



Metropolitan Water Reclamation District of Greater Chicago

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Title: Request for Policy Direction Regarding Continued Pursuance of Possible Dissolution of Calumet Union Drainage District No. 1 (Deferred from the September 16, 2010 Board Meeting)

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TRANSMITTAL LETTER FOR BOARD MEETING OF OCTOBER 7, 2010

COMMITTEE ON STORMWATER MANAGEMENT

Mr. Richard Lanyon, Executive Director

Request for Policy Direction Regarding Continued Pursuance of Possible Dissolution of Calumet Union Drainage District No. 1 (*Deferred from the September 16, 2010 Board Meeting*)

Dear Sir:

As part of its authority under the Stormwater Management Act ("Act"), the Metropolitan Water Reclamation District of Greater Chicago ("District"), has discretionary authority to petition the Circuit Court of Cook County ("Court") to dissolve drainage districts that are located within the District's geographical area. (70 ILCS 2605/7h(h)). In connection with this statutory authority, the District has investigated dissolution of Calumet Union Drainage District No. 1 ("CUDD"), in part due to a request from a number of residents of the City of Markham ("Markham"). Various reports have been prepared, and a study session was conducted on October 21, 2009, in Harvey, Illinois.

In connection with the dissolution of CUDD, District staff has raised concerns regarding the effect of subsection (h) of the Act which mandates that the District assume the liabilities of CUDD, both known and unknown, in the event that a petition to the Court by the District to dissolve CUDD is successful.

Accordingly, by motion dated December 3, 2009, the Board of Commissioners ("Board") authorized staff to pursue procuring a due diligence analysis of CUDD. A Request for Proposal ("RFP") for a forensic accounting analysis of the assets and liabilities of CUDD has been advertised, with an estimated cost of services of \$15,000.00. A second RFP for engineering consulting services is also in progress. As a first step in assessing the likely long-term maintenance costs associated with CUDD, the Engineering Department is developing a scope of work to determine ownership interest; it is estimated the cost for determining ownership interest will be a minimum of \$100,000.00. Once the ownership interest is established, the Engineering Department will

determine the number of structures, such as sewers, culverts, and bridges, for which an engineering conditions assessment is necessary. The cost for the conditions assessment will depend on the number of structures to be inspected and will cost a minimum of \$50,000.00.

However, in the intervening time period, a 12-acre illegal dumping site was discovered in Markham which is the target of an extensive investigation by the Illinois Attorney General's Office and the Illinois Environmental Protection Agency ("IEPA"). It appears that the massive illegal dumping area is at certain points located within or adjacent to, the CUDD right-of-way.

An IEPA fact sheet regarding the massive dump site indicates that "*the 12-acre-plus-dumping areas... are bounded by ...the Calumet-Union Drainage Canal on the south...*" (see Fact Sheet No. 1, "Investigation at Markham Illegal Dumping Site" and IEPA map dated May 2010, copies attached). The fact sheet indicates that various dumping activities have been going on at the site for many years. The initial inspections by IEPA revealed discarded mobile homes, automobile parts, boats, tires, drums of unknown liquids and solids, unknown liquid and solid spills on the ground, swimming pool chemicals, demolition debris, etc. The Director of IEPA has stated that the Markham dump "may be the largest illegal dump site the Agency has encountered." Of particular concern relative to the potential take-over of CUDD by the District is the statement by IEPA that "[c]ontamination in standing pools of water or in surface soil at the site poses a threat to off-site surface waters via the drainage ditch to the Calumet-Union Drainage Canal." Also troubling in terms of potential liability is a bolded message to parents of children in the area not to allow children to play in the area of the dump site due to many physical hazards as well as the potential for disease-carrying mosquitoes that present a danger to trespassers.

The second fact sheet issued by IEPA (Fact Sheet No. 2, July 2010, also attached) indicates that clean up of 9000 tons of solid waste is on-going and notes that the equivalent of 26,130 passenger tires have been removed from the dump. The fact sheet indicates that various chemical testing in cooperation with United States Environmental Protection Agency ("USEPA") indicates the presence of metals, including lead, as well as ammonia, chlorine and PAHs, but did note that private wells tested negative for site-related contaminations. The fact sheet notes that USEPA intends to remove all suspect chemical drums and spilled chemicals beginning in fall of 2010. Markham entered into an Agreed Interim Order that requires Markham to prevent access and provide 24-hour surveillance around the site. In addition, the fact sheet indicates that IEPA intends to pursue legal action against any viable party involved with the dump site. It could be presumed that IEPA will seek to recover from all responsible entities the million dollar-plus estimated cost of clean up.

Clearly CUDD's proximity to and knowledge of this illegal activity is being questioned by the public and government officials. There exists a likelihood that at some point there may be a need for the drainage district to defend against significant exposure to possible criminal and civil liability. A State of Illinois press release indicates that "Illinois EPA has requested the Calumet Union Drainage District clean up the drainage ditch on the south side of the site, since that area provides a breeding ground for mosquitoes."

In addition, several local newspaper articles have featured the illegal dumping site, and reference CUDD. One August 1, 2010, article in the Southtown Star implicates CUDD as follows:

"[a]nother agency, the Calumet-Union Drainage District, oversees an east-west section of the drain that runs through the 12-acre site and has since 1956. Officials with the agency, who say they walk the ditch annually, also said they never saw the massive solid waste piles near the waterway. [The drainage district's attorney indicated that CUDD] '... had no knowledge of it, honestly,'... 'If we had, we would have reported it.'"

There is a potential that CUDD will be named as a defendant for years to come in personal injury lawsuits filed by local residents as residents discover health conditions that they believe are related to the substances that existed on the site. Also of concern to the District in the event the District ultimately assumes CUDD's liabilities is the risk of potential liability under certain environmental laws regarding contaminated property.

In light of this significant development regarding potential liability of CUDD, and the budget concerns that are currently being addressed by the District, we are requesting policy direction in the manner to proceed, both with respect to entering into two due diligence consultant contracts, and also with regard to the ultimate issue of pursuing dissolution of a drainage district that will likely be the target of lawsuits for which the District then could be required to substitute in as defendant should CUDD be dissolved.

It is therefore requested that the Executive Director seek Board approval of one of the following alternatives with respect to pursuing dissolution of CUDD under the Act:

1. To not pursue dissolution of CUDD.
2. To not pursue dissolution of CUDD until federal, state and local authorities have completed their investigation, prosecution of responsible parties, and site remediation with respect to the 12-acre-plus illegal dumping site located in the City of Markham.
3. To authorize staff to proceed with engaging forensic accounting and engineering consultant services to perform due diligence analyses of CUDD, and report said consultant findings to the Board.

Requested, Frederick M. Feldman, General Counsel, FMF:RMH:LLD:jvs
Respectfully Submitted, Debra Shore, Chairman Committee on Stormwater Management
Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for October 7, 2010

Attachments