

APPROVED MINUTES

STATE AGENCIES AND GOVERNMENTAL AFFAIRS

Tuesday, March 27, 2018

10:00 AM

**Berryville Community Center, 601 Dr. Spurlin Circle
Berryville, Arkansas**

**Committee Members Present: Senator Gary Stubblefield, Vice-Chair
Representatives Bob Ballinger, Chair**

Other Legislators Present: Representatives Jim Dotson, Charlotte Douglas, Ron McNair, and Josh Miller.
Representative Ballinger called the meeting to order.

Opening Remarks by Committee Chair- Representative Ballinger thanked the community for attending the meeting. He explained that the committee meeting is an opportunity for the public to observe how the process works when the legislators review and discuss state agencies, boards and commission, in addition to election issues and constitutional amendments. He directed audience members to sign-in to be recognized to make statements or ask questions.

Welcome and Comments by Mayor Tim McKinney, City of Berryville, Arkansas

Mayor McKinney gave an overview and history of the failure of a landfill affecting six counties. As Mayor of Berryville, he served as a member of the Economic Development District Board. When the Board purchased the landfill, there were no other landfills in existence from Tonitown to Jonesboro. The purchase of a landfill was made with the belief it would serve the six counties for years to come. He then gave highlights of issues that developed over a period of years impacting the landfill:

- At the beginning of the purchase the Economic Development Board contracted with the Northwest Arkansas Economic Development Board to manage the landfill
- Environmental and regulatory problems added significant issues to the operation of the landfill
- The Arkansas Department of Environmental Quality (ADEQ) changed the requirements for the operation of the landfill with a requirement of \$6 million to alleviate issues
- \$500,000 was posted by the sellers to correct environmental issues
- The Board discovered that \$250,000 in sales taxes had not been paid by the Economic Development District
- The District submitted four different plans to ADEQ all of which were reject
- When the initial purchase of the bond issue was made there was \$9.8 million issued by the landfill hauling company
- An additional \$2.5 million was issued to pay bond closing cost and to correct environmental issues
- By the time the Solid Waste Board obtained control over the landfill away from the Economic Development District all of the monies were gone
- None of the environmental issues had been corrected
- The Solid Waste District negotiated with a national company, Sanpec, Inc. to correct the environmental and regulatory issues
- Negotiations consisted of an offer by Sanpec, Inc. to pay the Solid Waste District \$8,000 annually to own and operate the landfill
- Unfortunately, the Board rejected the offer by Sanpec, Inc.

Mayor McKinney explained that an audit conducted by Legislative Audit showed over \$500,000 was owed to the Solid Waste Board by the Economic Development District, which has never been paid. In total, an indebtedness of approximately \$2 million led the Board to request the resignation of the director of the Economic Development

District. Ultimately, the issue was heard in the courts during a bankruptcy trial. The judge ruled that the bonds associated with the landfill were in default. Mayor McKinney gave his personal opinion that the courts, the judges, the regulatory agencies, and all entities involved in the failure of the closure of the landfill protected the interest of the bondholders and passed along the cost to the taxpayers.

Senator King described the budget process performed by the legislative committee, the Special Language Committee when it reviews proposed legislation for the appropriation of funds for the personal services and operating expenses. Senator King explained that appropriations for state agencies is to provide for salaries and the operation of the agency, the maintenance and operations of their buildings. He believes this specific committee should be abolished because of deceptive methods used in the appropriation process for state agencies. Senator King referenced legislation passed for the appropriation of the operation of the ADEQ for the 2014-2015 fiscal year. He said this particular appropriation included the repayment of the bonds in default of the landfill. He believes the inclusion of the repayment to bondholders should not have occurred.

Michael McAllister, Managing Attorney, ADEQ, explained when he was employed in 2012 a great deal of history involving the particular landfill had already taken place. Mr. McAllister focused on the environmental situation, the environmental impact, and the outcomes. He explained any solid waste landfill has concerns involving the potential impact on ground water, surface water, and air quality. Mr. McAllister learned there were compliance problems with regulations while the landfill was still owned by private entities. ADEQ entered into a Consent Administrative Order with the previous owner, RLH, Sanitation, Inc. addressing concerns of areas in the landfill that were overfilled, areas that needed to be corrected and remediated. ADEQ had an order to work with RLH to address these issues, which were outstanding when the sale of the landfill occurred with the Solid Waste District. ADEQ continued to work with the District because the District assumed the compliance issues from the previous owner. Closure plans were submitted. The District asked for extensions of time that resulted in a series of consent orders over a period of years. In 2013, the Districted communicated to ADEQ it no longer had the resources necessary to manage the landfill. At that time, ADEQ instituted civil action in the Baxter County Circuit Court. While litigation was pending, the District sought relief in bankruptcy court. The judge in the bankruptcy filing dismissed the District's petition. ADEQ then proceeded with its lawsuit. At that time, there was approximately two and half million dollars in financial assurance the District had pledged to ADEQ through that court action. ADEQ obtained control of the monies to initiate remediation and closure of the landfill. At the same time, the bondholders represented by the Bank of the Ozarks, hired attorneys who had been actively involved in the attempted bankruptcy by the District. The trustees for the bondholders went to Circuit Court in Pulaski County and petitioned for the appointment of a receiver. What that meant was the District indicated it was bankrupt and did not have the finances to continue to meet its obligations. When the bank petitioned the court to appoint a receiver, the result was the receiver assumed the responsibilities of assessing the liabilities and obligations.

Jeff Treece, attorney at law, was appointed by the court as the receiver. Mr. Treece spent over a year working with members of the Solid Waste Board, bondholders, and ADEQ. He made a recommendation to the Court that in order to satisfy the outstanding obligations that the Board use its authority to impose a service fee on all the residents and businesses within the six counties. Mr. McAllister said ADEQ intervened to safely close the landfill.

He then discussed the legislation Senator King referenced earlier about the appropriation authorizing ADEQ to spend funds from a post closure trust fund to initiate and continue closure of the landfill. ADEQ used \$2,500,000 recovered in the Baxter County Circuit Court action. ADEQ used the money authorized by legislation to continue closure of the landfill. Mr. McAllister explained over a year was spent assessing the issues followed by a recommendation to the court. All of the entities involved reviewed the receiver's report and agreed to the recommendations. The report was presented to the court. The Pulaski County Circuit Judge entered an order to implement the receiver's recommendation that an annual fee of \$18.00 be paid by property owners in the six counties.

In response to a question by Representative Ballinger as to why bondholders were included, Mr. McAllister said he understood that special language authorized ADEQ to obtain monies from a separate fund to initiate and complete the closure of this environmental hazard. Language in the legislation also provided a method for ADEQ to seek recovery of funds expended from the Districts or its constituents, unless another arrangement was made between the parties. In response to a question by Representative Ballinger, Mr. McAllister said it is his position that the special language in

the appropriation for ADEQ allowed funds to be expended to clean up the landfill and also allowed a mechanism for recovery by tax payers unless there is some settlement agreement that would include all the parties. So, it was not actually designed to ensure bondholders got recovery. A third mechanism would be no reason for ADEQ to have authority to collect against the District, if there is an agreed order that is signed. The assumption being that at that time the state was in the midst of the process where the District was ready to sign off on an agreed to order. Mr. McAllister said this was his understanding.

Julie Linck, Senior Deputy Director, ADEQ was recognized. She gave her personal assessment of the bankruptcy records and court filings related to the landfill failure. Ms. Linck gave her interpretation that the state was facing ground water contamination and irreparable harm to the water in Norfolk Lake and Bull Shoals unless immediate action was taken.

Discussion of the Ozark Mountain Solid Waste District Fee

Josh Curtis, Governmental Affairs Director, Association of Arkansas Counties, Teresa Smith, County Collector, Baxter County, and Amy Jenkins, County Collector, Boone County, were recognized. Mr. Curtis explained Ms. Smith and Ms. Jenkins and four other collectors are responsible for collecting the \$18.00 annual fee on all parcels in the six counties imposed by the Pulaski County Circuit Judge. Mr. Curtis said all of the collectors are working to send out tens of thousands of tax statements. Ms. Smith and Ms. Jenkins answered questions of legislators and discussed the ongoing work being performed to collect the fee.

A large number of citizens made statements and asked questions of the legislators voicing their disagreement with their obligation to pay the fee imposed by the court.

There being no further business, the meeting adjourned at 1:30 p.m.