

The regular meeting of the Ewing-Lawrence Sewerage Authority was held on Tuesday, January 16, 2024, at 12:00 P.M. at 600 Whitehead Road, Lawrenceville, New Jersey 08648.

Present: Messrs. Kownacki, Muzaffar, Ryan and Vereen; Vance Stephens, ELSA Administrative Officer and W. Barry Rank, Esquire (via telephone); Allan Jacobs, PE of Jacobs Environmental Consulting, LLC.

Also attending: Chris Gianotto, ELSA Maintenance Supervisor; Tina Revilla, ELSA Laboratory Supervisor; Robert Jefferson, ELSA Operations Supervisor, Dennis Yoder, PE of Remington Vernick, Engineers; Jaelyn Bentz; Administrative Clerk; Kathleen Wollert, Ewing Council Member; Dudley Burdge, Representative of CWA Local 132; George Tyler and Matthew Krantz, Esqs., of Tyler, Aversano & Krantz, Esqs.

Absent & Excused: Mr. Geter

Mr. Vereen called the meeting to order and Mr. Filler gave the invocation. After the Pledge of Allegiance, Mr. Vereen advised that all requirements of the Local Public Meetings Act have been met. He also advised that any contracts awarded today would comply with the requirements of P.L. 1975, c. 127 (N.J.A.C. 17:27).

Kathleen Wollert and Dudley Burdge were introduced to and greeted the ELSA Board Members and those in attendance.

Mr. Filler advised that ELSA Shop Steward, William Thomas Bodnar had recently lost his mother.

Res. 1:24. On motion of Mr. Muzaffar and seconded by Mr. Kownacki and unanimously carried it was moved that the Minutes of the Authority's December 19, 2023, Board meeting be approved as presented:

Res. 2:24. On motion of Mr. Muzaffar and seconded by Mr. Lee and unanimously carried it was moved that the December Flow, Maintenance and Connection Reports be filed.

Res. 3:24. On motion of Mr. Muzaffar and seconded by Mr. Ryan and unanimously carried it was moved that the End of the Year Schedule of Bills in the amount of \$316,191.20 be accepted.

Res. 4:24. On motion of Mr. Muzaffar and seconded by Mr. Ryan and unanimously carried it was moved that the January 16, 2024 Schedule of Bills in the amount of \$839,261.81 be accepted.

Mr. Filler advised that the meeting of the Regional Sludge Management Committee was held on December 20, 2023. George Tyler, Esq., advised that Trenton Biogas is a client.

Mr. Filler introduced George Tyler and Matthew Krantz, Esqs., of Tyler, Aversano & Krantz, Esqs., who have been representing the Authority and those Authority's similarly situated on the nitrates matter. After providing a history of the litigation to date the Board was advised that a sewer ban must be imposed at this time.

Res. 5:24. On motion of Mr. Muzaffar and seconded by Mr. Ryan and unanimously carried the Authority went into Executive Session and the room was cleared of all guests.

Res. 6:24. On motion of Ryan and seconded by Mr. Muzaffar and unanimously carried the meeting resumed at 1:10.

Mr. Vereen advised that during Executive Session litigation strategy was discussed as well as the adoption of the following Resolution:

Res. 7:24. On motion of Mr. Ryan and seconded by Mr. Kornacki and unanimously carried the following motion was adopted:

WHEREAS, the EWING-LAWRENCE SEWERAGE AUTHORITY (the "Authority") operates a wastewater treatment facility which discharges treated wastewater into the Assunpink Creek in Lawrence Township, New Jersey pursuant to a New Jersey Pollutant Discharge Elimination System ("NJPDES") permit;

WHEREAS, on September 30, 2009, DEP issued a renewal NJPDES permit to the Authority ("2009 Permit") containing an effluent limitation for nitrate;

WHEREAS, the Authority requested an adjudicatory hearing to contest the effluent limitation for nitrate, and simultaneously, requested a stay of the nitrate limit;

WHEREAS, DEP granted both the hearing request and the stay;

WHEREAS, DEP subsequently moved for summary decision in the Office of Administrative Law and such motion was granted in an Initial Decision by the Administrative Law Judge despite the objection of the Authority;

WHEREAS, on February 14, 2023, the DEP Commissioner issued a Final Decision adopting the ALJ's Initial Decision upholding the effluent limitation for nitrate, and terminating the stay of the nitrate limit;

WHEREAS, the Authority appealed the Final Decision of the Commissioner to the New Jersey Superior Court, Appellate Division;

WHEREAS, the Authority also filed a motion with DEP requesting a stay of the Final Decision pending appeal;

WHEREAS, by Order dated November 1, 2023, DEP denied the Authority's motion for a stay pending appeal;

WHEREAS, the Authority subsequently filed a motion for a stay pending appeal with the Appellate Division;

WHEREAS, by Order dated January 4, 2024, the Appellate Division denied the Authority's motion for a stay pending appeal;

WHEREAS, pursuant to N.J.A.C. 7:14A-22.17, the Authority is required to impose a sewer connection ban where,

[f]or a three month consecutive period, a treatment works has discharged effluent to the surface water which violates any non-conventional pollutant of its NJPDES or NPDES permit, as determined by the arithmetic average of the permit parameters for the period.

WHEREAS, because DEP has refused to stay the effluent limitation for nitrate pending appeal, the Authority's wastewater treatment facility has, for a three month consecutive period, discharged effluent to the Assunpink Creek which exceeds the effluent limitation for nitrate;

NOW, THEREFORE BE IT RESOLVED that:

1. The Authority hereby imposes a sewer connection ban pursuant to N.J.A.C. 7:14A-22.17;
2. The Authority shall cease the further approval of sewer connections as of the date hereof;
3. The Authority shall notify the Townships of Lawrence, Ewing and Hopewell that they shall cease the issuance of building permits and condition all other approvals which will require or modify a sewer connection, and which have not already obtained a valid treatment works approval issued by DEP, unless such projects do not require a treatment works approval and/or sewer connection ban exemption.
4. The Authority shall give further notice of the sewer connection ban as required by N.J.A.C. 7:14A-22.18(a)(4).
5. The Authority hereby adopts the sewer connection ban exemption criteria set forth in N.J.A.C. 7:14A-22.22.
6. The sewer connection imposed herein shall, pursuant to N.J.A.C. 7:14A-22.18(f), remain in full force and effect until such time that a sewer connection ban is no longer required pursuant to N.J.A.C. 7:14A-22.17, and DEP approves the rescission of the sewer connection ban in writing.
7. The Executive Director is hereby authorized to consult with, and obtain the services of, the Authority's professionals, and take such other action as is necessary to effectuate the purpose and intent of this Resolution.

Res. 8:24. On motion of Mr. Lee and seconded by Mr. Muzaffar the following resolution was presented for adoption:

WHEREAS, the EWING-LAWRENCE SEWERAGE AUTHORITY (the "Authority") operates a wastewater treatment facility which discharges treated wastewater into the Assunpink Creek in Lawrence Township, New Jersey pursuant to a New Jersey Pollutant Discharge Elimination System ("NJPDES") permit;

WHEREAS, on September 30, 2009, DEP issued a renewal NJPDES permit to the Authority (“2009 Permit”) containing an effluent limitation for nitrate;

WHEREAS, the Authority requested an adjudicatory hearing to contest the effluent limitation for nitrate, and simultaneously, requested a stay of the nitrate limit;

WHEREAS, DEP granted both the hearing request and the stay;

WHEREAS, DEP subsequently moved for summary decision in the Office of Administrative Law and such motion was granted in an Initial Decision by the Administrative Law Judge despite the objection of the Authority;

WHEREAS, on February 14, 2023, the DEP Commissioner issued a Final Decision adopting the ALJ’s Initial Decision upholding the effluent limitation for nitrate, and terminating the stay of the nitrate limit;

WHEREAS, the Authority appealed the Final Decision of the Commissioner to the New Jersey Superior Court, Appellate Division;

WHEREAS, the Authority also filed a motion with DEP requesting a stay of the Final Decision pending appeal;

WHEREAS, by Order dated November 1, 2023, DEP denied the Authority’s motion for a stay pending appeal;

WHEREAS, the Authority subsequently filed a motion for a stay pending appeal with the Appellate Division;

WHEREAS, by Order dated January 4, 2024, the Appellate Division denied the Authority’s motion for a stay pending appeal;

WHEREAS, the effluent discharged from the Authority’s wastewater treatment facility has exceeded the monthly average and daily maximum concentration limitations for nitrate in each month since the Commissioner’s issuance of the Final Decision terminating the stay of the effluent limitation for nitrate contained in the Authority’s NJPDES permit;

WHEREAS, the Authority believes that it is in its best interest to evaluate alternatives for achieving compliance with the effluent limitation for nitrate while it continues to pursue the appeal of DEP’s adoption of the effluent limitation for nitrate;

NOW, THEREFORE BE IT RESOLVED that:

1. The Authority shall study and evaluate alternatives for achieving compliance with the effluent limitation for nitrate contained in the Authority’s NJPDES permit;
2. The Executive Director is hereby authorized to consult with, and obtain the services of, the Authority’s professionals, and take such other action as is necessary to effectuate the purpose and intent of this Resolution.

The above resolution was adopted on the following roll call vote:

Ayes: Messrs. Kownacki, Lee, Muzaffar, Ryan and Vereen.

Nays: None.

Absent: Mr. Geter.

Mr. Filler advised the Board that US Homes was awaiting his signature on a revised Treatment Works Application for its multi-family project in Hopewell Township. With the guidance of Matthew Krantz, Esq., the following resolution was presented for adoption:

Res. 9:24. On motion of Mr. Muzzaffar and seconded by Mr. Kownacki the following resolution was presented for adoption:

WHEREAS, U.S. HOMES CORPORATION (DBA LENNAR) (the “Developer”) proposes construction of a multi-family project in Hopewell Township as follows:

The North section is proposed to be 542 residential dwelling units consisting of 338 multifamily units, 92 stacked town houses, 30 town houses and 82 single family homes;

The South section is proposed to be 535 residential dwelling units consisting of 132 multifamily units, 224 stacked town houses, 70 town houses and 109 single family homes for a total of 1077 area residential dwelling unit (“Project”); and

WHEREAS, the New Jersey Department of Environmental Protection (“DEP”) issued Treatment Works Approval (“TWA”) No. 22-0268 to the Developer for the Project;

WHEREAS, during review of the TWA application by the EWING-LAWRENCE SEWERAGE AUTHORITY (the “Authority”), the Authority requested an increase in size of the force mains from 6” and 10” to 8” and 10”;

WHEREAS, DEP has required that the Developer obtain a TWA modification for this change in the force mains;

WHEREAS, by letter dated January 12, 2024, the Developer delivered a copy of the TWA modification application and a Form WQM003-T, Statements of Consent for TWA applications (“Form”), to the Authority and requested that the Authority execute Certifications C and D on the Form;

WHEREAS, the Authority’s wastewater treatment facility is not currently in compliance with the effluent limitation for nitrate set forth in the Authority’s New Jersey Pollutant Discharge Elimination System (“NJPDES”) Permit as determined by a rolling average of the three most recent monthly discharge monitoring reports;

WHEREAS, the effluent limitation for nitrate set forth in the Authority’s NJPDES Permit is presently the subject of an appeal before the New Jersey Superior Court, Appellate Division;

WHEREAS, past efforts by the Authority to obtain a stay of the effluent limitation for nitrate pending appeal have been denied by DEP;

WHEREAS, given the forgoing, ELSA contacted its DEP compliance manager, Mr. Daniel Lockward, to seek direction on how to respond to the Developer’s request for consent;

WHEREAS, Mr. Lockward instructed ELSA to execute Certification C and return the Form to the Developer without executing Certification D;

WHEREAS, the Authority considered the TWA Modification application of the Developer to connect its proposed facility to the Authority's sewerage system, Certifications C and D on the Form, and the instruction received from Mr. Lockward;

NOW, THEREFORE BE IT RESOLVED that:

1. In accordance with the instructions of Mr. Lockward, the Executive Director is hereby authorized to execute Certification C on the Form.
2. In accordance with the instructions of Mr. Lockward, the Executive Director is hereby directed not to execute Certification D on the Form.

The above resolution was adopted on the following roll call vote:

Ayes: Messrs. Kownacki, Lee, Muzaffar, Ryan and Vereen.

Nays: None.

Absent: Mr. Geter.

Mr. Jacobs advised that he had reviewed the application for final approval submitted by Friends of Paul Robeson Carther School to construct a new charter at 1298 Martin Luther King, Jr., Boulevard in the City of Trenton and Ewing Township. The three-story building will be bounded by Princeton Avenue, New Willow Street and Pritchard Street. The building is in Ewing Township; and

Res. 10:24. On motion of Mr. Muzaffar and seconded by Mr. Ryan and unanimously carried, the following resolution was presented for adoption:

WHEREAS, FRIENDS OF PAUL ROBESON CHARTER SCHOOL, propose to construct a new charter school at 1298 Martin Luther King, Jr., Boulevard in the City of Trenton and Ewing Township. The three-story building will be bounded by Princeton Avenue, New Willow Street and Pritchard Street. The building is in Ewing Township; and

WHEREAS, the EWING-LAWRENCE SEWERAGE AUTHORITY (the "Authority") considered the application of the Developer to connect its proposed facility to the Authority's sewerage system;

NOW, THEREFORE BE IT RESOLVED that the proposed connection for the Developer's proposed Development to the Authority's sewerage system is approved, subject to the following conditions:

1. The Developer, at its own cost, shall provide "as-built" plans for the sewerage system in a manner acceptable to the Authority's Engineer prior to the issuance of a Certificate of Occupancy by the Township.

2. The Developer, at its own cost, shall provide all necessary easements to the Authority upon the request of the Authority.

3. The Developer shall revise its utility plans in accordance with such recommendations as the Authority's Engineer shall specify.

4. The Executive Director is hereby authorized to execute all forms necessary to obtain a NJDEP Permit.

5. The Authority hereby endorses this project and further certifies that said project meets the 201 Agency requirements.

6. This final approval granted pursuant to this Resolution shall expire two (2) years from the date hereof.

7. The Developer shall pay the appropriate improvement, capacity, connection and inspection fees.

8. The sewers shall conform to the Authority's Rules and Regulations.

9. This approval is subject to acceptance of the comments and conditions outlined in Jacobs Environmental Consulting's letter dated January 8, 2024.

Mr. Filler advised the Board as follows:

1. Port Mercer Canal House has a TWA application pending and would be advised of the sewer ban and provided with an exemption application;
2. Synnergy – On hold pending a response from the BPU.
3. Mr. Jacobs is transitioning projects to Mr. Yoder.

Mr. Rank advised the Board that the first round of Briefs had been filed in the Deer Valley litigation and reply briefs are due February 1, 2024.

Mr. Jacobs advised that he was working on the Flow Report which would be ready for the February meeting.

Res. 11:24. On motion of Mr. Muzaffar and seconded by Mr. Ryan and unanimously carried, the meeting was adjourned at 1:25 PM.

Submitted by Susan Dorio for the
Ewing Lawrence Sewerage Authority

