that County Council would reserve the right to dissolve the SWA. Mrs. Brittain stated that Horry County Council has certain authorities separate and apart from this document as county government. Mrs. Brittain stated the By-laws were the governing documents for the internal operation of the SWA. Mr. Gray asked what action was expected on this documentation. Mrs. Brittain indicated none. Mr. Knight stated a resolution would be prepared for the next Board meeting to be voted on and when approved then presented to County Council. Mr. Thompson asked what further steps would be required after the By-law change in order to meet the qualifications. Mrs. Brittain stated Mr. Cureton indicated the next step would be a procedural change to the Articles of Incorporation. She indicated the corporate documents along with a request for a letter of ruling would be forwarded to the IRS with a legal brief stating the qualification for the status change and examples of other waste authorities to support this documentation. Mr. Gray asked if County Council's input would be after the fact and if Council wanted the language changed then they could reject the resolution. Mr. Knight stated Council would recommend changes and send it back to the SWA's Board. Mr. Hardee stated because of the IRS these changes are being made and if not then no changes would have been made. Mr. Gray stated the SWA was not filing the informational returns. He indicated the IRS informed the SWA changes were needed. Mr. Knight stated the SWA did not have to file under the original classification.

Mr. Thompson asked if there were any other By-law changes. Chairman Hardee indicated there was a need to discuss the duties of the Chairman. Mrs. Brittain distributed a handout stating the new duties of the Chair. The Chair shall serve as Chairman of the Board of Directors and shall have the following duties:

- a. Call meetings and briefing of the Board;
- b. Preside and maintain decorum at meeting of the Board and enforce the Amended and Restated Rules of the Board;
- c. In consultation with the Executive Director, establish the agenda for Board meetings;
- d. Make committee assignments, subject to approval of the Board;
- e. Sign documents authorized by the Board;
- f. Perform such other duties as may be authorized by the Board in accordance with the governing documents of the Authority.

Chairman Hardee stated the recommended changes would be voted on at the next meeting.

Mrs. Brittain stated these changes would be more in line with the duties of the Chair. Mr. Thompson asked if this would replace the article that stated the Chairman of the Board had the responsibilities of the day-to-day operations of the SWA. Chairman Hardee stated that was correct. Mrs. Brittain stated that the last sentence would be retained which states: the Chair shall execute all contracts and agreements authorized by the Board; the Chair shall be entitled to vote on any issue before the Board and shall be entitled to serve on any committee of the Board; however, the Chair shall not serve as Chair of any committee of the Board except the Corporate Planning Committee. Mrs. Brittain stated at the next meeting these changes would be in a red lined version with the final context of the document. Mr. Thompson asked Mrs. Brittain about research of other organizations. Mrs. Brittain commented the booklet that she gave Mrs. Murphy was based on a group that studied different organizations 501 (c)(3) and non-profit organizations. Mrs. Brittain stated generally the By-laws allow the Board of Directors to set the policy and the Executive Director implemented the policy set by the Board. Mr. Gray asked about the change in Mr. Bessant's job title. Mr. Knight stated that would take place on July 1, 2013, Mr. Bessant job title would be the Assistant Executive Director. Mr. Gray stated before the Board agreed to the changes he wanted to review the duties of the directors for clarification. Mr. Thompson asked where he could get the handbook. Mr. Knight indicated the Board would receive a copy at the next board meeting. Mr. Hardee asked the group if there was any information they wanted to add or subtract to the resolution before the next board meeting. Mr. Hardee stated the Solid Waste Authority belongs to the citizens of Horry County and hoped everyone realized this was one of the biggest assets the County has.

**MOTION TO ADJOURN**

There being no further business to come before the Board, **Mr. Thompson moved, seconded by Mr. Hilal to adjourn the meeting. The Motion was carried** and the Workshop was adjourned at 10:35 A.M.

Minutes approved on June 25, 2013.

**HORRY COUNTY SOLID WASTE AUTHORITY, INC.**

BY: \_\_\_\_\_(L. S.)  
Danny J. Hardee, Chairman

ATTEST:

\_\_\_\_\_(L. S.)  
Basem E. Hilal, Secretary

\_\_\_\_\_(L. S.)  
J. Michael Campbell

\_\_\_\_\_(L. S.)  
James H. Cokley

\_\_\_\_\_(L. S.)  
Dan P. Gray

\_\_\_\_\_(L. S.)  
John R. Long II

\_\_\_\_\_(L. S.)  
M. Lance Thompson