

COAKLEY EXECUTIVE COMMITTEE
Thursday, June 11, 2020, 10:00 a.m. Teleconference
Meeting Minutes

The Coakley Executive Committee (EC) Teleconference call commenced at 10:06 a.m.

Conferenced in by phone: Chairman Eric Spear, Seth Jaffe, Esq., Curtis Shipley, Esq., Robert Sullivan, Esq. Peter Britz, Dan MacRitchie, Joe Montello and Marian Steimke.

Guests conferenced in by phone: John Tuthill from Acworth, NH, Michael Tully, N. Hampton

Chairman Spear read the following:

Per NH RSA 91-A:2, III (b) the Chair has declared COVID-19 outbreak an emergency and has waived the requirement that a quorum be physically present at the meeting pursuant to the Governor's Executive Order 2020-04, Section 8, as extended by Executive Order 2020-09, and Emergency Order #12, Section 3. Members will be participating remotely and will identify their location and any person present with them at that location. All votes will be by roll call.

I. Review the minutes of the May 6, 2020 Coakley Teleconference call.

The EC clarified a statement in the HB494 paragraph on page 6: It is position of the EC that the work they are doing is work that is mandated by the EPA.

A motion was made by Attorney Seth Jaffe to approve the minutes of the May 6, 2020 meeting; this motion was seconded by Attorney Curtis Shipley.

On a roll call 3-0, the Committee voted to approve the May 6, 2020 minutes.

A motion was made by Attorney Seth Jaffe to approve the minutes of the non-public session of the May 6, 2020 meeting; this motion was seconded by Attorney Curtis Shipley.

On a roll call 3-0, the Committee voted to approve the May 6, 2020 minutes of the non-public session.

OU-1**II. BILLS****CITY OF PORTSMOUTH:**

- | | | |
|----|---|------------|
| A. | Invoice # 2900374574 dated 5/13/2020
Services of Peter Britz | \$2,750.00 |
|----|---|------------|

A motion was made by Attorney Seth Jaffe to approve item II – A for payment; this motion was seconded by Attorney Curtis Shipley.

On a roll call 3-0, the Committee voted to approve item II – A for payment.

CES, INC.

Payment Certifications dated:	6/11/2020
Invoices dated:	5/28/2020
Services rendered through:	4/26/2020

- | | | |
|----|---|------------|
| B. | Invoice # 20202227
General technical assistance | \$721.87 |
| C. | Invoice # 20202229
Work Plan, Fall 2018 Sampling; OOS Services | \$3,775.00 |
| D. | Invoice # 20202230
Fall 2019 Sampling | \$633.76 |

Peter explained that item B was mostly communication between CES, himself and the agencies. Item C involved fall sampling work, revision to figures and preparation for the 2019 report. Item D related to technical work that CES did on the annual report and providing technical assistance. Alpha Lab credited us a little over \$7,000, and this is the area where we offset the cost.

A motion was made by Attorney Seth Jaffe to approve items II – B, C, D for payment; this motion was seconded by Attorney Curtis Shipley.

On a roll call 3-0, the Committee voted to approve items II – B, C, D for payment.

Hodgdon, Wilson & Griffin

- | | | |
|----|--|----------|
| E. | Invoice for OU1 Tax prep Tax Year 2019
Dated:4/7/2020
Federal corporate 2019 tax return OU-1 | \$225.00 |
|----|--|----------|

Seth and Curtis agreed that taxes should not be owed out of the trust accounts. The Bank had chosen these particular accountants, and there is an ongoing issue of who is doing the taxes. The EC discussed potentially seeking another firm to do the taxes.

Bob said the amounts of taxes we are paying are small, but the amounts could be larger in the future.

A motion was made by Attorney Seth Jaffe to approve item II – E for payment; this motion was seconded by Attorney Curtis Shipley.

On a roll call 3-0, the Committee voted to approve item II – E for payment.

StoneHill Environmental

Payment Certification dated: 6/11/2020
Invoice dated: 3/31/2020
Services rendered through 4/10/2020

F. Invoice # 1736 \$2,121.47
Gas Monitoring and Reporting

It was noted that the agenda incorrectly described the work done by StoneHill. Peter explained that the landfill gas report / monitoring is the correct thing we are paying.

A motion was made by Attorney Seth Jaffe to approve item II – F for payment; this motion was seconded by Attorney Curtis Shipley.

On a roll call 3-0, the Committee voted to approve item II – F for payment.

US Department of Treasury

G. Form # 1120-SF For tax year 2019 \$87.00
IRS Form 1120-SF Tax Return for Settlement Funds
(Under Section 468B)

H. First Installment Tax Payment 4/15/2020 \$100.00

These two items had previously been paid by Piscataqua Savings Bank at the direction of Tom Queeney of PSB. These were paid without authorization from the EC. Bob pointed out that it becomes an anomaly if there is no authorization regarding payment of these funds.

A motion was made by Attorney Seth Jaffe to acknowledge that these two bills totaling \$187.00 were paid by Piscataqua Savings Bank without authorization from the EC; this motion was seconded by Attorney Curtis Shipley.

On a roll call 3-0, the Committee voted to approve the motion.

A motion was made by Attorney Seth Jaffe that the EC take steps to explore options with other accounting firms; this motion was seconded by Attorney Curtis Shipley.

On a roll call 3-0, the Committee voted to approve the motion.

A motion was made by Attorney Seth Jaffe that no money shall be spent on our behalf without our authorization; this motion was seconded by Attorney Curtis Shipley.

On a roll call 3-0, the Committee voted to approve the motion.

The group suggested that someone from the City talk to the accountants and send a letter to the Bank stating that in the future they should not be sending money out of the trust accounts without authorization.

Marcum is the firm in Boston that does the Coakley generator taxes. Seth will look into their costs.

Curtis will call Sherry Young to ask for her suggestion as well.

III. OU - 1 ACTION ITEMS

Assessments were sent out on 11/26/2019 and were due by 1/31/2020.

PRP	Percentage	Requested Amount	Amount Received	Date Received
City of Portsmouth	53.553%	\$166,014.00	\$166,014.00	12/10/2019
Town of Newington	5.462%	\$16,932.00	\$16,932.00	1/21/2020
Town of N. Hampton	4.062%	\$12,592.00	\$12,592.00	12/16/2019
Generators	20%	\$62,000.00	\$62,000.00	1/15/2020
Browning-Ferris	12.308%	\$38,155.00	\$38,155.00	12/30/2019
Waste Management	4.615%	\$14,307.00	\$14,307.00	1/21/2020
TOTALS	100%	\$310,000.00	\$310,000.00	

IV. OU - 1 RECORD ITEMS

A. OU – 1 Balance as of 6/9/2020: \$389,429.51

OU-2

V. BILLS

CITY OF PORTSMOUTH:

A. Invoice # 2900374574 dated 5/13/2020 \$2,750.00
Services of Peter Britz

A motion was made by Attorney Seth Jaffe to approve item V – A for payment; this motion was seconded by Attorney Curtis Shipley.

On a roll call 3-0, the Committee voted to approve item V – A for payment.

CES, INC. Payment Certifications dated: 6/11/2020
Invoices dated: 5/28/2020
Services rendered through 4/26/2020

B. Invoice # 20202227 \$1,340.63
General technical assistance

C. Invoice # 20202228 \$2,290.00
Bedrock Investigation Work Plan; Downhole Geophysics Packer Sampling, OOS Services

D. Invoice # 20202230 \$1,176.99
Fall 2019 Sampling

Peter explained that item C involved the work plan addendum and some coordination work with the agencies. Item D also reflects a refund/credit applied regarding the Lab.

A motion was made by Attorney Seth Jaffe to approve items V – B, C, D for payment; this motion was seconded by Attorney Curtis Shipley.

On a roll call 3-0, the Committee voted to approve items V – B, C, D for payment.

Hodgdon, Wilson & Griffin

E.	Invoice for OU2 Tax prep –Tax Year 2019	\$450.00
	Dated:4/7/2020	
	Federal fiduciary 2019 tax return OU-2	

It was noted we did not ask the CPAs why there are different amounts for different returns.

A motion was made by Attorney Seth Jaffe to send an email to HW&G to ask:

- 1) What their fee basis is;**
- 2) Why the billed amounts for OU-1 & OU-2 tax preparation are different;**
- 3) Why OU-1 was billed as a Federal corporate tax return, but OU-2 was billed as a Federal fiduciary tax return.**

Depending on the response, we may designate a committee of the EC to look into what HW&G did and whether the EC should look at other firms for next year. This motion was seconded by Attorney Curtis Shipley.

On a roll call 3-0, the Committee voted to approve the motion.

A motion was made by Attorney Seth Jaffe to approve item V – E for payment; this motion was seconded by Attorney Curtis Shipley.

On a roll call 3-0, the Committee voted to approve item V – E for payment.

VI. OU - 2 ACTION ITEMS

Assessments were sent out on 11/26/2019 and were due by 1/31/2020.

PRP	Percentage	Requested Amount	Amount Received	Date Received
City of Portsmouth	53.551%	\$334,693.00	\$174,693.00	12/10/2019 – <i>partial payment</i>
Town of Newington	5.463%	\$34,144.00	\$34,144.00	1/24/2020
Town of N. Hampton	4.063%	\$25,394.00	\$25,394.00	12/16/2019
Generators	20%	\$125,000.00	\$125,000.00	2/11/2020
Browning-Ferris	12.308%	\$76,925.00	\$76,925.00	12/26/2019
Waste Management	4.615%	\$28,844.00	\$28,844.00	1/21/2020
TOTALS	100%	\$625,000.00	\$465,000.00	

Peter explained that the payment from Portsmouth was split into two payments and the second half paid will be paid in the new fiscal year once they encumber the funds for next fiscal year.

Seth asked if there was any concern about whether the municipal budget would have sufficient funds for the new fiscal year, considering that there is currently a \$160,000 shortfall, and we will be spending a lot of money in FY21.

Bob said we hope to have our budget approved next Monday night, but there is another issue. The City has been paying Coakley remediation expenses off a large borrowing authorization and has been relying on that. We have used that up and we'll have to get new authorizations in the future. This will be subject to a meeting and public hearing and a 2/3 vote of the City Council. Then the Council still has to approve the payments each year.

Joe asked what Peter used in his budgeting regarding the work planned. Peter used the estimate that CES gave us before. Peter and Dan are close to the final numbers. Seth asked if we were close on the deep bedrock studies and said he'd rather delay in order to have better numbers. We want final agreement with the EPA on bedrock investigation. We have not yet nailed down the final scope. We have tried to make the agencies sensitive to the COVID issue. There is logic in waiting to do the budget until we get the final scope of work.

Peter and Bob will talk. Borrowing authorization is not part of the budget cycle. It is too late for the current budget.

VII. OU - 2 RECORD ITEMS

- A. OU-2 Balance as of 6/9/2020 \$638,018.90
- B. Letter from HW&G, CPAs dated 3/10/2020 to City of Portsmouth regarding Grantor / Agency Report for Coakley Landfill Superfund OU-2 Trust. Attachments: Form 1041; Statement 1: Grantor/Agency Report - Dividend Information fiscal year ending: 12/31/2019.

A motion was made by Attorney Seth Jaffe to approve the record items VII –A and B; this motion was seconded by Attorney Curtis Shipley.

On a roll call 3-0, the Committee voted to approve record items VII – A and B.

COMBINED OU-1 & OU-2

VIII. COMBINED OU – 1 & OU – 2 ACTION ITEMS

- A. Report of Peter Britz of the City of Portsmouth dated 6/11/2020

Spring sampling:

CES completed the sampling without issues, but sending the samples via FedEx took four days to arrive – even though it was guaranteed to arrive the next day. The samples are only good for two days, and as a result, the lab said the samples were out of temperature. They are all being recollected since it did not make sense to try to use them. The amended Spring sampling will be completed in the next day or two. We explained to the residents so they would be aware, and they were very understanding. CES agreed to absorb the cost for the amended sampling. The EC expressed their appreciation in stepping up to cover this added expense, and asked Peter to relay that to CES. Getting FedEx to pay the cost of the sampling was impossible – they would not budge, even though the delivery was to be overnight. FedEx only refunded the cost of the shipping.

Surface Water and Stormwater Proposal Amendment:

The Surface/storm water Amendment was to combine all the work into one contract. That has been done and that contract was distributed with the activity report for this meeting. Peter asked the EC to approve the contract/proposal (reference Record Item IX-A).

A motion was made by Attorney Seth Jaffe to approve the CES Proposal dated 5/20/2020 for Surface Water Evaluation and House Bill 494 Assistance; this motion was seconded by Attorney Curtis Shipley.

On a roll call 3-0, the Committee voted to approve the proposal.

Seth asked how the money would be allocated between OUI-1 vs OU-2. Peter answered that most surface water work has been OU-1. This is not going to fit the typical split that we've had of 65% / 35%, and we will review that.

Deep bedrock:

Peter said that we've agreed to do a pump test on a well on the southern part of the boundary/property that looks at fractures. He has consulted with the agencies to confirm this is a good well for the pump test, and so far they agree. They saw some evidence that there is some drawdown possibly due to fractured bedrock. Joe and Peter have gone through the recommendations. Once they approve the packer sampling intervals we will have the work completed. Once we receive the results from this we can confirm that MW-6 is a good well do the pump test on. The deep bedrock work plan is being reviewed by the agencies. We'll have an understanding soon of the additional work needed to complete this phase of the Deep Bedrock Study.

IX. COMBINED OU – 1 & OU – 2 RECORD ITEMS

- A. CES Proposal dated 5/20/2020 for Surface Water Evaluation and House Bill 494 Assistance.
- B. Email chain forwarded by R. Sullivan 6/10/2020 re: CL Tax Return - and why a tax was due for tax year 2019 but not for previous years. Communication with HWG, CPAs.

(1) 2019 & 2011 Forms 1120-SF - attachments to Record Item IX - B.

A motion was made by Attorney Seth Jaffe to approve the record items IX –A and B; this motion was seconded by Attorney Curtis Shipley.

On a roll call 3-0, the Committee voted to approve record items IX – A and B.

X. OTHER BUSINESS

Bob spoke about New Hampshire law as it applies to Right-to-Know requests. The law requires that public entities make records available for inspection. It is not a requirement to have to email or mail the requested records. Bob said the City applies that law literally and explained that we make the records available in City Hall or provide the records on a zip drive if the requester pays for the drive.

He said we get these kinds of requests all the time, so the City strictly interprets the rule. We have received a request for Coakley records to be emailed out. The question for the Executive Committee that Bob asked was: should we be emailing responses or should we follow the stricter rule that the City follows. It is the EC's decision. Eric said he thinks following the City rule would be appropriate. Seth said the group is a public entity because of the City. The EC would have appealed the lawsuit and would have won. However, Seth indicated that coming in to City Hall to examine records may not be realistic due to the pandemic.

A motion was made by Attorney Seth Jaffe that the group's policy should follow the City's policy in responding to Right-to-Know requests under New Hampshire Law; this motion was seconded by Attorney Curtis Shipley.

On a roll call 3-0, the Committee voted to follow the City's policy in responding to Right-to-Know requests under New Hampshire Law.

XI. SCHEDULE THE NEXT COAKLEY EXECUTIVE COMMITTEE MEETING

The next Coakley Executive Committee meeting is scheduled for Wednesday, July 15, 2020 at 10:00 a.m. It is planned to be held via teleconference.

The meeting adjourned at 11:06 a.m.

Dated: 7/15/2020

DocuSigned by:
Eric Spear
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Eric Spear, Chair
Coakley Executive Committee Chair

Respectfully Submitted,
Marian Steimke