

BENNER TOWNSHIP WATER AUTHORITY

REGULAR MEETING

May 17, 2016

ATTENDANCE:

AUTHORITY MEMBERS PRESENT: Tom Eby
Tim Edkin
Steve Lanich
Jerry May
Andy Swales

OTHER ATTENDEES: Warren Miller – SBWJA
Kelly Gill – SBWJA
Ross Pifer – Penn State Law
Marvin High – Penn State Law
See Attached Guest List

CALL TO ORDER:

The May 17, 2016, Regular Meeting of the Benner Township Water Authority was called to order at 6:30 P.M. by Tom Eby, Chairman.

AMENDMENT TO THE AGENDA – Mr. Eby moved, seconded by Mr. Edkin to amend the agenda to allow Ross Pifer and Marvin High of Penn State Law to address the Board immediately following the Treasurer’s Report. 4 ayes, 0 nays, 1 absent. The motion carried.

APPROVAL OF MEETING MINUTES:

The Minutes of the April 19, 2016 regular meeting were presented for review. **Mr. Lanich moved, seconded by Mr. Edkin to approve the Minutes of the April 19, 2016 Regular Meeting as presented. 4 ayes, 0 nays, 1 absent. The motion carried.**

TREASURER'S REPORT:

Mr. Lanich reviewed the Treasurer's Report as presented. Mr. Lanich asked the Board if there were any questions regarding the Paid Checks or Bills by Vendor submitted for approval. **Mr. Eby moved, seconded by Mr. Edkin to approve the Treasurer's Report as presented, the Paid Checks in the amount of \$608.99 and Bills by Vendor in the amount of \$2,472.28.** 4 ayes, 0 nays, 1 absent. **The motion carried.**

GUESTS:

ACRE Law Act 38 of 2005 – Mr. Miller introduced Ross Pifer and Marvin "Shawn" High of Pennsylvania State University's Dickinson School of Law who were asked to attend the meeting to briefly discuss the ACRE Law Act 38 of 2005. Mr. Miller indicated Mr. Pifer and Mr. High are guests of the Authority, but they do not represent the Authority.

Andy Swales entered the meeting at 6:36 p.m.

Mr. Pifer stated that Act 38 is a statute enacted by the general assembly in 2005 and is commonly referred to as the ACRE (Agricultural Communities & Rural Environment) Law. The ACRE law is primarily a procedural statute which provides a process for a farmer to challenge a municipality's unlawful statute. The ACRE law only applies to a municipality, not an individual property owner. A local government unit shall not adopt nor enforce an unauthorized local ordinance. An unauthorized local ordinance is defined as an ordinance that is enacted by a government unit that prohibits or limits a normal agricultural operation. Mr. Pifer indicated that a normal agricultural operation is defined in accordance with the Pennsylvania Right to Farm Act which reads as the activities, practices, equipment & procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural & aquacultural crops and commodities.

According to Mr. Pifer, anytime a municipality regulates activities that are going to have an impact on agriculture the ACRE law needs reviewed to ensure the municipality is being compliant. If a landowner feels that the municipality has overstepped its bounds he/she will submit a written request to the Attorney General's (AG) office. The AG's office has 120 days to review the matter and make a determination as to whether they think it is an unauthorized local ordinance. The AG's office will then send notice to the municipality to have the ordinance changed, but if that does not occur the AG is authorized to file suit in the Commonwealth Court. Mr. Pifer indicated there have been some requests submitted to the AG's office pertaining to the application of biosolids.

Mr. High informed the Board there was one particular case, Gilbert vs. Synagro Central LLC, which resulted in the Supreme Court determining biosolids is a “normal agricultural practice”. In this particular case the Appellee’s were adjacent property owners of a farm in which Synagro was land applying biosolids as fertilizer. This court case was over an odor nuisance and did not relate to water protection. Mr. Lanich asked if there was any relationship between the ACRE law/Right to Farm Law in connection with the protection of the public health. Mr. Pifer indicated protection of public health is an exception to the Right to Farm Law because it mainly deals with nuisance actions. It would not be an effective term of defense because it does not protect against pollution (ie. water contamination). The PA DEP has a process that would be followed if pollution would exist and those guidelines would be followed to determine if there was a permit violation.

Mr. High referenced another case which involved the AG’s office commencing action against East Brunswick Township seeking to invalidate an ordinance which was enacted in 2008 entitled “Ordinance to Assure Local Public Health and Safety During and After Land Application of Sewage Sludges”. In this case the AG contended that the 2008 ordinance was preempted by state statutes that regulate sewage sludge and its uses in the Commonwealth. The second reason was that the 2008 ordinance interferes with normal agricultural practices which violated another state law. East Brunswick Township attempted to add another layer to the PA DEP’s approval process which involved establishing a fee, bond, chemical testing, notice and signage requirements that must be satisfied in order to apply sewage sludge to land in the Township. The Commonwealth Court concluded this was a violation of the Solid Waste Management Act and the Nutrient Management Act.

Mr. Pifer indicated that all of the case law pertaining to the ACRE law can be accessed through Penn State Law’s website at www.pennstatelaw.psu.edu/academics/research-centers/agricultural-law/resource-areas/acrepennsylvania-act-38

The Board thanked Mr. Pifer and Mr. High for attending the meeting to provide an overview of the ACRE law as it pertains to municipalities.

SBWJA REPORT:

Engineering Services Request for Proposal (RFP) – Mr. Miller reminded the Board that the Authority currently does not have a retained engineer and recommended advertising a RFP for professional engineering services. Mr. Edkin indicated a RFP was the best way to proceed and the rest of the Board agreed. Mr. Miller stated the RFP will be advertised as soon as possible with a due date just prior to the next meeting.

Source Water Protection Plan – Mr. Miller reminded the Board to complete their cursory review of the draft Source Water Protection (SWP) Plan and direct any questions to Mr. Swales for final submission to Mark Stephens of the PA DEP.

Right to Know Law Request – As discussed during the last meeting, Mr. Eby wrote a letter to the Bellefonte Borough Authority (BBA) requesting all testing records and permits associated with the application of biosolids within Benner Township. In response to Mr. Eby's request, our Authority received a letter from Joe Beigle, BBA Chairman, which failed to provide the requested information. Mr. Miller asked the Board if they wished to file a Right to Know Law request with the BBA for the previously requested information. Mr. Swales indicated he doesn't feel as though this Authority could gain anything from it at this point and doesn't believe it to be necessary. Mr. Swales stated he believes that we would have to question the PA DEP's methodology in approving the permit and doesn't feel as though there is a whole lot that we can do. Mr. Edkin agreed with Mr. Swales but wants to know if the provisions of the permit are actually being followed. Mr. Swales stated it's the PA DEP's responsibility to monitor the project to ensure compliance. A file review would have to be completed with the PA DEP to obtain any records pertaining to the application of biosolids.

John Kostas indicated he completed a file review of the entire BBA case file within the PA DEP and everything he viewed indicated the BBA is doing everything correctly. There was one incident in 2008 where the field inspector found non-organics in the biosolids. At that time a letter was issued by the PA DEP to the BBA requiring them to stop the land application until the matter was resolved. At one point in 2008-2009 the BBA was taking in frack water and was informed by the PA DEP that they were unable to take in this type of material because their general permit did not allow for it.

Establishing a Base-Line in Testing of Well – Mr. Miller provided a list of contaminants a homeowner may want to test for when establishing a base-line in testing of a well. They are:

- Chloride
- E-coli
- Metals (Zinc or Copper)
- Nitrogen (Organic known as TKN)
- Nitrates and Nitrites

Mr. Kostas asked if high levels of phosphorous in drinking water would be considered dangerous. While completing his file review of the BBA, the PA DEP soil sampling reports indicated phosphorus levels have always been almost off of the chart and wondered if that would be something to test for. Mr. Miller indicated that phosphorous is a nutrient which is regulated through the Chesapeake Bay Tributary Strategy to remove nitrogen and phosphorous from the outflow of the sewer treatment plant. When the phosphorus is removed from the waste stream it settles into the sludge which eventually becomes biosolids. Mr. Kostas asked if phosphorous is regularly tested in drinking water and Mr. Miller stated he would prefer to review the list of contaminants before providing an answer.

Bio-Solids Appeal – The Board discussed the need to hire legal counsel to handle the appeal to the Environmental Hearing Board in relation to the application of biosolids to the Spicer Family Farm. **Mr. Eby moved, seconded by Mr. May to retain Randall Hurst of Mette, Evans & Woodside as counsel to handle the appeal to the Environmental Hearing Board in relation to the application of biosolids to the Spicer Family Farm.** 5 ayes, 0 nays. **The motion carried.** Mr. Edkin asked if an estimate has been provided by Mr. Hurst for the appeal or if the Board wants to set a limit as to the amount of the expenses associated with the appeal. Mr. Miller stated that he did not ask Mr. Hurst for an estimate, but he believes the Authority will be invoiced monthly which will allow the Board to closely monitor the expenses relating to the appeal.

Use of Tablet to Enter/Upload Meter Readings – Mr. Miller informed the Board that when he upgraded to a smart phone about a year ago he received a free tablet through Verizon. The Authority staff only uses the tablet to enter and upload the quarterly water meter readings to the billing software. Verizon charges \$10.00 per month for the data plan of this tablet. Mr. Miller suggested the water authority should be invoiced for the monthly charges associated with the tablet and the Board agreed.

Spicer Family Farm Letter –Mr. Eby presented the Board with a letter he drafted to the Spicer Family Farm regarding the Authority's position on the application of biosolids to their farm and the potential liability should contamination of the water source occur. **Mr. Swales moved, seconded by Mr. May to approve the letter provided by Mr. Eby to the Spicer Family Farm in relation to the application of biosolids to their farm.** 5 ayes, 0 nays. **The motion carried.**

Boggs Township Contamination of Wells – Mr. Kostas asked if anyone was aware of a contamination of wells that occurred within Boggs Township by biosolids. The Board had no knowledge of the incident of contamination referenced by Mr. Kostas.

SOLICITOR'S REPORT: Mr. Campbell was absent from the meeting.

CORRESPONDENCE:

Bellefonte Borough Authority – As discussed earlier in the meeting, the Authority received a letter from Joe Beigle, Chairman, in response to our Authority's request for information pertaining to the application of biosolids within Benner Township.

OLD BUSINESS:

Source Water Protection Plan –Once the final draft of the Source Water Protection (SWP) plan is complete, the Board discussed hosting a special meeting to review the SWP plan and obtain the public's input of the plan. Mr. Eby indicated he believes we should include the State College Borough Water Authority (SCBWA) in discussions relating to the SWP plan and the affects if contamination would occur.

Emergency Response Plan – Mr. Edkin referenced the importance of having a business continuity plan in place and asked if such a plan exists. Mr. Swales indicated that he recalls an Emergency Response Plan (ERP) being developed years ago. Mr. Miller informed the Board that a plan was developed for Hampton Hills in 2007 prior to the start-up of the Grove Park system. An ERP will be developed for the Grove Park Water system in early June and presented to the Board for approval at a future meeting.

NEW BUSINESS:

2015 Audit – Mrs. Gill provided an overview of the 2015 audit and asked if there were any questions. Mr. Edkin referenced page 2 of the Independent Auditor's Report relating to the lack of a Management's Discussion and Analysis and asked what that statement was referring to. Mrs. Gill indicated the same question transpired last year and the analysis explains the difference in revenues and expenses from one year to the next. It also would project expenses in the upcoming years and revenue sources. According to our auditor, most Authorities don't usually provide this type of report due to the added time and expense.

Mr. Edkin also referenced Page 8 of the audit which states all balances were in the custody of PLGIT which is not FDIC insured. Mr. Miller stated he believes the Authority's monies are covered by Act 72, but will verify this with PLGIT and the auditor. **Mr. Edkin moved, seconded by Mr. Swales to approve the 2015 audit as presented.** 5 ayes, 0 nays. **The motion carried.** Mr. Edkin stated this was a great audit report and thanked the SBWJA personnel for their "top notch" services with the management of the Water Authority's accounts.

Management Representation Letter – Mrs. Gill indicated a standard management letter was provided by the auditor, Baker Tilly, which must be placed on letterhead and signed by the Chairman. The management letter indicates that we have provided the auditor with all of the necessary information to complete the audit. **Mr. Eby moved, seconded by Mr. Swales to approve and sign the Management Representation Letter provided by the Auditor, Baker Tilly.** 5 ayes, 0 nays. **The motion carried.**

Parameters of Water Testing – Mrs. Swancer asked Mr. Miller if he would consider adding information to the website which will identify parameters for base line testing of wells if any residents were interested. Mr. Miller stated that the Water Authority does not have a website, but he could contact Benner Township to see if they would be interested in posting to their site.

ACTION ITEMS:

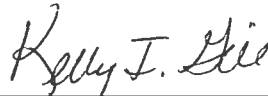
- Preparation of Emergency Response Plan for Grove Park Water system
- Inquire about insurance of PLGIT monies
- Testing of Phosphorous in water systems
- Engineering RFPs

Next regular scheduled meeting is June 21st at 6:30 p.m.

ADJOURNMENT:

Mr. Swales moved, seconded by Mr. Eby to adjourn the meeting at 8:24 p.m. 5 ayes, 0 nays. The motion carried.

Respectfully submitted,



Kelly J. Gill, Recording Secretary

CC: Benner Township 06/22/2016

**BENNER TOWNSHIP WATER AUTHORITY
1224 BUFFALO RUN ROAD
BELLEFONTE, PA 16823
(814) 355-4778**

**REGULAR MEETING
MAY 17, 2016**

GUEST LIST

1. Renee Swanson
2. Shirley GRYCZUK 111 ASTER AVE, Bellefonte
3. Kevin Astore 178 Chirony Ave
4. Randy Brackbill Bellefonte
5. Melinda Conrad 203 Arrowhead Way
6. Joe Benzels Bellefonte, Pa.
7. Emily Janoscat Arrowhead Way
8. David Wise
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____