

SENATE OF PENNSYLVANIA

COMMITTEE ON LOCAL GOVERNMENT

In re: Debt Structure of Distressed Harrisburg
Incinerator

Volume I - Pages 1-230

Stenographic report of public hearing
held in Hearing Room 1, North Office
Building, Harrisburg, Pennsylvania, on

Thursday
October 4, 2012
10:00 a.m.

SENATOR JOHN EICHELBERGER, CHAIRMAN

MEMBERS OF LOCAL GOVERNMENT COMMITTEE

Sen. MIKE FOLMER Sen. JOHN BLAKE
Sen. JOHN YUDICHAK

ALSO PRESENT:

K. Lee Derr, Executive Director, Local Government Committee
Luc Miron, Chief of Staff, Senator Blake
Kyle Mullins, Legislative Support, Senator Blake
Fred Sembach, Chief of Staff, Senator Folmer

Reported by:
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Chief Official Reporter
Senate of Pennsylvania

	<u>WITNESS</u>	<u>PAGE</u>
1		
2		
3	Steven Goldfield, Esquire, Senior Counselor, PRAG, Forensic Investigative Report	6, 10
4	Royce Morris, Esquire, Solicitor, Harrisburg Authority	7
5		
6	Fred Reddig, Secretary, Department of Community and Economic Development	83
7		
8	Tim Anstine, Esquire, Deputy Chief Counsel, Department of Community and Economic Development	89
9	Bernadette Barratini, Esquire, former Chief Counsel Department of Community and Economic Development	109
10	Eric Papenfuse, former Harrisburg Authority Board Member	132
11		
12	Fred Clark, former Harrisburg Authority Board Member	149
13	Stephen R. Reed, former Mayor, City of Harrisburg	164
14	Daniel R. Lispi, former Director of Special Projects City of Harrisburg	184
15		
16	William Cluck, Esquire, current Harrisburg Authority board member	204
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 CHAIRMAN EICHELBERGER: Good morning, everyone.
2 If we can call the hearing today of the Senate Local
3 Government Committee to order. I'd like to offer some opening
4 remarks.

5 We've had this discussion for quite some time and
6 decided that we would hold a hearing or series of days of
7 hearings on the financial problems associated with the
8 Harrisburg Authority's Resource Recovery Facility, commonly
9 referred to as the Harrisburg incinerator. Senators John
10 Blake, Mike Folmer, and myself, along with key staff members
11 including Lee Derr, Fred Sembach, Luc Miron, and Kyle Mullins
12 have spent a great deal of time reading through volumes, and I
13 mean volumes, of paper and interviewing people connected to
14 this unique fiscal disaster.

15 Harrisburg's financial plight has attracted
16 national attention because of its depth, its complexity, and
17 its reflection on the Commonwealth as our State capital. One
18 component of the city's total debt burden is the debt
19 attributed to the incinerator. A closer look at the history
20 of this debt accumulation, primarily through the forensic
21 investigation report, reveals a series of bad decisions made
22 over years of time. Our goal today, and on October 29, is to
23 learn how a public process defined in law, that includes
24 decisions made by four public entities, with advice from
25 highly compensated licensed professionals, could leave the

1 Harrisburg Authority, the City of Harrisburg, and the County
2 of Dauphin on the hook for over \$300 million borrowed on an
3 asset valued at a small fraction of that amount.

4 Our obligation as legislators is to use what we
5 learn from this hearing to fix the deficiencies in our
6 statutes and protect taxpayers in other jurisdictions from a
7 similar fate. We are anxious to hear from the witnesses
8 scheduled today and appreciate their willingness to testify.

9 Before asking Senator Blake for his opening
10 statement, I'll introduce the other Members present. Senator
11 John Yudichak and Senator Mike Folmer. And Senator Blake, I
12 understand you have some opening comments as well.

13 SENATOR BLAKE: Thank you, Mr. Chairman, and thank
14 you, ladies and gentlemen. I'm actually just going to have
15 some brief opening remarks on this matter. I want to extend
16 my gratitude to Chairman Eichelberger, as well as to his
17 staff, Lee Derr, and to my staff that have worked so hard in
18 trying to prepare for these hearings.

19 I've had several communications with Chairman
20 Eichelberger on this matter and have consistently said that as
21 legislators, we are not prosecutors, we're not a grand jury,
22 but we are obliged to the taxpayers' public interest and the
23 taxpayers' protection. Government needs not only to advance
24 the interests of taxpayers but to protect them. And in the
25 case of the Resource Recovery Facility, the Harrisburg

1 incinerator project, it may have started as a project of good
2 intentions, but it seems to me, in terms of my review of the
3 forensic audit, a series of actors and decisions has left the
4 City of Harrisburg taxpayers on the hook for some \$300 million
5 in debt on a facility that never cash-flowed.

6 There were five public bodies that had the ability
7 to make decisions on this, including the mayor, council, the
8 Authority, and the county, and the Department of Community and
9 Economic Development. There were 3 different contractors, 6
10 law firms, 4 financial advisors, 4 technical and engineering
11 firms, 2 bond insurers, nearly 25 different actors over a
12 period of years that had the opportunity to make decisions
13 that involved the public interest, and I fear, unfortunately,
14 that they became a little too self-interested in this process
15 and did not have the public interest at heart.

16 The \$300 million in debt that was incurred on this
17 facility amounts to about \$7,000 for every man, woman, and
18 child in the City of Harrisburg. That's an enormous debt
19 burden, and it is not, obviously, in the public interest. And
20 our obligation, again, in these hearings is to find out where
21 there are flaws in our legislation, flaws in our laws,
22 weaknesses in our laws, flaws in the procedures and the
23 regulatory procedures that attend these types of transactions
24 in order to inform the Chairman and I, and the Members of this
25 committee, on legislative fixes that can guarantee that this

1 fiscal debacle does not get revisited on any taxpayers across
2 the Commonwealth.

3 I would say something about the Chairman's opening
4 remarks that I think needs to be said here. He indicated this
5 is a unique circumstance, and I agree that the scale of the
6 situation is probably unique, but I don't think it is distinct
7 only to the City of Harrisburg. I think this is a more
8 pervasive issue throughout the entire Commonwealth that
9 affects the fiscal health of all of our communities. I think
10 that we need to take into consideration those laws and those
11 regulations that deal with the decisionmaking of professionals
12 and that deal with the decisionmaking of local government
13 officials to guarantee that the public trust and the public
14 interest can be served.

15 So with that, Mr. Chairman, I'll turn the
16 microphone back to you.

17 CHAIRMAN EICHELBERGER: Thank you.

18 We'll call our first witness, Steven A. Goldfield,
19 Esquire. And he's accompanied this morning with Royce Morris,
20 who is the Solicitor for the Harrisburg Authority. Welcome.
21 And the microphones have buttons. When they turn bright
22 green, you know you're in business.

23 MR. GOLDFIELD: Mr. Chairman, Senator Blake,
24 Members of the committee, and staff, my name is Steve
25 Goldfield. I want to thank you very much for taking the time

1 to inquire into what went wrong in connection with the
2 Harrisburg incinerator financings. I'd also be remiss if I
3 didn't thank the Harrisburg Authority, who showed the
4 leadership and took a leadership role in making sure that the
5 forensic investigation took place and that as many facts as we
6 could gather got out into the public domain.

7 I'm here today on my own behalf. I'm not here on
8 behalf of the Office of the Receiver or the Harrisburg
9 Authority, and I just wanted to make that clear. I'm here to
10 share the information that I'm aware of based upon the
11 information that we received and interviews that took place
12 that I was present at. I wanted to remind the committee that
13 there were three firms that participated in the forensic
14 investigation. My firm was but one of them, and my focus was
15 on bonds, swaps, and municipal finance. My background is as a
16 bond counsel and underwriter's counsel, and now I'm a
17 financial advisor for municipal finance. So as such, there
18 are certain aspects of the audit that are outside my area of
19 expertise and that I didn't participate in the research of or
20 writing about.

21 MR. MORRIS: Good morning, Senators, and thank you
22 for the opportunity to make a brief opening statement on
23 behalf of the Harrisburg Authority. On behalf of our Board
24 Chairman, Mark Kurowsky, and our members, Westburn Major and
25 William Cluck, I would like to thank you for this opportunity.

1 The Board of the Harrisburg Authority unanimously
2 voted to pursue the forensic audit which brings us here today.
3 They did so inheriting a Resource Recovery Facility mired in
4 debt and having a critical decision to make with regards to a
5 retrofit, knowing that if the retrofit was completed and we
6 still had a full-functioning incinerator, it would not
7 generate income sufficient to pay its debt.

8 For the board, that raised a serious question, and
9 they need answers to that: How did it get that way? And as a
10 result of that, they commissioned this forensic audit. They
11 knew they couldn't get answers without the assistance of
12 seasoned and highly qualified professionals. They interviewed
13 multiple candidates and they put together a superb team of
14 professionals which included Doug Schleicher, Glenn Weiner of
15 the law firm of Klehr Harrison Harvey Branzburg, special legal
16 counsel for us; Dave Duffus and James O'Brien of ParenteBeard,
17 the forensic accounting firm; and also Steve Goldfield, who is
18 with us here today from Public Resource Advisory Group, who
19 served, as he said, as our expert in municipal finance.

20 On behalf of the board, I want to take this
21 opportunity to make clear that even though we intended to
22 waive attorney-client privilege with respect to the report,
23 the discussions surrounding that report with professionals and
24 with the board we consider still to be attorney-client
25 privilege and confidential matters. They wanted the process

1 to be open and transparent, and they wanted everyone to have a
2 full picture of what went wrong in Harrisburg and who created
3 the mess here. However, they still wanted to maintain the
4 privilege with counsel that is attendant to what may have to
5 occur in the future.

6 Further, the board wanted you to know the scope of
7 this audit was limited by our resources and our inability to
8 compel production of documents and to depose key witnesses.
9 The forensic audit will serve as a starting point, we hope,
10 for further investigation, and that's why we applaud this
11 committee for taking up this initiative.

12 Finally, I just remind you that Mr. Goldfield, as
13 he said, is testifying as an individual before the committee,
14 and his expertise is in the financial area with bonds and
15 swaps. Neither he nor any other member of our team was asked
16 to draw any legal conclusions, they were not asked to do
17 anything other than to uncover and analyze the history of the
18 transactions that led to this fiscal crisis. Whether laws
19 were broken, by whom, and where the laws need to be changed
20 are matters for others to decide.

21 Once again, I thank you for this inquiry. The
22 board's hope has always been that if responsibility lies with
23 individuals or institutions, that they will be held
24 accountable, and if current laws are inadequate to protect
25 municipalities of this kind or others from this type of

1 malfeasance, that those laws are changed. Thank you.

2 MR. GOLDFIELD: There are many, many extraordinary
3 trails that could be followed in the saga, and as we both have
4 said, the forensic investigation is really just a starting
5 point. It's a roadmap that identifies issues and concerns. I
6 thought that, you know, a lot of those other trails are very
7 important and could lead to very important issues that the
8 committee may wish to pursue in the future. I can tell you
9 from working on this for many, many months that some of those
10 trails lead down rabbit holes. And so what I wanted to do is
11 with the precious time that I have is to really stay focused
12 on specific issues that I was involved in, that I have
13 experience in, and that I thought were germane for this
14 committee to focus on this morning.

15 Three issues. Why didn't the borrowing limits in
16 the law prevent the city from taking on so much debt? I
17 thought that was probably the most important thing I could
18 talk about. Second issue: There's all this debt, there's an
19 incinerator that works fine, but the incinerator can never,
20 ever carry the debt service. So what happened to all the
21 money that was borrowed on behalf of or ostensibly in
22 connection with the incinerator? And third, if I have time,
23 I'm going to briefly touch on swaps and the swap portion of
24 the audit. That alone I know there have been committees that
25 have looked at whether Act 23 should be repealed. I have a

1 one year, it may need to call in the guaranty, but it will
2 raise rates the next year. A facility like this has
3 competition from landfills, maybe other incinerators, and
4 electricity prices are volatile, so there's no way to know
5 what you're going to be able to sell electricity at for 30
6 years. And in the case of this incinerator, the overwhelming
7 majority of their revenues were from tipping fees, charges
8 that garbage trucks are charged to dump municipal waste, and
9 electricity. And there was no control over those because
10 there was competition and there's market electricity prices.

11 So long as the debt remains self-liquidating, the
12 city can report -- and this is in the audit, and you'll see we
13 kind of coined a phrase, because we had to say it so many
14 times that we thought it would be easier to follow -- the city
15 can report in a certificate under Section 8110.(b) of the Debt
16 Act that no decrease in the amounts to be excluded is required
17 by any change of circumstances. We call that a Clean 8110(b)
18 Certificate. So the utility that I talked about sets rates
19 and charges, does a good job, pays for everything, including
20 its debt service, every year for 10 years, when the city goes
21 to borrow the next time, it can submit to DCED a Clean 8110(b)
22 Certificate. It can say, never called on the guaranty,
23 revenues are sufficient from user fees to pay for all the
24 debt, I don't ever expect to have to pay on my guaranty, so
25 I'm not going to decrease the amount of self-liquidating debt

1 that I told you about before.

2 Just as an aside, the legislative history of the
3 Debt Act, '73 maybe, originally required an annual
4 certification that all debt that was deemed self-liquidating
5 is still deemed self-liquidating. So there was going to be an
6 annual requirement that it be certified to the department to
7 keep up with changes and circumstances. That's not what was
8 promulgated into the law. What was promulgated into the law
9 was you're self-liquidating on the books of DCED until the
10 next time you borrow. Because you've already borrowed, and if
11 it turns out that the rates and charges aren't enough, you may
12 lose some borrowing capacity, but you can't take the bonds off
13 the market. So the idea is the next time you go to borrow,
14 you must either deliver a Clean 8110(b) Certificate, that is
15 that we know of no circumstances that would result in us
16 having to decrease the amount of debt on the books that's
17 self-liquidating, or you have to tell DCED there have been
18 changes in circumstances that would result in us having to
19 decrease the amount of debt that's self-liquidating. And of
20 course these are, you know, they work in opposite directions.
21 You decrease self-liquidating -- actually, it's not really
22 opposite directions. If you decrease self-liquidating, you
23 decrease your borrowing limit, right. So if you were right up
24 to your limit and you decreased the self-liquidating debt,
25 then you couldn't borrow anymore. And that's the way the law

1 is supposed to work. That if you get to a place where you
2 thought a lot of debt was self-liquidating and you were wrong,
3 that it prohibits you from borrowing any more money until you
4 get more borrowing capacity.

5 Why do you do this? Why does the Authority ask
6 for a guaranty by the city? It reduces the borrowing cost.
7 So for a utility - water, sewer - before the Harrisburg
8 crisis, you have a general obligation guaranty, the gold
9 standard in the bond community. If you have a high-rated
10 entity - Dauphin County - and you get a double-A GO guaranty,
11 the credit markets are willing to loan at much lower rates.
12 You get to then pass that along to your users. You get to
13 pass along the decreased expense called debt service to your
14 users. So you either get to decrease your rates, or more
15 likely, you get to reduce the increase in your rates when you
16 build something.

17 So it makes sense to have this construct. And
18 it's used in the City of Harrisburg very well with the parking
19 assets. Most of the parking debt is guaranteed by the city.
20 The parking debt has no trouble paying all of its operations,
21 all of its improvements, and all of its debt service. It's
22 deemed and it's approved as self-liquidating to the city
23 because the city never expects to have to pay on the guaranty.

24 I'm going to pause because now I'm going to jump
25 into a second concept and the last concept before I get into

1 the report and ask if there are questions.

2 CHAIRMAN EICHELBERGER: Do you want questions now?

3 MR. GOLDFIELD: Only if you have them. We can
4 wait. I just wanted to take a breath and tell you that I was
5 going to move on to one more concept in the Debt Act.

6 CHAIRMAN EICHELBERGER: Okay, we'll wait.

7 MR. GOLDFIELD: Okay, thank you. Okay.

8 The second area in the Debt Act that I want to
9 frame, because when we go into the audit, we're going to walk
10 through and I'm going to go back to these two concepts:
11 Self-liquidating debt, is it? Should it have been? You know,
12 the second one is very important, and it's going to be more
13 important as the Federal government moves programs to the
14 State without appropriate funding, the State moves programs
15 down to the local governments without complete funding, and
16 the local governments have pressure to not raise taxes but to
17 provide essential government services.

18 And I have to say, I am an elected official in a
19 very small town in the Commonwealth and I sit as the chair of
20 the Finance Committee, not surprisingly. I think they say a
21 volunteer is the person that didn't understand the question.
22 I know what this pressure is and I know that you have to get
23 creative and I know that you don't want to raise taxes and you
24 don't want to cut services, and it's very challenging. This
25 is going to get worse, and I can see in my profession the

1 pressure in this area.

2 This area is the Debt Act limits a city's ability
3 to borrow on a long-term basis for current operations. We
4 call it working capital. That's more of a business and tax
5 law and Debt Act terminology, but it's really your operations.
6 So if you don't have enough money to pay for your operations
7 this year, you have some choices. You could cut program, you
8 could raise taxes, or you can borrow. If you never address
9 the structural deficit because you don't want to cut taxes or
10 cut programs sufficiently to run a balanced budget, and you
11 borrow for operating expenses this year, and you do it again
12 next year, and you do it the year after that, it's akin to
13 paying your rent with a credit card and never paying the
14 balance off and continuing to do it. At some point you're
15 paying exorbitant interest rates, you haven't addressed the
16 problem, and the debt load is beyond your capability.

17 The harm intended to be prevented is like that,
18 it's like the idea of getting into a floating rate mortgage
19 and hoping the rates will stay low and hoping something will
20 turn out. So the Debt Act has a proscription against
21 borrowing long for current operations because it's a recipe
22 for financial disaster. Again, the structural deficit is
23 masked when you do that. So unless it's part of a
24 construction project, working capital cannot be financed on a
25 long-term basis without court approval. That's the hurdle.

1 And there's a whole process in the Debt Act about what you
2 need to show. And it's basically you're in a crisis,
3 necessity, there's no other way out, you have to do it. And
4 there's not a ton of this, it's called unfunded debt under
5 Pennsylvania law, but there are unfunded debt proceedings, and
6 you'll see more and more.

7 So the exception is if there's a construction
8 project--and this is where it gets very interesting with the
9 incinerator--then you can finance working capital. What the
10 Debt Act says is a reasonable initial, two key words -
11 reasonable initial - working capital for the operation of a
12 project may be borrowed, as may interest on money borrowed to
13 finance the project. We call that capitalized interest.

14 When you take out a new mortgage and you throw all
15 your costs into it, you're basically borrowing those costs and
16 spreading it out. It makes sense. So if you have an
17 incinerator, let's take the first day that you decide to build
18 an incinerator. You build it, it's not going to be receiving
19 trucks the first day and it's not going to be selling
20 electricity the first day, and you're still going to need to
21 hire people, and you're still going to need to test the
22 equipment, and you're still going to need to ramp up
23 operations. And so it's appropriate to have reasonable
24 working capital until you're in operations, maybe call it
25 stabilized operations we're running now. Same with interest.

1 You don't have the money to pay debt service on day one when
2 it opens because it's just not cash-flowing like that. So the
3 Debt Act says you can borrow to pay for principal and interest
4 through the date of completion of construction, and if deemed
5 necessary, one more year. Because again, the day you open --
6 during construction, you're not making anything; the day you
7 open, you're not efficient. So if deemed necessary, one year
8 thereafter.

9 An extraordinary amount of proceeds of the
10 borrowings that we're talking about today ostensibly related
11 to the incinerator, but they weren't used for construction,
12 they weren't used for equipping, they weren't used for
13 improvements to the incinerator or anything that would improve
14 the revenues of the incinerator. And that's where we're going
15 to start our inquiry. What were they used for? And if this
16 thing wasn't carrying itself, why was it self-liquidating?

17 So let's turn to the forensic investigation, and I
18 don't know whether everyone has a copy, but to the extent that
19 we have copies, I'm going to call out pages, if you want to
20 follow along and put asterisks down. So the incinerator
21 trials and tribulations date back pretty far. We were engaged
22 really to start in 2003, but as we got into it, we realized
23 that it would be very important to look at the purchase of the
24 incinerator by the Authority to the city and the course of
25 conduct in the 10-year period before the 2003 issue to provide

1 us with context as to what had happened before that may have
2 informed what the heck's going on now. So I just want to let
3 you know that we're going to start in 1993, and it wasn't part
4 of our original scope. We went back to the Authority and to
5 Royce and said, we think this may be important, and they said,
6 we think you're right, and so you'll see less treatment of but
7 some treatment of 1993-2003. So we're going to jump into the
8 forensic audit.

9 On page 19, the Resource Recovery Facility was
10 experiencing operational and regulatory problems at the time
11 the city sold the facility to the Authority. Okay, so this
12 wasn't, you know, the crown jewel; here, take it, this is
13 going really well, you don't know how good it's going to be.
14 This was an old facility that had operational problems,
15 regulatory problems, and it was sold to the Authority. So I
16 know former Mayor Reed is going to be here and asking him, you
17 know, why did that sale take place? What were the purposes
18 for selling the incinerator to the Authority in 1993 would be
19 an interesting question we don't know the answer to. But in
20 the early '90s as well, the Resource Recovery Facility was
21 experiencing reduced waste flow. So big deal. Big deal is
22 that there's two things that really generate revenue -
23 electricity sales, tipping fees. Waste flows means truck
24 tipping, \$50 a ton. That revenue is very important. So there
25 wasn't really a revenue stream that was growing. There was a

1 revenue stream that was declining, regulatory issues that were
2 going to cost a lot of money to address, and the facility
3 wasn't operating that well. It needed to be fixed. It needed
4 work.

5 So first bond issue, we call this an acquisition
6 financing. Page 26. The first bond issue was a sale. But,
7 you know, it's like a sale to a related entity almost because
8 the Harrisburg Authority was created by the city. And this is
9 very common, you know, in utilities to create a municipal
10 authority and have them focus on water, sewer, things that
11 general government might need to spend more time on to really
12 do a good job on, and it allows the government to focus on
13 more of the essential government services.

14 So the sale occurs, and this is really important
15 to understand. The price of this incinerator that now has
16 \$340 million of obligations was \$26.7 million originally.
17 Okay, it's been retrofitted, so I'm going to talk about the
18 improvements in the retrofit. But this all started in 1993
19 with a sale for \$26.7 million, and on top of that the
20 Authority borrowed an additional \$7.5 million to improve the
21 facility. As I said, it wasn't in great shape. It needed
22 some work. So the total cost for the acquisition plus the
23 original improvements was \$34 million. At this time, Dauphin
24 County was not sending its waste to the incinerator, and so
25 there were flow issues. Whether the flow could improve or not

1 was anybody's guess.

2 The city guaranteed this debt and filed, we think,
3 because we don't have all of the paperwork, but it appears
4 that they filed for self-liquidating debt status. This
5 incinerator, for I think the exclusion at that date, was \$28
6 million of that debt will be self-liquidating. That is, it
7 will pay for operations and debt service out of charges for
8 tipping fees and electricity. If the next day that wasn't
9 true, the city wouldn't have been under any obligation to do
10 anything about it. The city would only be under an obligation
11 under the Debt Act to do something about that the next time
12 the city borrowed and filed proceedings, and they'd either
13 file a Clean 8110(b), or they would say that circumstances
14 have changed and therefore we're unable to file a Clean
15 8110(b). Please mark this debt no longer self-liquidating and
16 reduce our borrowing capacity.

17 1996, three years later, the Authority borrows,
18 not guaranteed by the city, the Authority borrows \$3.5
19 million. Approximately \$2.8 million of that is for working
20 capital. Okay. So the alarm bell on panel 2 goes off when
21 somebody like me reads this. It's wait a second, three years
22 ago it was self-liquidating, you're borrowing for working
23 capital. That means you don't have enough money to pay for
24 your operations and your debt service. Why was the Authority
25 allowed to borrow for working capital? Remember, the Debt Act

1 us any concern.

2 What we heard in our interviews was that at this
3 point, the city and the Authority were shopping the Resource
4 Recovery Facility. They were either going to sell it, I think
5 they saw the writing on the wall that the regulatory
6 improvements were expensive, the flow wasn't there, the
7 electricity prices weren't there. It just wasn't working real
8 well. Or they had to expand the revenue base, the transfer
9 station and operations, and start getting waste from New
10 Jersey and other places, because this wasn't working. But to
11 date, we only had one borrowing guaranteed by the city, and
12 then a series of small working capital financings, and
13 refinancings of working capital financings, and one more
14 improvement.

15 1998. 1998 is an important year because now we
16 really do implicate the guaranty. We roll up the Authority
17 debt, the '96s and the '97s, and the '93 into a '98 bond
18 issue. So now that's our, you know, we've rolled the whole
19 thing. We've consolidated our loans, so to speak, in one
20 transaction, \$55.8 million to refinance the '93s and the '97s.
21 But it wasn't to save costs. So when I refinance my mortgage,
22 it's because I was paying 5 and I can get 3.5. I could reduce
23 my costs. That's a really smart refinancing.

24 The other kind of refinancing that is permitted
25 under Pennsylvania law is a restructuring. And there's all

1 different levels of them, but the worst one is called a
2 scoop-and-toss. You just take what you're owing the next 2
3 years because you don't think you can afford it and you chuck
4 it out long and you pay interest on it for 20 years instead of
5 2 years. And we in the financial advisory world actually can
6 calculate the present value cost.

7 This was not a refinancing for debt service
8 savings. It was a legal way to create working capital. If I
9 need \$100 to pay my operating expenses and my debt service,
10 and I only have \$90, then if I take \$10 of the debt service
11 owed that year and the next year and the year after that and I
12 toss it out long in a new borrowing, then I don't need that
13 \$10 anymore. I've creating working capital. I've created
14 revenue available to make myself whole for that year. So
15 various degrees of restructuring.

16 But when we talk about a restructuring, and again,
17 it's permitted under the Debt Act, we talk about not
18 necessarily a refinancing for savings, because the Debt Act
19 has authorization for refinancings for savings, and it has all
20 sorts of procedures for showing that. This is a refinancing
21 to create some breathing room. Another signal that the
22 incinerator was not paying all of its debt service and
23 operating expenses.

24 So question, pausing point. At this point the
25 city could have, again, paid under its guaranty. It says that

1 "the city shall pay an amount sufficient to cure any
2 deficiency. It shall punctually pay from its revenues or
3 funds to the trustee the debt service." So one option is that
4 the city advances the money that the facility was short that
5 year, and if it's running a balanced budget, that's going to
6 be a little bit of a hardship. If it's running a surplus
7 budget or has a big fund balance, maybe they can do that one
8 year and then get it fixed for the next year or redo their
9 budget, increase their budget because they've covenanted under
10 the Debt Act that they are going to budget and appropriate
11 what's necessary for the next year. So if they know that
12 they're \$20 short and they're going to expect to be \$20 short
13 next year, then they should budget \$20 more. That's another
14 way it could have been done. How it was done was a
15 restructuring. Guaranty wasn't hit on, the budget wasn't
16 changed.

17 Importantly, the self-liquidating debt status of
18 this debt was not downgraded. So when you did the '98 deal,
19 you refinanced the 1993 bonds, there's a certificate that
20 would relate to the '93 bonds, but they're not outstanding. I
21 refinanced them. I rolled them up into this consolidation.
22 But in 1998, an exclusion was applied for for 100 percent of
23 this debt. So you see the debt is mounting. A lot of it is
24 used for working capital. Some of it's being used kind of
25 book-door restructuring to get through a year or two. But the

1 question that we asked is, is it really, in 1998, all
2 self-liquidating? The proceedings were prepared, the pieces
3 of paper that were supposed to be filed were filed, and it was
4 approved.

5 The other thing that happened in 1998 was that
6 some of this money went to replenish the facility's operating
7 reserve fund. The operating reserve fund is there for if you
8 have a blip in operations and you don't have enough money to
9 pay for your operations. They obviously used all the
10 operating reserve fund, so that's not revenues or rents from
11 the users. That's digging into the operating reserve fund.
12 Another alarm bell goes off. You're not funding everything
13 that you need to with user rates. Is it really
14 self-liquidating at this point?

15 2000. I'm on page 28, for those who are following
16 along in the report. The Authority issues an additional
17 amount in 2000 of approximately \$25.2 million to restructure.
18 Here we are again. Okay? We don't have enough money for
19 operations, we don't have enough money for debt service, or we
20 don't have enough money for both, but we don't have enough
21 money. It's effectively reimbursing itself for prior payment.
22 My recollection is that there may have been an advanced
23 funding by the city here, and it paid itself back for that
24 advanced funding. So whether it was short and the guaranty
25 was hit, that's still not self-liquidating, or whether it was

1 sufficient to pay for operations and debt service on either
2 the '98 bonds or the 2000 notes.

3 So you're telling the people who are going to buy
4 the debt that we're fully operational as best as we can, but
5 we're not going to have enough money to pay the '98 bonds and
6 the 2000 notes. They were also told that under a number of
7 circumstances, the operation of the existing Resource Recovery
8 Facility may be restricted, halted, or terminated. We could
9 have a shutdown. In such case, the debt service on the 2000
10 notes would have to be paid partially or solely to the extent
11 of payments made by the city under the Guaranty Agreement.

12 So we're back to self-liquidating still. Should
13 these bonds have had a filing made that said that the other
14 bonds are no longer self-liquidating? Do we reasonably expect
15 that the guaranty will never have to be hit on at this point,
16 or do we -- and it's not an all or nothing thing. There could
17 be enough revenues that you say, well, 50 percent of this is
18 still self-liquidating, 50 percent isn't. So it's impossible
19 to say without being there at the time what our analysis would
20 have been as to how much was self-liquidating. Some was.
21 There were still some revenues. Unless you can't even pay for
22 your operations. If you create \$1 above operations for debt
23 service, then you've got some self-liquidating, but greatly
24 reduced.

25 Did the city change its budgeting and appropriate

1 for the next year an amount that it expected would be needed
2 again? No, because it restructured. So it threw the bonds
3 out and it didn't need to. And it didn't reduce the amount
4 that was deemed to be self-liquidating.

5 There's another thing that could have been done,
6 and this is second-guessing, but I just want to put it all out
7 there that there were options, there were choices, and choices
8 were made. But one of the choices was we've got some stranded
9 debt. We have \$80 million of debt on this facility that we
10 bought for \$27 million and put maybe \$20 million in. It's not
11 going to cover this. Let's consider some of the debt on this
12 stranded debt and we'll issue--we, the city--general
13 obligation bonds, and we'll amortize that over a period and
14 we'll say that's stranded. And as we interviewed people, that
15 was posited in the early 2000s as the way out of this. There
16 were people in the city who said shut it down. It's an
17 albatross. Shut it down. But the question was, who's going
18 to pay the debt? We've got to pay the debt. Borrow for it.
19 So we got into trouble borrowing, we're going to borrow for
20 this? You know, I have other things I want to do with my GO
21 debt. I have things I need to do for the city. Whatever the
22 answer was, that is one of the options, and that wasn't an
23 option that was pursued.

24 I'm on page 29 now, we're at the 2002 notes. \$17
25 million borrowing, \$1.9 million of which for capital projects.

1 So we now know what the rest was for, right? We know it's
2 capitalized interest and working capital, because that's the
3 theme here and that's why we wanted to show some of this.
4 Over \$12 million of this borrowing was used for working
5 capital, and \$1.1 million was used to pay the current interest
6 on the debt that the facility couldn't pay. Clear indication
7 that the facility was not servicing its existing debt.
8 8110(b) certificate option clean, reduce the amount of debt
9 that's on the books at DCED that's deemed to be
10 self-liquidating, it was filed clean.

11 City guaranteed the 2002 notes. Let me introduce
12 another player, it used to be known as FSA, a national bond
13 insurer, went out of business, now known as AGM Assured
14 Guaranty. FSA insured the 1998 bonds and the 2002 notes. So
15 now we have a city guaranty and an FSA insurance policy, so if
16 anyone out there is saying, well, if you're disclosing all
17 this bad stuff to the markets, who's foolish enough to buy
18 this paper? And the answer is the people who don't look at
19 the underlying operations who say, well, I'll get paid on a
20 timely basis by FSA. At that time there were five AAA bond
21 insurers that everyone said, what could go wrong? Well, none
22 of them are left. One is standing, AGM, they're down to a AA-
23 with negative outlook. And the city could not ever even pay
24 off the amount of debt that we're talking about now, let alone
25 what we're going to get into next.

1 2003 A, B, C, a massive restructuring. There's a
2 good picture of what a scoop-and-toss looks like, because
3 that's what this is, on page 30 of the forensic investigation.
4 You can see this is some inside baseball financial advisor
5 stuff, but we love a straight line when we're looking at debt
6 service, or a declining line when we're looking at debt
7 service, because it means there's nothing on to come. We've
8 got level debt service, very conservative, you don't have to
9 rely on rate increases in the future, you don't have to rely
10 on tipping fee increases, electricity price increases. Nice
11 and level. That's what it was.

12 On page 30, mine's in color, all of the white is
13 what was prior to issuance of the 2003 A, B, C refunding
14 bonds. And it was all picked up and tossed out long so that
15 the debt service due on the bonds was reduced significantly,
16 and with an additional purpose, not just the purpose of we
17 don't have enough money to pay our debt service and we don't
18 want to pay under the guaranty and we don't want to ruin our
19 debt limit, but we're now at a place where the 2003 D, E, and
20 F retrofit bonds are being contemplated, and the masterminds
21 behind the retrofit say that's going to cost a lot of money
22 and we don't have enough money to pay for our existing debt
23 service, how are we going to even pay the interest on that
24 debt service? And the answer was we'll make a lot of room.
25 How will you make a lot of room? We're going to take a lot of

1 your debt and we're going to move it out long.

2 Did anyone say how much that would cost? We're
3 asked that all the time. We did an estimate. We didn't find
4 anything in writing that said, gee, that's a little risky,
5 that's a little expensive, how much is it going to cost? It
6 may have happened. We didn't get all the paperwork. But our
7 estimate, nine years later trying to retroactively figure this
8 out, was it cost about \$10 million of additional debt.

9 So there's lots of pieces here that are going to
10 add up to the answer to the question: How is there all this
11 debt on this facility? The facility seems fine, but where did
12 all this money go? Okay, so here's \$10 million of debt that
13 was added to the burden to allow for the 2003 D, E, and F
14 retrofit.

15 Okay. I'm going to pause again to see if there
16 are any questions, and then I'm going on to the Barlow
17 retrofit project. So does anyone want to ask a question now
18 before I move on?

19 CHAIRMAN EICHELBERGER: How about we take a few
20 questions before we get too much further. Is that okay?

21 MR. GOLDFIELD: That's fine. Thank you.

22 CHAIRMAN EICHELBERGER: Maybe what we can do, and
23 I didn't discuss this, you don't have any, John, is maybe we
24 could ask one or two each? Because we'll all have questions
25 and we could probably be here till midnight tonight. I could

1 probably be here till midnight, and I'm sure he has and Mike
2 has as well. So maybe if we ask one or two each, and then
3 we'll kind of keep it in check.

4 How about Senator Blake. Do you want to start?

5 SENATOR BLAKE: Thank you.

6 I'm deeply grateful for the methodical and very
7 professional and thorough work that you and the team did on
8 this audit. So let me just start there.

9 I guess there's a couple of things that I'm trying
10 to wrap my head around on the basis of everything that you've
11 just said. You know, my first question was going to be you've
12 raised a lot of red flags in this forensic audit, could you
13 clarify them? Well, you've just clarified a whole pile of
14 them for me.

15 I'm trying to have some understanding over the
16 statutory basis in LGUDA regarding self-liquidating debt that
17 is supposed to -- there is supposed to be some meaningful
18 analysis of a change in status. You've consistently said that
19 it was clear, it was evident that they were not meeting
20 operations, they were not meeting debt service obligations,
21 and yet there is this prolonged assessment that this is
22 self-liquidating. I'm trying to understand where that
23 disconnect is. If you can help me.

24 MR. GOLDFIELD: I'll try.

25 SENATOR BLAKE: Okay.

1 MR. GOLDFIELD: The self-liquidating debt
2 component of the filing with DCED is considered by some as a
3 separate set of proceedings. We would call them the
4 self-liquidating debt proceedings. And it's a package, and
5 it's a package that's spelled out in the Debt Act of what
6 needs to be there. And one of the things that needs to be
7 there is a professional with experience has to do a report
8 that demonstrates that the revenues will be sufficient to pay
9 operating expenses and the debt service, and if that report is
10 not in the filing, the DCED will kick it out and say I can't
11 give you an exclusion. So number one, there needs to be, you
12 know, the folks who are the actual movers of the project need
13 to tell somebody to apply for self-liquidating debt status.

14 Number two, the professionals need to advise the
15 issuer as to whether this would qualify or not qualify.
16 That's bond counsel, that's financial advisors, that's
17 solicitors.

18 Number three, they have to go out and get a
19 professional to look at the operating side, and then usually
20 the underwriter does the bond debt service. They just run a
21 bond debt service and say, well, here's how much it's going to
22 cost, now you tell me if you can cover operations in this
23 amount. And they put that package together, and as long as it
24 satisfies the definitions in the Debt Act, DCED approves it.
25 They don't have the staffing to do an independent analysis,

1 and they don't think that it's appropriate for them to go out
2 to a facility and do due diligence or to research authority
3 bond issues and what they were for, because they've never seen
4 that. They basically call it on the papers.

5 SENATOR BLAKE: Understood. And you've answered
6 my question about the issue of capacity and an independent,
7 third-party objective underwriting. The dependence is on the
8 professional consultants engaged by the parties in question to
9 make a representation to the department.

10 MR. GOLDFIELD: I would say that's the gatekeeper
11 of first resort.

12 SENATOR BLAKE: I understand. I don't want to
13 take up too much time, in deference to the Chairman, but the
14 other thing that seems to jump off the page in this audit
15 consistently, and more particularly, relating to the last two
16 elements of your commentary leading up to my questions, is the
17 issue of a complete disregard for the cash flow situation of
18 this facility and a complete reliance upon the guarantees. Is
19 it fair?

20 And I guess I'm trying to find out where there is
21 either a statutory or regulatory protection against what I'm
22 hearing here, but it seems to me, and to your point, you said,
23 who's buying this paper? Who's buying this paper are the
24 people who don't care about the cash flows. They care about
25 the guarantees. And that's part of the problem here, and I'm

1 wondering whether or not in your experience you can advise us
2 and this committee on how we can omit that danger for our
3 taxpayers.

4 MR. GOLDFIELD: Yeah. I think that this would be
5 something that I'd want you to hear from a lot of
6 professionals, and obviously, this is my opinion because
7 you've asked for it. I think that one distinction could be
8 that a utility where you have control over the rate setting or
9 some notion that you've got a captive user base and you can
10 always raise rates, even if there's a one-year blip that you
11 did on the guaranty, makes sense and can reduce costs, like
12 taxes, but of rates.

13 One distinction I tried to bring out before is
14 that there's a lot of stuff going on, it's a little bit on the
15 proprietary side. It's a great project, by the way, turning
16 trash into electricity, but back then they didn't have what we
17 would call flow control, where all of -- and we're going to
18 get to that, because we have it now -- but where all of the
19 county had to, by ordinance, deliver its trash. So you had
20 competition amongst waste haulers, and if your price wasn't
21 good, they would go dump it at a landfill.

22 And we're going to get to that too, because that's
23 what was happening. Landfill costs versus incinerator costs.
24 A trash hauler is going to get paid by the municipality a
25 contract price, and they're going to take it to the cheapest

1 place, because that's where they get the most profit. So
2 there's competition out there that government maybe, you know,
3 isn't in a good enough position to assess. There's more risk
4 to it anyway.

5 And then the electricity prices are very volatile.
6 So what DCED will get is they'll get this thing that says for
7 the next 30 years, we're assuming electricity prices will be
8 5.5 cents per kilowatt hour. Well, what are they supposed to
9 do with that? Are they supposed to get an independent
10 consultant in and a forecast and try to figure out whether
11 that's reasonable or not? So there's no reasonable test or
12 statutory provision. I don't know if there could be. I don't
13 think the government wants to build up to that.

14 So what that does is it backs me into, when you've
15 got that much volatility on the revenue side that you don't
16 have control, maybe that's not a good project to have a
17 guaranty of.

18 SENATOR BLAKE: I appreciate that response, and
19 I'm going to hold the rest of my questions and defer back to
20 the Chairman, but I just want to summarize what you've just
21 said that I think is important for us to consider, which would
22 be the attributes of the facility and the economics and the
23 financial performance and the reliability of the financial
24 performance of a facility of a particular set of attributes,
25 your contrast being a utility versus this Resource Recovery

1 Facility and the revenue streams upon which it relies. I
2 think that's an important consideration for the committee.
3 Thank you.

4 SENATOR FOLMER: I have one question. I may be
5 jumping ahead a little bit, but I'm looking at page 124,
6 footnote 447, Ibid. Section 6.01(b). There seems to be a lot
7 of these accounts being set up. I'll name a few, and I'll be
8 quick: The Retrofit Working Capital Account, the Retrofit
9 Capitalized Interest Account, the Retrofit Capitalized Debt
10 Service Account, the Retrofit Construction Account, the
11 Surplus Fund, the Retrofit Debt Service Account, the Retrofit
12 Sinking Fund Account, and the Retrofit Debt Service Reserve
13 Account. How do you keep track of all these accounts, and is
14 this normal? What is this?

15 MR. GOLDFIELD: First of all, I want to thank you
16 for reading the footnotes, because it's our favorite part of
17 the report. We think that most of the juice is in the
18 footnotes, and not everybody admits to us in public that they
19 read the footnotes.

20 Second, it is a byproduct of having done this kind
21 of work for about 15 years, that's why I was brought in. It
22 would have taken forensic auditors who don't do this a lot
23 longer than it took me, so it was pretty efficient.

24 Third, and probably most importantly, is that as
25 we get to 2003, you're going to see convoluted structures and

1 strained interpretations that create more and more levels of
2 subordination and accounts, and it's one of those things where
3 when I see it, I know that there were some tricky legal calls,
4 that there were constructs created in legal documents to get
5 around concerns or to try to build a structure that fit into
6 something that wasn't necessarily usual and typical.

7 SENATOR FOLMER: Then how much did they push the
8 envelope then? Is that hard to say?

9 MR. GOLDFIELD: You know, what I'd request is that
10 we get through a little bit more.

11 SENATOR FOLMER: Okay. I'm sorry.

12 MR. GOLDFIELD: And that we can talk about where,
13 and then in terms of quantifying how much, I'm going to leave
14 that to everyone else.

15 SENATOR FOLMER: Thank you.

16 Thank you, Mr. Chairman.

17 CHAIRMAN EICHELBERGER: How about a thought that
18 came to me when you were talking about the benefits of getting
19 guarantees from the city and the county, where you were
20 talking about the city at this point. I could not find, and
21 maybe it was there and I just missed it, where there were
22 quotations done without having the city guaranty. And the
23 reason I ask about that is, for the overall costs, if the rate
24 was much cheaper having the guaranty, I understand that, but
25 that also forced them to borrow millions of additional

1 dollars. So was the overall cost still less because it was a
2 cheaper rate, or was the Authority obligated, since they were
3 obligated for millions of additional dollars, was this still
4 -- was it a worse deal?

5 MR. GOLDFIELD: And I'm not pandering, that's an
6 excellent question, and I'm glad you asked it. That is
7 exactly what I would have wanted my client to ask and what I
8 would have told my client they should expect. Guaranteed, how
9 much will it cost; not guaranteed, how much? That's the
10 economic decision that a financial advisor can help the
11 decisionmakers with. Whether that happened, I don't know.

12 I can tell you that when I get to 2003, D, E, and
13 F, that's precisely the analysis we did find from the
14 financial advisors to the county, and in fact, I was surprised
15 at the volume of analysis relating to how much that guaranty
16 was worth to the facility, maybe overdone, and maybe some
17 other things could have used some attention, but that analysis
18 has not been found with respect to any of the city guarantees.

19 And I can conjecture, but instead I think I'll
20 just point out in the audit, we found it curious that the
21 guaranty fees did not relate to the size of the bond issue.
22 Because if you're looking at this from an insurance
23 standpoint, I'm taking credit risk. How big is the credit
24 risk? That has an impact on the size of the guaranty fee.

25 The guaranty fee, through serendipity or something

1 else, matched the structural deficit of the city. So it would
2 get set, on occasion, to fill a General Fund budget gap, a
3 structural deficit, instead of how much money is it going to
4 save? What's it worth? Is it worth doing it this way?

5 CHAIRMAN EICHELBERGER: And have you ever seen
6 guaranty fees anywhere else in the Commonwealth?

7 MR. GOLDFIELD: Only in 23 years in one other
8 municipality, and it was used for General Fund budget reasons.
9 And it's legal, and that's what I was told when I came across
10 that the first time. I said, it may be legal, but why would
11 you do it? So in this facility, and I used to know this in my
12 head but I don't now, if you add up the county guaranty fee,
13 which was significant, and all the city guaranty fees, you
14 probably get to another \$7 million of debt that provided value
15 or not, but it's on a facility that's not generating enough to
16 pay its operation and its debt service, so why do you load up
17 more debt on it?

18 CHAIRMAN EICHELBERGER: Right. Well, maybe we
19 should let you finish up the rest of that, and if you could
20 leave some time, I think we all have additional questions, but
21 we don't want to jump ahead.

22 MR. GOLDFIELD: Yes, I'm just getting into the
23 audit now, but it's really -- this is the core of it.

24 So when 2003 comes, the city is faced with some
25 choices. After the 2003 bond issue, there's now \$104 million

1 of debt, which today we would take in a heartbeat, right?
2 We'd love to only have \$104 million of debt to resolve, but
3 we've got \$340 million.

4 So another stopping point. What do you do? You
5 pack it in? You say this was a loser? How are we going to
6 pay the \$104 million? One interview, they were looking at
7 that. General obligation bonds, stranded debt. Big mistake,
8 let's try to get it behind us as soon as we can. Or, they
9 could try to fix it, and it was too expensive to fix. There
10 wasn't going to be a fix that they could find. They could
11 find a fix that would be able to cover itself, but not cover
12 itself and the stranded debt.

13 So they found a unique and rather inexpensive
14 option in some technology that had been used in smaller
15 facilities and became enamored with it, and that was the
16 Barlow retrofit. The Barlow retrofit was an idea that was
17 close to just shutting the other thing down and building a new
18 one, but it used parts of the guts. That's about as technical
19 as I can get with the engineering.

20 So they decided to go that way. And that's a
21 whole trail that wasn't my part of this, but I would recommend
22 people look at, which is bidding process, analysis,
23 independence of how this came to be. But let's get back to,
24 as I said, I could end and just go that way, but I don't want
25 to do that.

1 Self-liquidating debt, that's what I'm still on
2 the first part. Is the \$104 million of stranded debt still
3 self-liquidating? If it's not, can I issue the big 2003 A, B,
4 C transaction and still be under my debt limit? Okay? So
5 here's what's going on at the time. This is the turning point
6 of the whole project. Everyone knew the project wasn't
7 working out. There's no way the city was going to be able to
8 foot this bill at this time. The bond insurer said that, and
9 let me back up. I'm sorry. Let me get back to page 20 and
10 21. I want to give a little bit of context, because I always
11 jump right into the financing, and I don't think that's great.
12 Let me give context to what's going on, because the county is
13 going to come out of the blue now if I don't do this, and it's
14 important to understand. So let's go to pages 20 and 21 of
15 the report. Okay.

16 January 2000, Dauphin County Commissioners create
17 a task force. It's comprised of County Commissioner Payne,
18 Mayor Reed, and Mr. Giorgione. Task force recommends the
19 county create a City-County Intergovernmental Solid Waste
20 Management Office to carry out jointly the county's
21 responsibilities for solid waste management. Spring of 2003,
22 the county decides to seek waste combustion capacity. No more
23 landfill, we want to burn it and turn into electricity. After
24 being urged by county municipalities to address rising
25 landfill costs, so we're in a day here where landfill costs

1 are going up, the municipalities are telling the county, get
2 us out of this, and they're thinking maybe an incinerator
3 retrofit will do the trick.

4 September 23, 2003, the county looks at Chester,
5 PA, an incinerator that's about 10 miles from where I live,
6 and the retrofit, and designates that all county waste will go
7 to the City of Harrisburg's Resource Recovery Facility.
8 Here's the problem. To be operational, this incinerator
9 needed a major, major overhaul. The EPA's requirements under
10 the Clean Air Act limited the volume of materials that could
11 be processed, and it was just not going to be able to meet the
12 future EPA clean air mandates. So now you've got the county
13 and the city aligned here that this is going to be -- we're
14 going to build.

15 The insurer, that's where I was, says, well, we're
16 not insuring the city's guaranty anymore. They've got more
17 debt than they could ever repay. We've got more exposure to
18 them than we want, and we have no idea whether this
19 incinerator idea is a good idea or a bad idea, and whether
20 it's self-liquidating or not. That's State law. We don't
21 care about that. The only way we're going to insure this
22 thing is if the county provides its GO guaranty. That's when
23 PFM gets engaged, because the city wants to do a guaranty fee,
24 and so the county wants to do a guaranty fee, and PFM is
25 looking at the plan of finance, and this all comes together.

1 Here's the choice that they had at the time.

2 One, call the \$104 million of stranded debt what
3 it is, \$104 million of stranded debt, and get rid of it off of
4 the books. Unfortunately, had they done that, it's highly
5 questionable that the city would have been able to guarantee
6 the 2003 A, B, and Cs, and if they weren't able to guarantee
7 the 2003 A, B, and Cs and that wasn't done, then the retrofit
8 wouldn't have a city guaranty on it either. The only way it
9 could be done would be with -- well, there's a lot of ways it
10 could be done, but a county guaranty with the insurer could
11 have done the trick.

12 So it was, if -- and we did an analysis in the
13 report, and I'm running out of time, so I'm not going to go
14 through it, but it really shows you how the debt limits work.
15 You know, it shows you that if the '98s are no longer
16 self-liquidating, then there wasn't enough capacity left to
17 pay for the 2003 As. If the 2003 As weren't self-liquidating,
18 there wasn't going to be enough capacity, and we have a chart
19 showing that for the 2003 D, E, and F.

20 So it became, you know, one of those situations
21 where if I had to conjecture, everybody's looking at this
22 thing thinking while it might not cover \$229 million of debt
23 service, but all it has to do is cover a dollar more than \$125
24 million and it's a good economic decision because then I don't
25 have to write off all the debt. It might not be

1 self-liquidating, but I'm better off having something that
2 generates some cash flow towards it rather than shutting it
3 down.

4 So the choice is: Stop; go, but do not file a
5 Clean 8010(b) on the stranded debt; or double down. And they
6 doubled down. They issued a report--and this gets back to
7 your question, Senator Blake--that included, interestingly,
8 Barlow, the engineer/designer/contractor did all of the
9 estimates of the operating expenses and revenues and
10 projections, and the underwriter did the projections of the
11 bonds. And they filed the report, and it actually got kicked
12 out the first time because Barlow only gave DCED the first 5
13 years of operations and she said, if you want this to be
14 self-liquidating for all 30 years, you give me 30 years of
15 projections. And they went back and they just rolled the
16 projections out, and that transaction occurred.

17 I want to turn to page 52 of the forensic
18 investigation. This is a good sum-up of the team's concerns,
19 so I want to point it out. And again, we're looking at
20 self-liquidating debt; was it or wasn't it? The RRF
21 experienced significant changes in circumstances from 1998 to
22 2003. Remember, the certificate that we're talking about says
23 change of circumstances, or no change of circumstances. If
24 change of circumstances, decrease; if no change, keep.

25 In 2000, the facility was derated to address EPA

1 clean air requirements, substantially reducing its throughput
2 and revenue stream. That's it's tipping. The Authority had
3 to pay for operations and debt service, and I'm going to
4 insert here, because it was actually longer: 1996, again in
5 1997, in 1998, in 2000, in 2002, and in 2003. Meaning that
6 the facility was not paying for its outstanding debt during
7 those years, and had borrowed more expensive debt to pay off
8 prior debt. So it added debt and it added expense.

9 The projects that had been funded were not
10 generating revenue sufficient to pay the debt service on the
11 RRF. The original facility that the Authority had purchased
12 in '93 and improved through the '90s in large part didn't
13 exist anymore at this time. So it was really difficult for us
14 to understand how the existing debt could continue to be
15 considered self-liquidating in 1998, in 2000, in 2002, and in
16 2003, and how a Clean 8110(b) Certificate could have been
17 filed. Nonetheless, the city filed a Clean 8110(b)
18 certification relating to all of those bonds.

19 I'm going to try to speed up a little bit. The
20 other interesting fact that we put in the forensic
21 investigation is that right before this retrofit, 55 percent
22 of the debt load was not acquisition or capital, meaning
23 working capital, capitalized interest. Fifty-five percent of
24 it. So you think, how do you have \$340 million of obligations
25 and the facility is not worth that much? It's because of the

1 paying your rent on the credit card time and time again, and
2 guaranty fees and restructurings that added debt and increased
3 debt service and nothing productive happening down at the
4 facility level that could help the Authority generate more
5 revenues.

6 A lot happened between 2003 and 2006, and I'm
7 looking at the clock and I'm just going to tell you that
8 you've got issues that you saw in the court with CIT, you've
9 got a bevy of swaps that are now starting to try to generate
10 cash, because the real working capital that was proper for the
11 2003 D, E, and F were retrofit, the real capitalized interest
12 for those 2003 D, E, and F bonds was running out, and the
13 facility wasn't operating at all.

14 So there was all this money set aside for three
15 years so that it could be built, and then when it opened it
16 would cash flow, and it wasn't even close, and Barlow just
17 completely bunked, ran out of money, you know all kinds of
18 cockamamie schemes to keep it afloat. By 2006, I'll fast
19 forward, December of 2006 the Authority terminates Barlow.
20 Not going to happen. Brings in Covanta, who is the current
21 operator.

22 They've exhausted all means. I mean, they've hit
23 eight swaps already, they've done the CIT transaction that a
24 lot of people said they didn't even know happened and it was a
25 license or it was a borrowing, or whatever it turned out to

1 be. You know, the county is not going to put any more money
2 in and the city doesn't have the capacity to put anything in.
3 I think they kind of realized that they're in a lot of
4 trouble, and people that are here that you talk to could tell
5 you what it was like. But it seemed, from the paperwork, that
6 it was pretty frenetic. It was crisis. So we're in crisis
7 now, what are we going to do?

8 Now we're up to \$229 million of bonds. We've got
9 CIT, we've got swaps, and if you don't walk away at \$80
10 million or \$100 million, it's real hard to walk away at that
11 level, \$249 million, \$250 million. So do you walk away,
12 stranded debt, call in the guaranty? The thought was, from
13 interviews, that you couldn't just sell it at a fire sale, not
14 open, because you would take a bath. So put aside the law for
15 a second. I get that. I get that. If we could just put a
16 little bit more money in and get it open, then we can sell it
17 and we could cut our losses. I get that.

18 Problem is that I think that from a contractual
19 standpoint and from a statutory standpoint, there were some
20 hurdles that needed to be attended to. And the determination
21 was made in 2007 to finish this incinerator, get it open, and
22 the price tag was estimated to be up to \$25.5 million. And
23 Covanta was going to operate after they engineered and
24 constructed.

25 So the city guaranteed its first '07 piece, and

1 now we're back again to new money, construction contract, real
2 good costs. The city guaranteed it, the county did not. That
3 borrowing could not have been guaranteed by the city under our
4 analysis if the 1998s and the 2003s weren't self-liquidating.
5 If none of it was self-liquidating, the city would have, when
6 it went into DCED, been \$140 million in deficit of borrowing
7 capacity. I don't think -- none of it was serviceable. I
8 think there is a portion of it that would have been
9 serviceable once it opened up, but I don't know how much. But
10 I'm just saying that when you talk about how did we get this
11 far over? If none of it was being serviced at all, or would
12 be serviced with the Covanta project, the city would have, at
13 that time in '07, been \$157 million under.

14 So we did some analysis to try to figure out,
15 well, how much of it would have needed to be self-liquidating
16 so that the city could have done what it did in '07? And it's
17 just speculative, right? Because what we did was we searched
18 everywhere for that analysis. Because if I was there and I
19 saw this -- and we had this discussion, hindsight is 20/20, so
20 it's easy for me to say this, but, you know, I expect, Senator
21 Eichelberger, I'm going steal your question, because this
22 would be the next thing that we would look at in what we were
23 talking about is, well, it can't all be self-liquidating
24 because we haven't paid debt service since 1993. So how much
25 would it need to be self-liquidating for us to be able to

1 borrow what we need to borrow?

2 And you would do that analysis and the DCED
3 proceedings would go in and say, we're going to reduce the
4 amount that's self-liquidating by 40 percent. And lo and
5 behold, we have just enough borrowing capacity left to do the
6 Covanta loan, and the next one I'm going to talk about, the
7 working capital loan, wasn't done.

8 We reviewed 17 sets of projections from advisors,
9 and not a single one showed that all of the prior debt could
10 be covered, and the 8110(b) certificate, not for the '07s,
11 because they finally said, well, this stuff isn't
12 self-liquidating. It wasn't sold as self-liquidating. But
13 remember, the 8110(b) relates back to prior certifications.
14 Are my '03 D, E, and F still fully self-liquidating? Yup.
15 '03 A, B, and C still fully self-liquidating? Yup. Are my
16 two 1998s? Yes, indeed.

17 So that filing, after all that we've talked about,
18 and a lot more that's in the forensic investigation that we
19 haven't talked about, still was a Clean 8110(b) from the city
20 and the county. Because the county guaranty related to 2003
21 D, E, and Fs, and the county didn't need the debt capacity, by
22 the way. The county could have said the whole thing is not
23 self-liquidating and they still would have had plenty of debt
24 capacity.

25 So the last thing that I want to talk about is the

1 So I could imagine that you could put together
2 Covanta and the working capital loan in 2007 and say that's
3 one project, and you could say and I'm going to capitalize
4 interest on the Covanta project, that \$25 million. That makes
5 sense. Can you capitalize interest on the 2003s, that was
6 four years earlier? The argument we got was, well, that
7 project never opened, and so Covanta project is the completion
8 of the Barlow retrofit. That's how the argument goes. If
9 Covanta is the completion of the Barlow retrofit, then it's
10 construction plus one, we're not construction plus one. So
11 2003s, that's the argument. I think it's the strongest of the
12 three.

13 '98s and 2003s, how did that become part of the
14 Barlow retrofit? It was prior in time and related to the
15 original facility, not the retrofit. That was our trouble
16 with capitalized interest. It made sense economically because
17 if they didn't do that, then guess who would have paid? The
18 county and the city, under the guarantees. And if they were
19 to follow our reading of the documents, they wouldn't have
20 gotten that money back for a long time, certainly not today.
21 They would have gotten it back after the 1998s were repaid.
22 But it was expedient to do it this way, and so it was done
23 this way.

24 So here's \$30 million of debt that's going to pay
25 professionals, it's going to capitalize interest on, you know,

1 Covanta loan, on Barlow retrofit, and on 1993 project working
2 capital. Again, loading up debt on a facility that really
3 didn't have a chance, once they decided to double down. May
4 have had a chance if the \$104 million was stranded and they
5 took that out of the equation. They had a payment and
6 performance bond, and Barlow bunked and they got it completed
7 readily and didn't do some of the other things that ended up
8 costing, may have had a chance, not to be completely
9 self-liquidating, but it would have been a close call. But
10 this didn't have a chance when they doubled down, and then to
11 add another \$55 million of debt, \$30 million of which is
12 called the working capital loan.

13 So you remember I started--and I'm going to
14 finish--with this idea of working capital. It's something
15 that we want to look at. Capitalized interest and working
16 capital, what is it? What should it relate to? How much
17 should there be? It's a bad sign, but necessary sometimes.
18 And a lot of times you just need a little working capital to
19 get through to the next year and you could right the ship.
20 But here's a situation where the course of conduct was to keep
21 borrowing to pay working capital and debt service and loading
22 it up. And that answers the question, how do we have \$340
23 million of debt on this facility that would otherwise be fine?

24 Thank you.

25 CHAIRMAN EICHELBERGER: How about we unveil a

1 chart that we have here this morning and have you walk us
2 through that chart very quickly. Would that be acceptable?
3 Do you want to do that?

4 Why don't you face that, Lee, so Mr. Goldfield can
5 see it and the audience can see it. We all have a copy of
6 that in our packets up here.

7 MR. GOLDFIELD: Senator, do you want to say
8 anything about it, or would you like me to introduce it?

9 CHAIRMAN EICHELBERGER: If you don't mind, just
10 take us through it quickly.

11 MR. GOLDFIELD: Okay. One of the common themes of
12 today was that there really never was enough revenue available
13 for debt service and operating shortfalls. And so we put
14 together this illustration, and you can see that there's not
15 very much above that zero line, and anything that is above
16 that zero line is in blue. And that's the revenue available
17 to pay debt service. The red is the overall shortfall.

18 So I want to just introduce the methodology here,
19 because I'm not an accountant, and lawyers playing with
20 numbers is dangerous sometimes. But I want to tell everyone
21 what this is derived from, because you could do it
22 differently, but I don't think the picture would be
23 dramatically different.

24 We took the audited numbers from 1998 through 2009
25 regarding the operating expenses and operating revenues of the

1 Resource Recovery Facility. So this is derived right from the
2 audit. We didn't take nonoperating revenues. They're not a
3 lot. We didn't take noncash expenses like depreciation. This
4 is a cash look. This is here's how much cash it takes us to
5 operate, here's how much cash we've got. What's the
6 difference?

7 The city has not yet released its 2010 audit, and
8 we hope that it's going to happen in this year, and it's
9 getting close. But I didn't have audited information for 2010
10 through 2012. So the best thing I could find was the budgets
11 of the Harrisburg Authority. So for 2010 through 2012 on this
12 chart, we're looking at the budgeted numbers for operating
13 revenues and operating expenses. And then for that period we
14 also calculated debt service, because remember, there's a lot
15 of variable rate debt, a whole other conversation. And there
16 was a lot of synthetic variable rate debt, meaning that swaps
17 turned fixed rate debt into variable rate debt. And so those
18 go up and down and up and down, and we did some calculations
19 of what it should have been.

20 And then in 2010, when the 2010 note matured and
21 the county took it over, the county started paying under its
22 guarantees, the bond insurers started paying under the bond
23 insurance policy, because the city couldn't, and they started
24 charging interest on interest and penalties, and it just adds
25 up, and that's how you get up where we are.

1 what it's worth but has to do with what it needs to get
2 through the budget year. And so as an example, a building
3 that the city doesn't need anymore gets sold to an authority
4 for \$15 million.

5 Now, bond counsel -- a lot of people need to sign
6 off on this, by the way, so you do have professionals out
7 there who are, you know, the police for this. Once the
8 acquisition occurs, 100 percent of the bond proceeds go to the
9 city and the city puts it in its General Fund. That's a
10 working capital financing, but under the Debt Act, it's an
11 acquisition financing.

12 So there are different ways of doing acquisitions
13 that aren't intended necessarily to generate just working
14 capital. There are different ways of doing restructurings
15 that make sense. So it would be throwing the baby out with
16 the bath water to say under no circumstances can you do a debt
17 restructuring.

18 I think where we may all want to focus, and
19 there's plenty of people that do this across the State that
20 could be helpful as well. I know Bernadette Barratini is
21 going to be here and she's got a wealth of experience. I
22 think where we might want to focus is on what excessive
23 working capital and restructuring financing should say
24 vis-a-vis self-liquidating debt. That -- I can make an
25 argument that the language in the statute is pretty clear that

1 it's rates and revenues of ultimate users are the sole
2 repayment. So, but this is kind of a backdoor, I'm reducing
3 my expenses this way so that the rates, revenues of the
4 ultimate users are what's paying debt service, but it wouldn't
5 be that way if I weren't doing these expensive scoop-and-toss,
6 scoop-and-toss.

7 So it's hard for me to segregate the working
8 capital, Cap I, and the self-liquidating debt concepts. But
9 the language is pretty clear. You know, how it gets enforced
10 is a question. What it means. This is not uncommon across
11 the country. There's not a wealth of judicial interpretation
12 of what those words mean. You know, DCED has a very small
13 department that looks at these, and they have a very defined
14 role in looking at it. There are opinions that if somebody
15 protests in a timely manner, goes up to an adjudicatory
16 hearing and those opinions are released. And so there's a
17 little bit of interpretation, but not very much. But the
18 statute itself makes sense the way it is.

19 SENATOR BLAKE: Right. And I think that your
20 point is well-taken. I think the Chairman would probably
21 agree with me on this that we need to look further at either
22 tightening that up in terms of its interpretation, bringing
23 the experts in to help us articulate something that be would a
24 little bit more in protection of the taxpayers' interest.

25 I don't want to take too much time, and I know

1 we're going over already. I have two other things. We didn't
2 get to swaps, but there has been an awful lot -- there is
3 significant discussion about that in your forensic audit. The
4 Act of 2003 by the General Assembly that allowed local
5 government units to use these interest rate management
6 agreements, I think at the time, I wasn't in the legislature
7 at the time, but my guess is that they didn't exist, so we had
8 to write a law to consider how they would come into play in
9 the market and how it would affect our local government units.

10 So I guess what I'm asking you now, again, based
11 upon your experience and taking a look at this, and Auditor
12 General Wagner has gone on the record that perhaps he thinks
13 we should revisit that act in 2003 that allowed them. What
14 opinion could you render or observation could you render about
15 whether or not these transactions -- let me just put it in
16 this context: I'm not sure that local government officials
17 who are making the decisions and who have an obligation to
18 assess risk to some extent to the taxpayers are as financially
19 literate as the professionals who are making the assessment.
20 In this particular circumstance, these transactions did not
21 reduce the costs of the financing, they increased the costs of
22 the financing. \$2 million to protect against a 12-percent
23 interest rate?

24 So I'm asking you whether or not you think, in
25 your professional observation, should we revisit whether or

1 not these even should be permitted in these kinds of
2 transactions?

3 MR. GOLDFIELD: I was around when Act 23 was
4 enacted and actually participated a little bit in trying to
5 help draft the protections and was asked just to volunteer for
6 DCED and go around the Commonwealth and try to explain what
7 these are, what the risks are, what the benefits could be, how
8 to use them properly, how not to. It was a 50-page
9 PowerPoint, and there were very few people that were remaining
10 in the room by the end of my presentation. I've done a lot of
11 interest rate swaps. PRAG has some very large, sophisticated
12 clients that have a lot of interest rate swaps, and used
13 appropriately, they are a good interest rate management tool.

14 I'm talking about New York City, New York State,
15 Los Angeles, the State of California, where you've got a
16 department that manages debt. Where you have real swap
17 policies that have been thought through. The bases that are
18 supposed to be touched here under Act 23 are to have an
19 interest rate management plan, but we saw in this process that
20 somebody prepared it, threw it on the table at the meeting,
21 one paragraph in the resolution, approved it, and no public
22 official, I would bet, read any of it. And then they did more
23 swaps that violated their own interest rate management plan.
24 So just having the piece of paper doesn't do the trick.

25 I think that larger municipalities can use these

1 well. Very sophisticated municipalities with independent,
2 very sophisticated, trusted advisors can use these well. But
3 since the market dislocation in 2008, they're not working very
4 well, and I don't see anyone even wanting to enter into them.
5 It used to be the whole idea of a swap is that it will taste
6 just like chicken, right? This will be just like a fixed rate
7 debt, and it's not like that anymore.

8 There's so much market dislocation and so much
9 volatility that in today's market, I can't imagine a
10 Pennsylvania municipality that I would recommend get into one,
11 and I could tell you that I've spent more time in the last
12 five years unwinding them and getting people back into
13 traditional fixed rate bond issues -- at cost -- because it's
14 just not worth that risk.

15 And, you know, I don't want to make a blanket
16 statement that no municipalities can handle this. But this
17 is, you know, it's like a loaded gun. It could protect you,
18 but you've got to be really careful and really trustworthy,
19 and it could go off. And when it does, it could be really
20 expensive.

21 SENATOR BLAKE: Thank you.

22 Thank you, Mr. Chairman.

23 CHAIRMAN EICHELBERGER: Senator Folmer.

24 SENATOR FOLMER: My first question, sir, and
25 again, I appreciate you being here today and going through

1 this. With all the apparent alarms going off and red flags
2 being raised about the ever-increasing debt load on
3 Harrisburg's incinerator and its inability to repay, who do
4 you think had the responsible to say we shouldn't be doing
5 this?

6 MR. GOLDFIELD: I think that there's not a person
7 in the report that didn't have an opportunity to do what I've
8 done one time in my professional career - to go to a client
9 and say, this is going to be horrible for you, but I'm telling
10 you not to do it. It's not the thing to do. I think you're
11 going to talk to some people who are elected officials, who
12 are appointed members, who are professionals, and I would
13 leave it to you to decide, relatively speaking. I don't know
14 that it matters, relatively speaking, who. What matters is
15 that no one did.

16 SENATOR FOLMER: Okay. Thank you very much for
17 answering that question. And because of time, I want to keep
18 pushing with my questions here.

19 This refers to the 2007 loan, the \$30 million --
20 the \$29,994,808.85. In 2007, all but \$1,810,600.33 seemed to
21 have been paid in fees. The \$28,184,208.54. Now, some of
22 this, Covanta especially, seems to have gone to that project,
23 but what was the \$28 million spent for?

24 MR. GOLDFIELD: Just give me one second.

25 SENATOR FOLMER: And I know I asked that quickly,

1 because I want to ask another question.

2 MR. GOLDFIELD: What I'm going to do is not go
3 through all of it, but I'm going to point you to an exhibit
4 that we put into the forensic investigation.

5 SENATOR FOLMER: Is this Exhibit C?

6 MR. GOLDFIELD: Exhibit G, as in "girl," gives you
7 a complete list.

8 SENATOR FOLMER: Okay.

9 MR. GOLDFIELD: And I'll go three categories:
10 Reimburse County of Dauphin for everything it advanced and
11 avoid it having to pay anything for the next three years;
12 reimburse City of Harrisburg for everything it advanced and
13 covering it for the next couple of years; pay debt service.
14 Now, remember what you just said, let's see, it was \$1.8
15 million, was it, of new money?

16 SENATOR FOLMER: Yeah.

17 MR. GOLDFIELD: So what's the capitalized interest
18 on \$1.8 million, if that's the project, right? It's in the
19 dollars.

20 SENATOR FOLMER: Okay.

21 MR. GOLDFIELD: The next category is capitalized
22 interest. It's capitalized interest on that, it's capitalized
23 interest on the retrofit, it's capitalized interest on the
24 '03s, it's capitalized interest on the '98s. It's we don't
25 want to have to pay anything for the next three years, even

1 though we have guarantees, so let's borrow and pay that debt
2 service. And then it's the professionals. That's the last
3 category, and you can see, we spelled out exactly what each
4 professional got paid.

5 SENATOR FOLMER: Okay. Thank you very much.

6 And my last question, real quick, would be, would
7 you briefly comment on the 2003, quote, "City Council Fund,"
8 on page 48 of the forensic audit?

9 MR. GOLDFIELD: I can't, because that wasn't part
10 of my responsibility. I only know what I've read in the
11 report.

12 SENATOR FOLMER: Okay.

13 MR. GOLDFIELD: I would suggest that we can go
14 back to the people who prepared that portion of the report and
15 submit a response or comment at a later date, if that would be
16 satisfactory.

17 SENATOR FOLMER: I guess it would have to be.

18 Thank you very much.

19 MR. GOLDFIELD: Or there will be other people that
20 you could ask that question that maybe could answer it.

21 SENATOR FOLMER: I'll keep that open. Thank you.

22 CHAIRMAN EICHELBERGER: How about a follow-up on
23 that: Have you ever seen a special projects fund in any other
24 case?

25 MR. GOLDFIELD: No.

1 CHAIRMAN EICHELBERGER: Do you have any idea in
2 total, which I think I've seen this figure, but I just don't
3 remember. I don't know if you know off the top of your head,
4 how much through the years went to professionals through all
5 the borrowings, all the swaps?

6 MR. GOLDFIELD: I'm going to say that we did the
7 best that we could, and we took sources that were publicly
8 available and made available to us, and it's not complete
9 because we didn't get everything that we would need to make it
10 complete. But I'm going to point to an exhibit that is
11 Exhibit H, as in "Harry," that takes from 2003 only to 2010
12 only and shows by professionals, by firms, et cetera.

13 It gets tricky, and this is the swap question,
14 right? So in a swap transaction, not everything you pay to
15 the swap counterparty is fee. There are aspects of it that
16 are volatility risk that you have to pay for, there's fee. If
17 you're off-market, you may have to pay for that, and vice
18 versa. So when you see numbers, you know, you can't go with a
19 broad brush and say they made \$2 million on those caps. Or
20 how much they made on the -- and what's hidden in swaps is
21 that if it's off-market, meaning that it's not priced right on
22 the market that day, they can get paid over time through a
23 couple basis points in interest rate. And on a \$92 million
24 swap over 30 years, that's a huge amount, and that doesn't get
25 reported anywhere. That's calculated.

1 So what you see here is at best a really strong
2 effort at taking everything that we got from everyone that
3 volunteered, taking everything we got from the Harrisburg
4 Authority, and taking all of the transcripts of all of these
5 bond issues, poring over them and compiling them in this
6 exhibit.

7 CHAIRMAN EICHELBERGER: Thank you. How about one
8 last question for me is could you walk us through and explain
9 how this works, where it's stated and what document we follow
10 and how things should work as far as payments? So when we see
11 all this refinancing that's happening over the years, in a
12 recent example you just discussed where the county was made
13 whole, the city was made whole, and so on, the order of how
14 people should be paid, the protections involved in the
15 indentures, and so on, just typically how it works, not
16 necessarily specifically in this case.

17 MR. GOLDFIELD: Yeah, typically is better than
18 this, because this is, as Senator Folmer said, I'd say that
19 the Harrisburg Parking Authority and this indenture structure
20 are two of the more complicated ones I've had the pleasure of
21 reviewing.

22 We tried to do this, Senator, and it's really
23 difficult to follow. I'm saying that, and I wrote most of it,
24 because there are so many buckets and so many priorities.

25 I'm going to answer your question, but I'm going

1 to point to page 123 of the audit that says "Priority of
2 Bonds." Because the first place that I would look as a
3 professional is, there's all these bond deals. Are they on
4 parity? Which means they're all equally treated, or I think
5 lawyers like to use Latin words like *pari passu*. Or they're
6 senior and subordinated bonds. And not within, necessarily,
7 the purview of the committee, but certainly within the purview
8 of the report was in my experience, you have a strong
9 additional bonds test that is another gatekeeper to prevent
10 the continual issuance of debt that you could never repay.
11 And in my experience, either the professionals put that in for
12 a revenue producing facility. For instance, you've got to be
13 able to look back, and that's what it usually is, it's usually
14 a look back and a look forward, one year or two years, and
15 meet a 1.2 times, a 1.3 times coverage ratio, meaning not only
16 did I pay my operations and my debt service, but I had 30
17 percent more than I even needed. So even if I have a little
18 problem next year, the amount that it goes down by will not
19 disable me from paying my debt.

20 So the rate covenant was 1 times. Why? The only
21 answer could be that the bonds were being underwritten and the
22 bonds were being insured on the basis of the GO guarantees,
23 because you don't do that on a revenue-producing facility.
24 You always know that expenses can go up and revenues can go
25 down and things are volatile and you need coverage. So you

1 need coverage so that your rates are set to cover every year,
2 and you can't incur more debt unless you're paying for your
3 existing debt. That's basic contractual security structure,
4 not legislative, not statutory. That's basic.

5 The way that the trust indentures get convoluted
6 is that they do say that if you're not covering at least 1
7 times, meaning I paid my debt service this year, you can't
8 issue more debt. And how could you issue more debt if you
9 can't even pay what debt that you have? But you needed some
10 certifications, some engineering certifications to give
11 comfort to the trustee. And apparently, they didn't feel that
12 they could get them, and so they issued subordinate bonds,
13 meaning not on a parity with the '98s. So the '98s were
14 senior, the 2003s were issued knowing that they had to market
15 the 2003 D, E, and Fs, and they were made not even subject to
16 the pledge of the revenues, and that's how they got out of the
17 additional bonds test. And they did that again in 2003 D, and
18 they did that again in 2007.

19 And so you have these layers of subordinate debt.
20 And it's a workaround contractually that works. Is it
21 financially prudent? That's a different question. The
22 subordinate debt additional bonds test that I would typically
23 see in a deal like this is less coverage than the senior debt.
24 If you're going to issue debt on a parity, I want a 1.3 times
25 coverage; subordinate debt, 1.10. I want at least 10 percent

1 more than I needed to do this. The subordinate debt covenant
2 in these contracts was nonexistent. As long as it wasn't on a
3 parity, you could do it. It didn't matter. And that's how
4 they rolled this out through the 2000s.

5 Another gatekeeper that professionals, contract
6 structure, underwriters, advisors, you know, issuers that know
7 these kinds of things could have incorporated, not in the
8 deal.

9 CHAIRMAN EICHELBERGER: Senator Folmer.

10 SENATOR FOLMER: Just real quick. This is a
11 little bit of a hard question and such for you to answer, but
12 what, if anything, should we be doing to prevent such problems
13 in the future? Do we need to change any laws as a legislative
14 body? Do we need more openness, transparency, and
15 accountability? Do we need to add criminal penalties to
16 existing laws? What do we need to do so this doesn't ever
17 happen again?

18 MR. GOLDFIELD: I'd like to suggest that what
19 you're doing is so important to us because it will help us
20 figure out an answer to that question.

21 SENATOR FOLMER: Okay.

22 MR. GOLDFIELD: There are many people who we would
23 love to have talked to and found out, you know, really what
24 were the problems? You can't legislate good financial taste.
25 You can't require professionals to do, you know, certain

1 things. So I don't know if this is going to come down to a
2 legislative fix until we hear, really, from everyone else and
3 get the rest of the documents. We have pockets. So my
4 thoughts now I think are premature, but I would welcome a call
5 from you after this process ends with the exact same question.

6 SENATOR FOLMER: Okay, will do. Thank you very
7 much.

8 MR. GOLDFIELD: Thank you.

9 CHAIRMAN EICHELBERGER: And one quick follow-up
10 from Senator Blake.

11 SENATOR BLAKE: It's a follow-up on that question,
12 and I think you've spoken to the issue that your forensic
13 audit, you didn't have the ability to compel compliance, and
14 whether or not we should, as a legislative body, consider
15 asking the Auditor General to look into it in a deeper
16 fashion, because he would. Is that a worthwhile request that
17 we should make of the Auditor General's Office?

18 MR. GOLDFIELD: Pardon me, may I ask you to repeat
19 that?

20 SENATOR BLAKE: I'm just saying that you didn't
21 have the ability to compel compliance. You asked; if you got
22 it, you got it and you used it. Should we consider, as a
23 committee, reaching out to the Auditor General's Office to
24 take a deeper look where he may have the ability to compel?

25 MR. GOLDFIELD: No one's ever asked me a question

1 like that before. I believe, and the people that I've worked
2 with believe, that it would be helpful to get the complete
3 picture to avoid a recurrence. And we're trying to also look
4 forward and say, doubtful that anything like this will ever
5 recur, but are there lessons that could be legislated? And I
6 just don't know, there's the tension between the kind of
7 palliative effect of getting the entire story out, and I don't
8 know if we'll ever get the entire story out, because there's a
9 lot of people that have representation now in civil
10 litigation, and I think people are going to be very
11 circumspect about what they share in light of where everything
12 is right now.

13 So the question is, is that, you know, if it
14 didn't have a cost and I knew that it could happen, and it
15 could happen without an extraordinary amount of effort, you
16 know, there's a lot of people that would like to see that, it
17 would have a cost, and the longer that this is discussed and
18 there's no conclusion to it, you know, the more difficult it
19 is for people to move forward.

20 SENATOR BLAKE: I understand, and I appreciate
21 your care in that response. The issue is cost benefit. I
22 mean, there is already quite substantial learning in the work
23 that's been done here, and I think things that we could act on
24 in the learning that we've had this morning and in your
25 testimony. So the question is whether or not we could, I

1 think, have sufficient information to make the appropriate
2 changes, and that's the issue.

3 MR. GOLDFIELD: Yeah. Yeah. And if I may, I
4 think the forensic investigation touches on a lot of issues,
5 and as I said, we went down a lot of rabbit holes, and I'm
6 suggesting that other people might, if there's this
7 comprehensive review of everything, it might make sense to
8 pick off a few of the issues that were raised but couldn't
9 come to conclusion that are most troubling and focus on a
10 priority list, as opposed to trying to figure out everything
11 that happened because it's such a long period and there are so
12 many different issues that have been raised.

13 SENATOR BLAKE: Very good. Thank you, sir.

14 CHAIRMAN EICHELBERGER: Okay, we're tremendously
15 behind schedule here. Our first witness, that's not a good
16 sign for us, but we knew this would be somebody we wanted to
17 take some time with, so we greatly appreciate your time, Mr.
18 Goldfield, and all the work that you've done. We've all read
19 the report, and many of us have had discussions with you prior
20 to this, so that we know the time that you've put into this
21 and your continuing effort.

22 And Mr. Morris, thank you for being here today.

23 MR. MORRIS: Thank you.

24 CHAIRMAN EICHELBERGER: We appreciate that very
25 much as well.

1 When I was in elementary school, I believe they
2 gave us 20 minutes for lunch is all we got, and that's about
3 what -- I think we can do that today as adults. If we get
4 back here at about 20 till 12:00, we'll try to get caught up
5 on our schedule and everybody can get a quick break. Thank
6 you. 20 until 1:00, I mean.

7 (Whereupon, the proceedings were recessed at 12:20
8 p.m., and were reconvened at 12:40 p.m.)

9 CHAIRMAN EICHELBERGER: I call the Local
10 Government hearing back to order. We have our next witnesses,
11 and we were offering oaths or affirmations, and we didn't do
12 that for the first group because they were both legal counsel.
13 Today we have, I believe, two or three in the second group
14 that are attorneys, so we would only need to issue that to Mr.
15 Reddig. So would you like to affirm or swear?

16 (Whereupon, FRED REDDIG was duly sworn.)

17 CHAIRMAN EICHELBERGER: We welcome a group from
18 DCED - Mr. Reddig and Bernadette Barratini and Tim Anstine.
19 And I ask you to start your presentation, thank you.

20 MR. REDDIG: Thank you very much, Chairman
21 Eichelberger. Thank you for the opportunity to provide
22 testimony today on the Local Government Unit Debt Act. Also
23 with us today is Tim Anstine, Deputy Chief Counsel for DCED,
24 who currently administers the Local Government Unit Debt Act.
25 And I'm going to refer to the Debt Act by its acronym, LGUDA,

1 just to try to save a little bit of time as we go through.
2 And also with us is Bernadette Barratini, former Deputy Chief
3 Counsel in the Department of Community and Economic
4 Development who administered LGUDA during her tenure with
5 DCED.

6 I'd like to first of all provide a brief overview
7 of debt-related issues from a local government perspective.
8 The majority of local governments need to borrow at some point
9 in order to fulfill their responsibilities in providing for
10 the health, safety, and welfare of their residents. Prudent
11 debt management is an important part of municipal financial
12 management and the overall administration of a municipality.
13 It involves planning, budgeting, accounting, and public
14 relations. Proper debt management can mean the difference
15 between controlling debt and being controlled by it.

16 If and when a municipality incurs debt, it should
17 do so only with proper planning and an awareness of the impact
18 the debt will have on its overall finances. Debt commits
19 future revenues to its repayment, requiring elected officials
20 to make appropriate provisions far into the future. Without
21 proper perspective and preparation, a municipality's debt, as
22 with any household budget, could get out of hand and create
23 financial difficulties.

24 It is also possible to back unconsciously into a
25 difficult financial position by accumulating year-end

1 deficits, much like a household may overextend its use of
2 credit. Proper debt management can avoid these problems.

3 There is no hard-and-fast rule for determining
4 when to borrow. Local officials must make that decision given
5 the circumstances, the community's priorities, its financial
6 capacity, and other available options. However, there are
7 some general guidelines to follow in making those decisions.

8 First, consider how the borrowed money will be
9 used. Will the borrowed funds be used for long-range public
10 purpose? Local governments may only spend money for public
11 purposes. Furthermore, with only a few exceptions, State law
12 permits local governments to borrow only for capital projects.
13 The exceptions are borrowing to fund a unit's unfunded
14 actuarial accrued pension liability, self-insurance policy, to
15 pay for a countywide reassessment of real estate, or to borrow
16 in anticipation of the receipt of tax and other revenues
17 during the current fiscal year to address cash flow needs.
18 With court approval a local government may also issue unfunded
19 debt to pay off unpaid prior years' obligations or legal
20 judgments.

21 Second, only incur debt to finance a project that
22 returns benefits to the community throughout the term of the
23 debt. In other words, the public should reap the benefits of
24 the project at least as long as it takes to pay for it. State
25 law limits the life of a debt issued to 40 years or the stated

1 useful life of the project, whichever is shorter. As part of
2 a capital budget process, bonds with a term of 30 years can be
3 issued to fund the current portion of a capital budget even if
4 all of the items included in the budget do not have useful
5 lives of 30 years. For example, fire trucks or public works
6 equipment.

7 Third, carefully weigh the alternatives to
8 borrowing. Does the municipality qualify for grant funding?
9 Such grants might finance a portion or all of a project. If a
10 decision is made to pursue a grant, be aware that there may be
11 matching provisions, as well as other regulations and
12 requirements. Can the municipality comply with these
13 requirements? Would the costs of complying outweigh the
14 benefits?

15 If a particular project is not needed for a few
16 years, another option is to create a capital reserve fund, a
17 special fund into which moneys are regularly deposited in
18 anticipation of capital projects. This fund could be used to
19 reduce or eliminate the need to borrow, thereby saving
20 interest dollars.

21 Fourth, consider financing the project from
22 current revenues on a pay-as-you-go, or pay-go, basis.
23 Perhaps the costs could be met by levying a one-time tax or
24 fee, as another alternative.

25 There are two general approaches to financing

1 capital needs in a municipality. One is the pay-as-you-go, or
2 pay-go, basis. And the second is a pay-as-you-use, or
3 borrowing, basis. Some of the factors to consider with either
4 - from a pay-go basis, municipalities must immediately face up
5 to fiscal realities rather than borrow to defer costs. Pay-go
6 encourages municipalities to take a harder look at the need
7 for projects and the costs involved before undertaking them.

8 Avoiding debt affords municipalities greater
9 flexibility in times of economic downturns because future
10 resources are not committed to paying debt. Municipalities
11 would not be saddled with debt service payments during the
12 times they are least able to afford it. During recessions,
13 capital costs can be cut by postponing projects or reducing
14 outlays without harming current operations. Interest costs
15 are also avoided. The total interest on every \$1,000 issued
16 at 5 percent amounts to approximately \$1,580 over 20 years.
17 The pay-go approach avoids this cost. Borrowing capacity is
18 also saved for times when the municipality actually needs it.
19 And finally, debt is not passed on to future generations.

20 Factors to consider on a pay-as-you-use, or
21 borrowing, basis include: As revenues increase over time, the
22 fixed costs of debt repayment will represent a smaller portion
23 of total revenues. Paying debt should become easier over
24 time. Projects that are currently needed should not be
25 delayed unnecessarily because of low current revenues. This

1 is especially applicable to new or growing communities.
2 Postponement of projects might delay the municipality's
3 development and retard growth in its tax base. Borrowing
4 insures that new residents and future generations using the
5 facilities help to pay for them, as future taxes or user fees
6 go towards debt service. And also, during times of inflation,
7 the dollars used to repay the debt are worth less than the
8 dollars borrowed.

9 Having a formal capital improvement program and
10 budget process that is integrated into a local government's
11 annual budget process, along with a formal debt management
12 program, are best practices that will provide a multi-year
13 focus to address infrastructure needs in a planned and
14 fiscally responsible manner, and if followed, maintain a
15 municipality's fiscal integrity. LGUDA sets forth the
16 procedures to issue the various types of debt and defines
17 responsibilities until the debt is paid.

18 The procedures to follow when issuing debt may
19 seem complex and intimidating, though they are important in
20 insuring the fiscal stability of local governments. The
21 Pennsylvania Department of Community and Economic Development
22 is responsible for the administration of the Local Government
23 Unit Debt Act, to provide guidance to municipalities on
24 borrowing-related matters, and acts on filings that are made
25 pursuant to provisions of the act.

1 And I'm now going to turn to my colleague, Tim
2 Anstine, who is going to walk you through the various
3 provisions of LGUDA. Tim.

4 MR. ANSTINE: Thank you, Fred.

5 I've prepared a PowerPoint presentation that
6 contains the substance of what I'm going to tell you because I
7 figured you would need that. It's difficult to absorb a lot
8 of this. It's kind of detailed, but I wanted to give an
9 overview of the LGUDA and how it works and how it affects the
10 local government units, and then talk a little bit about what
11 the role of DCED is in that process.

12 And to start with, it's important to understand
13 that the source of the debt limits that we have now are found
14 in the Pennsylvania State Constitution. The 1968 Constitution
15 included a provision that required the General Assembly to
16 enact debt limits that would be based upon a borrowing base
17 determined by the revenues of the local government units.
18 Prior to this time, my understanding is that the Constitution,
19 the Pennsylvania Constitutions that preceded the 1968
20 Constitution, included the debt limits in the Constitution,
21 and they were based on an assessed valuation of the local
22 government units. In other words, the debt could not exceed a
23 certain percentage of the total assessed valuation of the
24 property in the local government unit. So the '68
25 Constitution changed that manner of calculating the debt

1 limits because I assume it was thought that the revenues that
2 the local government unit earned from its taxes would be a
3 better reflection of how much debt capacity it could have.

4 It's also interesting to note that the
5 Constitution includes the exclusion for self-liquidating debt
6 that we've talked about or that you've heard a lot about
7 today. That is found in the Constitution. So in response to
8 the Constitution, historically, I believe the Senate in 1968
9 or '69 appointed a commission to develop the LGUDA statute,
10 and it took several years to do that. And then finally, in
11 1972, LGUDA was enacted by the State legislature. It's been
12 amended several times since then, and it was reenacted and
13 codified in 1996. But there haven't been that many
14 significant changes, with the exception of the swap provisions
15 that were discussed this morning.

16 Now, under LGUDA, LGUDA governs local government
17 units, and those are typically your counties, your townships,
18 your boroughs, and your school districts. It also would
19 include any Home Rule Charter local government unit that
20 received its charter after July 12, 1972. Importantly, any
21 municipal authorities or industrial development authorities,
22 other kinds of authorities, they are specifically not
23 considered to be local government units, and the debt that
24 they incur is not subject to the limits of the Debt Act.

25 That's correct. Let me go back and add that the

1 City of Philadelphia is also not covered by the statute, or
2 the county, but the school district is in Philadelphia.

3 Under LGUDA, debt is classified in several ways.
4 First of all, the debt has to be incurred for a specific
5 project, a type of project that's one of the ones that are
6 enumerated in the Debt Act. The most common types of projects
7 that we see are for the construction and acquisition of
8 buildings and other facilities, infrastructure such as sewer
9 projects, any purchases of equipment - police cars and fire
10 engines, and so forth. The other big type of project that we
11 see are refunding projects, where as you heard this morning, a
12 local government unit has incurred debt and then they refund
13 it at a later point, usually to reduce debt service on the
14 original debt.

15 The act also specifies the costs that could be
16 paid for with debt that is incurred, and it's a fairly broadly
17 defined definition of project costs. Essentially, any costs
18 that are necessary for the acquisition of the construction of
19 the project, professional fees with no stated limitation in
20 the definition, capitalized interest up to one year following
21 the completion of construction of the project is permitted as
22 a cost, and what's called reasonable initial working capital
23 in order to operate the project that's being financed.

24 Under the Debt Act, the types of debt is further
25 classified as either electoral debt, nonelectoral debt, or

1 lease rental debt. Electoral debt, as the name applies, is
2 debt that's approved by the voters in the local government
3 unit, and there are no limits on that kind of debt. As
4 provided in the State Constitution, any debt that's been
5 approved by the taxpayers, there's no limit to it. That's a
6 fairly rare type of debt. We don't see many proceedings filed
7 for electoral debt.

8 The biggest category is what is called
9 nonelectoral debt, which is when a local government unit
10 issues debt directly for a project that it is undertaking.
11 General obligation bonds, and so forth.

12 The third type is what's called lease rental debt,
13 and that term I think is a historical term because
14 historically, I think, in the 1940s there came into play the
15 Authority -- what is called the Authority method of financing.
16 And that was with the creation of municipal authorities to do
17 utility type projects that were not on the books of the local
18 government unit, but where the local government unit was
19 leasing the project back from the Authority that financed it,
20 and there were payments being made by the local government
21 unit to the Authority under lease agreements. So in effect,
22 the taxpayers were paying that debt through the lease payments
23 that were being made to the Authority. And so the term lease
24 rental debt came into play to describe that category of debt,
25 but it also includes any other agreements, such as a Guaranty

1 Agreement, as we see in the case of the City of Harrisburg,
2 where a local government unit is guaranteeing debt that's been
3 incurred by an authority. And those are fairly common types
4 of debt financings that we see.

5 Once you get beyond the broad categories of debt,
6 you get into the types of debt instruments that are issued by
7 the local government unit. They can be general obligation
8 bonds or notes, which I would say is the most common type of
9 debt instrument that we see. These are bonds or notes that
10 are backed by the full faith and credit and taxing power of
11 the local government unit. You can have revenue bonds and
12 notes, which are bonds or notes, the security of which is a
13 pledge of the revenues that are being generated by that
14 particular project. And then beyond that you could have
15 guaranteed revenue bonds and notes, where the principal
16 payments on the bonds are going to come from the project being
17 financed. But if there's a shortfall in those revenues, the
18 local government unit is backing the debt with its full faith
19 and credit and taxing power.

20 And I've given an example of a proceeding for a
21 general obligation note. In 2011, Bedford County issued
22 \$4,685,000 in general obligation bonds to finance an emergency
23 management system in the county. An example of revenue bonds
24 and mortgages was the -- we had Intermediate Unit 1 in
25 Fayette, Greene, and Washington Counties issued \$3 million in

1 revenue bonds to finance renovations to the central offices.

2 Now, there's a further classification by which
3 debt can be classified, and that is the time period to which
4 the debt relates. Most of the debt proceedings that we see
5 are for long-term projects. As Fred indicated, the Debt Act
6 does contain a provision that limits the maturity of debt to
7 the lesser of either the useful life of a project or 40 years.
8 And there's a requirement in the Debt Act that when a local
9 government unit is financing a capital project, that they must
10 obtain a realistic estimated useful life of the project, so
11 that we can determine whether or not the maturity is
12 satisfactory. But there is an overall limit of 40 years,
13 regardless of the useful life of the project.

14 Second, there is a type of debt called unfunded
15 debt, which Fred alluded to, and this is where basically the
16 local government unit does not have the tax revenues that it
17 needs to pay its current operating expenses. It's
18 miscalculated, and there's essentially an emergency type
19 situation. And in that case, the Debt Act allows for the
20 local government unit to go into the local Court of Common
21 Pleas and apply for approval to fund its unfunded debt. And
22 that's what that's called, funding unfunded debt.

23 And there's limits that the court will look at to
24 allow that kind of debt to go forward. There's criteria that
25 have to be established, and there's a limit on 10 years on a

1 maturity of that debt. And I'll talk a little bit more about
2 that later.

3 The third type of debt is an even shorter term
4 obligation, and these are tax anticipation notes, or tax and
5 revenue anticipation notes, which are issued in the current
6 fiscal year to kind of tide the local government unit over
7 until it receives its tax revenues, because their expenses are
8 more or less level throughout the year, but their tax receipts
9 may occur only once or twice in the course of the year, so
10 they need a short-term financial instrument to help them kind
11 of bridge the gap. And those are, as I said, short-term
12 instruments. They must mature no later than the end of the
13 current fiscal year.

14 Having given that kind of broad overview of the
15 types of debt, we get then to the debt limits that are
16 imposed. And as I said, the Constitution required that the
17 General Assembly base these on a percentage of the revenues,
18 of the recent revenues of the local government unit. Under
19 LGUDA, the borrowing base of the local government unit is
20 deemed to be the average of the total revenues of the local
21 government unit for the three fiscal years immediately
22 preceding the year that the borrowing is being made. And
23 total revenues is defined in the act to include mostly tax
24 revenues and any other revenues that are coming in to the
25 local government unit, exclusive of subsidies that it might

1 receive from the Federal or State government that are for a
2 particular project, interest on sinking funds or reserve
3 accounts that it may have to pay project costs, and money from
4 the sale of capital assets. Because those are deemed to be --
5 they're nonrecurring types of income, so it wouldn't make
6 sense to include them in the borrowing base.

7 And when a local government unit borrows, it must
8 calculate its borrowing base and certify that to our
9 department. And I have an example on page 17 of the handout.
10 I apologize for the difficulty in reading this. I thought
11 that these would be projected. But this was the borrowing
12 base submitted by Aleppo Township in Allegheny County in
13 connection with a borrowing that they made I believe last
14 year. And it basically sets forth and certifies what their
15 total revenues have been for the prior three years and
16 determines what the average of those revenues are.

17 Now, once you have the borrowing base of a local
18 government unit, the debt limit is then calculated as a
19 percentage of that borrowing base. And I've given them on
20 page 18, actually on page 17 and 18, the debt limits for
21 nonelectoral debt are, again, in the case of Philadelphia
22 School District, it's 100 percent of the borrowing base, 300
23 percent of the cap for a county, and 225 percent of the
24 borrowing base for a school district other than Philadelphia.
25 That's the debt limit for nonelectoral debt, those mostly

1 Now, the act does include certain provisions to
2 allow a local government unit to exceed its debt limits.
3 There is a specific provision for counties that have
4 countywide responsibility for certain programs, and they are
5 allowed to exceed their debt limit up to 100 percent of the
6 borrowing base. And on page 24, the top slide there, it lists
7 the specific types of programs that would allow for an
8 increase in debt: Hospitals, flood control, air and water
9 pollution control. These are, you know, projects that are
10 going to broadly benefit the county and its inhabitants, and
11 the determination was made that there should be a higher debt
12 limit allowed for those special projects.

13 The second kind of shall we say manner of
14 exceeding the debt limits would be in the case of emergency
15 debt. And that would be as shown on page 25, when it's
16 necessary -- when a local government unit is at its limit for
17 borrowing, but it absolutely needs to borrow for one of the
18 reasons listed on page 25. Basically, there's going to be a
19 threat to public health or safety. And again, there's a
20 procedure in the act where the local government unit has to
21 petition the Court of Common Pleas and go in and basically
22 make its case that it should be entitled to incur debt in this
23 emergency.

24 And then the next type of debt that exceeds the
25 debt limit is the unfunded debt, which I had started to talk

1 about a little bit earlier. And again, this is where a local
2 government unit finds that it's unable to pay its current
3 operating expenses, or the expenses of a prior year that might
4 have gotten rolled over into the current year, and the Debt
5 Act has a provision for them to go into court and make its
6 case that it should be allowed to fund that. And they must
7 establish that they're unable to raise sufficient tax revenues
8 to pay the obligations either because of the tax limits
9 imposed on them, because of the timing in the fiscal year, or
10 because it's somehow not in the public interest to do so. And
11 I'm not aware of any emergency filings that have been made
12 since I've been doing LGUDA. I don't know, Bernadette, if you
13 have. It's very rare, I would say, for unfunded debt.

14 But we did have example, actually, of Lackawanna
15 County in 2011. We received proceedings where they borrowed
16 \$21 million to fund unfunded debt to pay current operating
17 expenses and outstanding debt.

18 The procedural requirements for borrowing are set
19 forth in the act. And essentially, if you're going to have
20 electoral debt, there's a procedure that the local government
21 unit goes through to have that referendum put on the ballot
22 and have the results of that election certified to the
23 department. In addition to that, and in all other cases,
24 generally the local government unit must first enact either an
25 ordinance or a resolution after public notice of that fact

1 authorizing the debt. And the ordinance is both an
2 informational tool for the local government unit citizens, and
3 it's the way that the local government unit officially starts
4 the process of incurring debt. And they're required to
5 publish a notice of the ordinance not less than 3 and not more
6 than 30 days before the meeting at which the ordinance is
7 going to be enacted, and then once the ordinance is enacted,
8 they have to publish another notice within 15 days stating
9 that it has been enacted, and in both advertisements must
10 provide that the ordinance is available for public inspection
11 at the government unit's office.

12 Our role in this, DCED filings, the act provides
13 what are called the proceedings, debt proceedings. And those
14 are essentially the paperwork that's done in connection with
15 the debt incurrence. It would be copies of the advertisements
16 of the public meeting have to be submitted to us, a copy of
17 the ordinance, a copy of the agreement with the underwriter or
18 the bank to make the loan or buy the bonds from them. A copy
19 of a debt statement, which is to be a certified copy or a
20 certified statement of all of the outstanding debt that that
21 local government unit has, as well as the borrowing base
22 certificate. In addition, if they want to have exclusions
23 from the debt for self-liquidating or subsidized purposes,
24 they have to file an exclusion report that's been prepared by
25 an appropriate professional, most commonly an engineer,

1 stating that the revenues from that project will be sufficient
2 to pay the debt service. And so forth.

3 The legislative history for LGUDA indicates that
4 the submission to DCED and the approval was intended to serve
5 three purposes. One, which was to be a check on the debt
6 limits, and I guess this would be the most important. An
7 accuracy check to make sure that the local government unit is
8 not exceeding its debt limits. The second purpose was to
9 provide finality to the proceedings. That is to say that they
10 couldn't be challenged in any manner, so that the bonds can be
11 sold and debt can be incurred by municipalities without the
12 uncertainty that that might ensue if they could be challenged
13 at a later date. And indeed, the Debt Act provides that once
14 we have approved the proceedings, they cannot be challenged,
15 and unless there had been a taxpayer complaint filed before
16 our approval.

17 But once our proceedings are approved, once the
18 DCED approval is given to those proceedings, they are deemed
19 to be final and they cannot be challenged in any court
20 proceeding at law or in equity or in any civil or criminal
21 litigation. So the proceedings themselves and the debt that's
22 incurred it was felt important that it be given finality. We
23 didn't want any uncertainty in the capital markets, which
24 would make it more expensive and difficult for local
25 governments to borrow if the proceedings could be challenged.

1 The third reason for the filing with us is to
2 provide a manner for collecting data on a statewide basis to
3 know in fact what the debt load is of all the local government
4 units in the State, and we maintain on our Web site, and
5 before that we had written records, detailed records of all of
6 the debt incurrences by the local government units in the
7 State. So when they file with us, the most common error that
8 is made in the filings is that there is a discrepancy between
9 the debt statement that they file with us and what our
10 official records show as being the debt that they have
11 incurred. Either they have some debt on there that we didn't
12 know about, or we have something showing on our debt records
13 that they did not include in their debt statement. So that's
14 the most common source of error that has to be worked out
15 before we can give our approval.

16 The act specifies that we have 20 days to, from
17 the time that we receive the proceedings, to act on them.
18 There is a provision for an additional 20-day extension, if we
19 feel that we need it, but I'm not aware of that having been
20 used recently, in any event. So the point to be made here is
21 that these proceedings come to DCED fairly late in the
22 process. The local government unit has already had their
23 public meeting, they've already incurred the debt by enacting
24 the ordinance, they've entered into an agreement with the bond
25 underwriter to sell the bonds or with a bank to make the loan,

1 they have all of their project contracts ready, they've got
2 everything that they need to go, and we're sort of the last
3 thing that happens before they close on that loan.

4 And the legislative history indicates that the
5 20-day period was put in there because at that time the
6 average time between signing an agreement with a bond
7 underwriter and going to settlement was 30 days, so they
8 thought that 20 days would be sufficient. If we don't act on
9 it in that time, the proceedings are deemed to be approved.
10 And we don't like that to happen, and I don't think it ever
11 has happened. We either act on them to approve them within
12 that 20-day period, or we notify the local government unit
13 that there's some deficiency in their filing, and that stops
14 that 20-day period from rolling on, until the deficiencies are
15 corrected.

16 And once they are corrected and we deem that
17 everything is fine, we issue a certificate of approval. Now,
18 with respect to what we do when we get these proceedings,
19 because of the limited amount of time and the volume of these
20 that we get, I think I have a slide in here on page -- just to
21 put this in context -- on pages 34 and 35, you can see the
22 number of these, it's typically over a thousand a year. So
23 we're getting 20, 30 proceedings a week from local government
24 units. We're really reviewing to see whether they've dotted
25 their I's and crossed their T's. We're not inquiring into the

1 wisdom of the project that's being undertaken. We're not
2 second-guessing engineers. If it's an exclusion proceeding,
3 we want to make sure that they have an engineer's report and
4 that it contains all of the things that are required by the
5 act, but we're not in a position to second-guess that.

6 The other thing that's required, as was discussed
7 this morning, once a local government unit has incurred debt
8 and has had it excluded on our debt records from their debt
9 limits, when they later incur debt, they have to tell us, they
10 have to certify that those earlier exclusions are still in
11 force; or if they're not, they have to tell us that
12 circumstances have changed and that they can no longer claim
13 those exclusions. But that's a requirement -- it's the only
14 requirement in the act now that allows any kind of monitoring
15 of exclusions that were granted in the past.

16 And we rely entirely on what they tell us. It's
17 typically a one-line certification in their debt statement
18 saying that we certify that there have been no changes that
19 would cause those exclusions to be reduced, other than through
20 the normal payment on the debt. You know, amortization of the
21 debt, which would reduce the exclusion. So we look at it to
22 make sure that everything is done, we evaluate the ordinance
23 to make sure that the project that's being funded is one of
24 the projects that a local government is allowed to enact.

25 There are provisions in the Debt Act that govern

1 how the debt can be structured over time. They're generally
2 required to have approximately level debt service on their
3 debt, except for the lease rental debt. And what that means
4 is, the thought was, in reading the legislative history, that
5 when a local government unit incurs debt, they didn't want
6 schools and townships and so forth to be able to incur debt
7 where they put off a lot of the burden into later years and
8 onto boards, maybe school boards that are going to be in power
9 later. They didn't want to burden those later bodies with the
10 responsibility for that debt. They wanted the debt load to be
11 fairly even.

12 Now, they are allowed to what we call wrap their
13 debt. In other words, they may have four or five different
14 issues of debt outstanding, and we would look at them in the
15 aggregate and see, when you put all of the debt load together,
16 is it an approximately level debt load? So that's one way of
17 allowing them to structure their debt, an individual debt
18 issue that may not be level, but when you take it in
19 conjunction with all of the other debt issuances, it's still
20 an approximately level debt service on a local government
21 unit.

22 Now, as Bernie just stated, the big exception here
23 is that those provisions having to do with level debt service
24 do not apply to lease rental debt. And if you'll recall, when
25 there's lease rental debt, the actual debt is being issued by

1 the Authority, Harrisburg Authority, or whatever. The LGUDA
2 provisions do not apply to the debt that's issued by the
3 Authority, and there's no provision that requires that that
4 level debt service requirement be passed, you know, also apply
5 in the case of authority debt that's being guaranteed. So in
6 the case of Harrisburg, it sounds like there was not level
7 debt service, that a lot of it was shoved off to the end, and
8 it wouldn't have been a matter that we would have looked at,
9 because we have no jurisdiction over the Authority's debt, and
10 that level debt service requirement is not applicable to lease
11 rental debt.

12 Finally, I just wanted to touch on a couple of
13 kind of ancillary issues related to LGUDA to give you just a
14 broader understanding. There are some additional kinds of
15 debts that are authorized in the statute. One is for small
16 borrowings for capital purposes. A local government unit is
17 allowed to borrow up to \$125,000, or up to 30 percent of its
18 nonelectoral debt limit, without coming in to seek our
19 approval to do so. And this is commonly used to buy police
20 cars, things like that. The aggregate amount of that debt
21 cannot exceed, as I said \$125,000, and the maturity of the
22 debt cannot exceed five years. And it can only be used for a
23 capital project, such as the purchase of equipment.

24 And I've given an example there where Dravosburg
25 Borough in Allegheny County borrowed \$50,000 to purchase a

1 dump truck. They're not required, again, to get our approval,
2 but typically they will let us know that they've done that so
3 that we can amend our debt records and have them as complete
4 as possible.

5 And I think I've already talked about tax and
6 revenue anticipation notes and the fact that they're
7 short-term financial instruments. They have to be, again,
8 they do not require the approval of the department, but the
9 local government unit is required to file with us a
10 certificate, let us know that they've done this and file a
11 certificate of the tax revenues and other revenues that they
12 expect to receive, which would then support the issuance of
13 the tax anticipation note, or the TRAN.

14 And then I did want to touch basically on the swap
15 provisions that were discussed this morning. The 2003
16 amendments to LGUDA authorized the local government units to
17 negotiate and enter into these qualified interest rate
18 management agreements, including swaps and interest rate caps
19 and collars, agreements that are intended to manage their
20 interest rate risk. I would echo what was said earlier about
21 the ability of most officials, most local government officials
22 and school board members to not understand really what they
23 are entering into. I don't think a lot of professionals
24 really understand them. The local government unit is required
25 to retain an independent financial advisor when they enter

1 into these what are called CRMAs, but it doesn't seem like
2 it's worked out a lot.

3 Again, they're not required to get our approval
4 for these swap agreements. They are required to let us know
5 that they've entered into them, and we maintain in our files a
6 log of all the swap agreements that have been entered into by
7 the local government units. And I think I have the number
8 here. Since 2003, we've received over 700 swap filings
9 relating to over 700 different debt issues. It's fallen off
10 dramatically lately because of the interest rate environment.

11 That concludes my presentation. I would be happy
12 to take any questions that you may have.

13 CHAIRMAN EICHELBERGER: Ms. Barratini, are you
14 going to speak as well, or are you just here to answer
15 questions?

16 MS. BARRATINI: Well, I think Tim's pretty much
17 covered the process. Again, the department looks at what's
18 contained in the documents that are in the debt proceedings
19 and the exclusion proceedings, and unless there is a taxpayer
20 complaint which would raise issues, and then there is a whole
21 administrative process for that, and there was none filed
22 regarding any of the incinerator deals, or unless there's
23 something that on the face of the documents just jumps out at
24 you, or your debt calculations show a problem, there really
25 isn't any way for the DCED people involved in the review to

1 know what's going on behind the scenes.

2 The department does have limited jurisdiction, and
3 this has been upheld by various court decisions, Commonwealth
4 Court and so on, in regard to taxpayer appeals that have come
5 through the department over the years that we do not have the
6 ability to second-guess the local government officials in
7 their wisdom to do a project. Whether we agree with it or
8 don't agree with it, it is not the department's job. They
9 have no ability to second-guess those types of things. So
10 basically, it's a review for compliance with the statutes and
11 a check of the debt limits and the debt statement information.

12 With regard to exclusion proceedings, the statute
13 does require that the exclusion report be prepared by an
14 architect, engineer, or other person qualified by experience
15 in relation to the project. So, for example, with a golf
16 course, a county golf course, you may see a golf course
17 manager preparing the project. With a sewer project or water
18 project, usually it's the project engineer. With the
19 incinerator project, my understanding is by the time they got
20 to Barlow, that was the only entity that was or persons who
21 were involved in that particular type of design model. It was
22 something, as I understand, that was new and innovative. And
23 so, yes, Barlow did do the exclusion report in 2003. And
24 again, that is not uncommon to have the project engineer on a
25 water project or sewer project prepare the exclusion report,

1 because they're the ones that are most involved in the project
2 and would know the details.

3 It does have to include a projection of revenues
4 and expenses covering the life of the issue, and there is
5 provision in that section, which is Section 8026 of the Local
6 Government Unit Debt Act. That's the checklist for what you
7 need to file with the department in order to obtain an
8 approval of exclusion proceedings. It does allow you to
9 include other available funds - its rights, rents, assessments
10 to the users, and any other available funds.

11 So, for example, with a sewer project or water
12 project, if you were getting a PennVest grant or USDA grant,
13 you could include those funds. Or if you had reserve
14 accounts, anticipated earnings over the years, they can make
15 certain adjustments to include other available funds related
16 to the project. So it's not just ultimate users' assessments
17 when they actually do their projections of revenues and
18 expenses.

19 If you have any questions, I don't have any
20 specific independent recollection of -- I did the reviews for
21 Harrisburg in 2003 -- well, I've been doing LGUDA reviews
22 since the mid-'80s, for about 26 years. I retired from the
23 State in April. And as Tim said, there would be maybe 700 to
24 1,200 a year. The staff would usually consist of me, or in my
25 absence, another attorney in the office would be my backup

1 when I would go on vacation. But usually it would just be me
2 and a legal assistant, and some periods of time I didn't even
3 have a legal assistant. So the department staff is very
4 small. None of us, and I know my predecessor, nobody that has
5 been involved in administration of LGUDA has ever been an
6 engineer or architect or a person trained with incinerator
7 projects or retrofits. So it's basically a legal review of
8 the documentation to make sure it meets the requirement of the
9 statute.

10 In terms of project description, we go by what is
11 -- your debt ordinance has to identify what you're borrowing
12 for. That's a requirement in the statute. It has to identify
13 the project or projects you're financing, the amount you're
14 financing, the useful life or useful lives, if they're capital
15 projects. So we go by, or the department would go by the
16 description of the projects in the debt ordinance.

17 Now, the department has checked and they don't
18 have the actual proceedings, for example, from 2007. They
19 just have what their computer record -- a computer record is
20 created since the mid-'80s, we've had this in place. A
21 computer record is created when debt proceedings are filed,
22 for each debt proceeding. And that would indicate data is
23 entered as the reviews are done, which would indicate a
24 description of the project as contained in the debt ordinance.
25 So for -- I don't have the actual debt proceedings. They're

1 not kept. The statute, I think, requires the department to
2 actually keep the proceedings for only maybe four months. So
3 the department's record is the computer record.

4 And for example, the \$30 million 2007 Guaranty
5 Agreement, it's a retrofit project including a working capital
6 component of the retrofit completion project. So there was
7 some reference, obviously, in that ordinance to the completion
8 of the retrofit project, which would be a capital project,
9 including working capital or working capital component.
10 They're not required by statute to give you a breakdown of
11 costs. They don't have to tell you X dollars is going to pay
12 attorney's fees, X dollars is going to pay engineering fees, X
13 dollars is going for this project cost, and this is for
14 working capital. No breakdown is required. They just have to
15 identify projects which meet the definition or definitions in
16 the Debt Act, and that's what the department reviews.

17 I don't know if you have any questions.

18 CHAIRMAN EICHELBERGER: I do. How about I ask my
19 colleagues first.

20 Senator Blake.

21 SENATOR BLAKE: Thank you, Mr. Chairman.

22 Thank you so much for your being here and for your
23 testimony. It's good to see you. I appreciate, Tim, in
24 particular, the detail of your walking us through the LGUDA
25 framework. There's a couple of things that I said at the

1 outset of the hearing about trying to identify either
2 weaknesses in the statute. You might have just identified one
3 with respect to what we require under statute. But I think
4 that the situation here is, and I'm not sure that the Chairman
5 would disagree with me, is an issue of the outputs coming from
6 the department are only as good as the inputs upon which you
7 rely. It would appear to me, in the case of this project in
8 particular, you have competent professionals who are making an
9 assessment who are providing you the necessary documentation
10 associated with disposing of it in terms of its legality. And
11 you also have, in the case, Tim, in the latter part of your
12 presentation with respect to the swaps, an independent
13 financial advisor that makes some assessment of it.

14 The thing that I, and I guess I should say that
15 your testimony affirms the testimony we just got from Attorney
16 Goldfield about your capacities and about your role, and it is
17 limited, and it's understood. I think probably the thing that
18 I'm going to ask of you, and I'm not sure how well you can
19 comment on this, but I'm going to put it out there, this issue
20 of the lack of coordination, if you will, between a municipal
21 authority's actions and those of a local governing body, this
22 issue of exclusion and self-liquidating debt, and I guess the
23 issue of the reach of LGUDA. The only reason that anything
24 ever came to you was a function of the guaranty, not on the
25 base of the actions of the Authority itself. So a couple

1 question. Let me start with one easier one.

2 One of the things we learned in the previous
3 testimony is that typically the projects that you'll do that
4 will be self-liquidating debt are probably a sewer authority
5 or water authority, where the revenue streams seem to be
6 reasonably predictable based upon the cost of the services
7 being provided. How distinctive was this project? How many
8 LGUDA requests do you get involve projects outside of that
9 realm that are dealing with revenue streams that are a little
10 bit less predictable than perhaps a sewer authority?

11 MR. ANSTINE: I defer to Bernadette. I mean, I've
12 been administering LGUDA for about six months, and I haven't
13 seen anything.

14 MS. BARRATINI: This type of project, I mean, I
15 don't remember really seeing anything quite like this one. I
16 mean, it was unique. Again, you could get -- there have been
17 a few over the years, counties with golf courses. You know,
18 they would, again, use a golf course -- the manager of the
19 golf course to prepare the revenue projections. But the most
20 common are clearly sewer and water projects.

21 SENATOR BLAKE: Understood:

22 MS. BARRATINI: You just don't see a lot of this
23 incinerator financings.

24 SENATOR BLAKE: I guess the other thing I'm
25 curious about has to deal with these 810(b)--

1 MS. BARRATINI: 8110(b).

2 SENATOR BLAKE: 8110(b). If they are going to be
3 certified to the department, in the case of the City of
4 Harrisburg, they would have had to have been certified by the
5 local governing body of the city, is that correct?

6 MS. BARRATINI: They're considered part of the
7 debt statement. When they hand in -- file the debt statement,
8 a statement indicating their outstanding debt, taking whatever
9 lawful deductions they're entitled to under the Debt Act to
10 come up with their net debt figure, they have to -- that has
11 to be prepared within 60 days of filing with the department,
12 it has to be verified under oath or affirmation, meaning
13 verified under notary or under municipal seal.

14 Section 8110(b) certification, at least where it's
15 located, that requirement is located in the Debt Act. That's
16 in the debt statement section of the act.

17 SENATOR BLAKE: Okay.

18 MS. BARRATINI: So usually, it's signed off by
19 whoever signs off in the debt statement, and that's usually
20 the secretary/treasurer and the president of council, or it
21 could be the auditor or comptroller, you know, depending on
22 the type of entity - school district, municipality, township,
23 whatever. It's usually a combination of those officials that
24 sign off.

25 SENATOR BLAKE: Just as a point of clarity though,

1 in the case of a municipality, the mayor and council would
2 have to agree to this by ordinance? It would be embedded in
3 that action by a local government? The local governing body
4 would be certifying something to you based--

5 MS. BARRATINI: Well, no, the debt statement is
6 just prepared -- usually in your debt ordinance, you're going
7 to have an authorization of certain officials to prepare,
8 certify, and file the debt statement and borrowing base
9 certificate. So whoever they've authorized in their debt
10 ordinance to do that, that's who's going to sign it. Usually,
11 you'll see, like with the City of Harrisburg, I believe it was
12 probably the mayor and controller. With a school district, it
13 may be president of the school board and the secretary, or
14 secretary/treasurer. Sometimes it's done, if they have
15 auditors, they'll have the auditor do the borrowing base
16 certificate and the debt statement. But it's whoever is
17 authorized in their debt ordinance or debt resolution.

18 SENATOR BLAKE: So the officer is charged or
19 authorized to do so in their debt resolution. Okay. I
20 understand.

21 MS. BARRATINI: Right.

22 SENATOR BLAKE: I guess, again, in the interest of
23 time, Mr. Chairman, I'll defer to you. Thank you very much.

24 CHAIRMAN EICHELBERGER: Thank you.

25 Senator Folmer.

1 SENATOR FOLMER: Thank you very much. Given what
2 you've said and told us, it sounds like DCED's review is
3 mostly to be sure the paperwork is complete, but not
4 necessarily accurate. And if that answer is yes, what's the
5 value of a clean certification? The process obviously didn't
6 help with the Harrisburg finances. So what's the purpose of a
7 clean certification if -- especially after what you just told
8 us?

9 MR. ANSTINE: Well, not only with respect to the
10 certification, but with respect to everything that's in the
11 debt proceedings, whether it's the project description, or the
12 exclusion report that's done by the -- the figures that are
13 provided to us as far as their revenues and the borrowing, we
14 rely entirely on what's told to us, and if we can't rely on
15 it, then there should be procedures or there should be a
16 method of correcting that, but we do rely on the accuracy and
17 the truth of what's presented to us.

18 MR. REDDIG: Senator, I would offer that I think
19 that the value in it is the value that it has for the borrower
20 going into the credit market. The credit market is looking at
21 some -- looking at compliance issues with the act, and that
22 translates into a value of marketing those bonds in the
23 capital marketplace.

24 SENATOR FOLMER: Okay, but if that is all correct,
25 then what are the penalties for filing an inaccurate,

1 misleading, or false certification to the department?

2 MR. ANSTINE: The act itself does not include any
3 provisions. The original version of LGUDA, the draft that was
4 prepared in 1972, had a very strong perjury provision in it.
5 That was removed from the act, and the only real mention is in
6 the section that deals with the finality of the proceedings.
7 As I mentioned earlier, once we give our approval, the
8 proceedings cannot be challenged. There is an additional
9 section that says that although the proceedings may be final,
10 it does not relieve anybody from liability for fraud, I
11 believe it's fraud--

12 MS. BARRATINI: Yeah. I'll have to find that
13 section.

14 I do have to say, though, when that was recodified
15 in 1996, we were told the intent was not to change anything
16 substantively, just to recodify. But something may have
17 gotten lost in the recodification process, because clearly the
18 language is not quite as strong now.

19 MR. ANSTINE: It says -- the section giving
20 finality says it "does not relieve any person participating in
21 the proceedings from liability for knowingly participating in
22 an ultra vires act," meaning one beyond the authority of the
23 government, "...or from any civil or criminal liability for
24 false statements in any certificates filed or delivered in the
25 proceedings."

1 So the liability has to come from some other
2 source, but it's not in the act itself.

3 SENATOR FOLMER: Okay. And because of time, I
4 just want to move along here, and thank you for that answer.

5 When the certifications for Harrisburg incinerator
6 were reviewed by DCED, were there any concerns or red flags
7 that gave you pause before the certifications were approved
8 for any of the bonds? Because you just said this project was
9 unique. So were there any meetings, discussions, or other
10 special efforts needed for DCED to be satisfied the
11 certifications you received for the Harrisburg incinerator
12 were indeed self-liquidating debt?

13 MS. BARRATINI: Okay, when I say unique, I mean I
14 don't recall any other relating to incinerator project.

15 SENATOR FOLMER: Okay.

16 MS. BARRATINI: In terms of the uniqueness of the
17 equipment or whatever Barlow had designed, I learned about
18 that afterwards, subsequently, as more information came out in
19 newspaper articles. But at the time, it was an incinerator
20 retrofit -- they had an incinerator that had a facility, and
21 they were making improvements on it in 2003.

22 SENATOR FOLMER: Thank you.

23 MS. BARRATINI: And the person that happened to
24 fill out -- complete the exclusion report happened to be the
25 person that was going to be making the improvements. So I

1 can't honestly say it jumped out as a red flag as it would
2 now, knowing what we know now.

3 SENATOR FOLMER: Okay.

4 MS. BARRATINI: And all the other information that
5 Mr. Goldfield mentioned about what was going on behind the
6 scenes or breakdowns of how much was capitalized interest, how
7 much was working capital, how much was fees, again, that
8 wouldn't be part of -- they're not required to disclose that
9 in their filings. That wouldn't--

10 SENATOR FOLMER: Which leads me to my--

11 MS. BARRATINI: --have been part of--

12 SENATOR FOLMER: I'm sorry. I don't want to
13 interrupt you. Please forgive me.

14 MS. BARRATINI: I'm finished.

15 SENATOR FOLMER: Which leads me to my last
16 question for you. You said on August 31, 2011, Dauphin County
17 issued a revised certification for DCED for the Harrisburg
18 incinerator. From DCED's perspective, and given the ongoing
19 questions about the Harrisburg incinerator, is this reissued
20 certification significant?

21 MS. BARRATINI: I'm sorry, I'm missing -- could
22 you run that by me again?

23 SENATOR FOLMER: Right. On August 31, from what
24 we received, on August 31, 2011, Dauphin County reissued a
25 revised certification to DCED for the Harrisburg incinerator.

1 My question is, from DCED's perspective, and given the ongoing
2 questions about the Harrisburg incinerator, is this reissued
3 certification significant?

4 MS. BARRATINI: I don't know what you mean by a
5 "reissued certification." You mean in relation to a new
6 borrowing?

7 SENATOR FOLMER: Well, they revised it, according
8 to what we have here.

9 MS. BARRATINI: I'm not sure what you're -- that
10 they have a new debt issue? Are you -- I don't know what
11 you're referring to.

12 SENATOR FOLMER: He's going to bring it down to
13 you.

14 MS. BARRATINI: Okay.

15 (Document handed to witness.)

16 MR. ANSTINE: Just to expand a little bit on an
17 earlier point, the way this works is the local government unit
18 provides us with duplicate sets of proceedings that we review.
19 We keep one, and then we stamp approval on the other one and
20 send it back, and that becomes part of the official transcript
21 for that bond proceeding. So the fact that we don't have
22 those proceedings from the earlier years, they're still
23 available. The parties should have them.

24 MS. BARRATINI: Okay, you're, I assume, referring
25 to the highlighted part?

1 SENATOR FOLMER: Yes.

2 MS. BARRATINI: Okay. When you file a debt
3 statement, and if you've had exclusions approved in the past,
4 you can choose to claim them, but you don't have to, unless
5 you need them in order to remain within your debt limits.
6 Dauphin County didn't need them in 2007. I don't believe they
7 needed them to claim them now. So they choose not to claim
8 them. That's not really -- it just says they have elected not
9 to utilize this exclusion in connection with this debt
10 proceeding.

11 What Mr. Goldfield was talking about when he was
12 talking about a Clean 8110(b) certification, or revising it
13 downward, that would be one where they would come in and they
14 would want to claim, say, at least a portion of the
15 incinerator debt exclusions, and they would say, you know, at
16 this time -- instead of certifying there's no change in
17 circumstances, they would say something to the effect that due
18 to reduced revenues, only 40 percent, or exclusions in the
19 amount of X dollars, can be excluded. That's not what
20 happened here with Dauphin County. This footnote just says
21 they're just not going to use them in this debt proceeding.

22 SENATOR FOLMER: Okay. So is that what the
23 revision was all about then?

24 MS. BARRATINI: Pardon?

25 SENATOR FOLMER: Is that what the revision was all

1 about then?

2 MS. BARRATINI: Well, I assume by 2011 they
3 weren't going to use them because--

4 SENATOR FOLMER: Okay.

5 MS. BARRATINI: --they knew it wasn't -- I'm just
6 guessing.

7 SENATOR FOLMER: Okay.

8 MS. BARRATINI: But the fact remains, once they're
9 approved doesn't mean you have to use them.

10 SENATOR FOLMER: Okay.

11 MS. BARRATINI: You only have to use them if you
12 need them because of debt capacity.

13 SENATOR FOLMER: Well, thank you for answering
14 that.

15 Okay, I'm done.

16 CHAIRMAN EICHELBERGER: Okay. It seems to me like
17 we have a lot of -- I think we have a lot of work to do with
18 what you folks do on a regular basis. If we're going to look
19 at this problem comprehensively from a statutory basis, and
20 constitutionally, we've got to try to firm things up one way
21 or another. I didn't know that you have no idea where the
22 money goes, apparently. Right? They don't have to tell you?

23 MS. BARRATINI: Other than the description, the
24 general project description.

25 CHAIRMAN EICHELBERGER: Yeah. So if 99 percent of

1 it goes to fees and 1 percent goes to construction, that's
2 okay.

3 MS. BARRATINI: That's supposedly up to the
4 determination of the elected officials to determine how they
5 spend their money.

6 CHAIRMAN EICHELBERGER: Right.

7 MS. BARRATINI: Right.

8 CHAIRMAN EICHELBERGER: Do you have any ideas for
9 us? I have a couple of specific things, but do you have any
10 general ideas then? That may be one. Do you agree that
11 that's something we should maybe ask for upfront, give us more
12 specifics about the breakdown of money?

13 MR. ANSTINE: Certainly couldn't hurt.

14 CHAIRMAN EICHELBERGER: At least there would be
15 something on the record that the public would have to say that
16 this is what was asked for. We'll have to get through that.
17 But particularly with the Unit Debt Act and with DCED's review
18 policy, any specifics you have, we would appreciate it. You
19 don't have to necessarily give them to us now, unless you have
20 something that jumps out at you. But if you can give that to
21 the committee, Senator Blake or I, we would appreciate that.

22 Has there been -- I know you do hundreds of these
23 a year. How many of these are turned down every year?

24 MS. BARRATINI: Well, the way the process has
25 worked, I assume it's still the same since April. When a

1 review is done, if there's something that's not in order, the
2 local government unit, through their representative, whoever
3 made the filing on their behalf, is contacted in writing and
4 told, you know, we have this problem, or we need this
5 information or this correction, and they're given an
6 opportunity to make a correction. Most, you know, I would
7 have to say 99.9 percent of the time they're corrected.

8 CHAIRMAN EICHELBERGER: Right. That's what I
9 would--

10 MS. BARRATINI: And very, very few--

11 CHAIRMAN EICHELBERGER: If ever, that are turned
12 down.

13 MS. BARRATINI: Right. And the most common reason
14 for kicking them out is if you don't -- that first notice
15 requirement is very specific as to timing and content, and
16 there have been a couple of instances where I had to say, you
17 have to start all over because you didn't give the proper
18 notice in accordance with the Debt Act. But a lot of the
19 other errors are things that they can correct. They can amend
20 their ordinance or resolution, or they can correct their debt
21 statement. They can file supplements to their exclusion
22 proceedings to address whatever items have been raised by the
23 department.

24 CHAIRMAN EICHELBERGER: You didn't recall any, you
25 had said earlier, when you first began, that you don't have

1 any specific recollections of this filing?

2 MS. BARRATINI: No. As I said, I would look at
3 between 700 and 1,200 a year, so.

4 CHAIRMAN EICHELBERGER: Yeah.

5 MS. BARRATINI: I mean, I know I've reviewed
6 Harrisburg City's. I know I didn't review all of Dauphin
7 County's, but I've reviewed some over the years, but I
8 couldn't tell you which ones, off the top of my head. But I
9 did review Harrisburg's.

10 CHAIRMAN EICHELBERGER: If you knew today -- if
11 you knew then what you knew today, what you know today, would
12 it make any difference in your decision approving filings?

13 MS. BARRATINI: Well, obviously, from what Mr.
14 Goldfield testified, they had problems going back into the
15 1990s. Yeah, I mean. But then again, I guess I'd have to
16 ask, you know, from where did that information come? I mean,
17 is the department supposed to be reading newspapers? Because
18 it's more than just obviously here. We're located in
19 Harrisburg. You know, we see the Patriot News or Penn Live.
20 But what about throughout the rest of the parts of the State?
21 A lot of what I learned subsequently about the project came
22 through newspaper articles.

23 CHAIRMAN EICHELBERGER: But what you just told us
24 was, though, even if you knew that, you couldn't do anything
25 about it.

1 MS. BARRATINI: Well--

2 CHAIRMAN EICHELBERGER: I mean, if they certified
3 that this is the case, then that's what you have before you to
4 make your decision. Correct?

5 MS. BARRATINI: I imagine I would ask about it,
6 but, you know, if they come back and say, you know, we've
7 certified this as correct, I don't know what you do.

8 CHAIRMAN EICHELBERGER: Do you have a process, if
9 somebody would call you and say -- well, you said--

10 MS. BARRATINI: The complaint process.

11 CHAIRMAN EICHELBERGER: --if you get a complaint--

12 MS. BARRATINI: Yes.

13 CHAIRMAN EICHELBERGER: --you can act on it. But
14 if you just heard something or you had some other knowledge
15 that wasn't an official complaint, what would you do? You
16 would probably just roll on it based on what you have before
17 you?

18 MS. BARRATINI: I think we would have to.

19 CHAIRMAN EICHELBERGER: Let me ask you this to
20 close here, because we're running behind schedule again. I
21 see three potential scenarios to try to help what you're faced
22 with on a daily basis. One would be that we beef up your
23 department and have a more thorough review process. I don't
24 know how -- that seems to me to be more remote. That's
25 costly, it would take a lot of time. I don't know how we do

1 that based on the numbers that you have every year that go
2 through your department.

3 Another one would be that we look at, have a more
4 stringent review process for people that maybe are over a cap
5 limit, some trigger somewhere in there that if they get to be
6 so much, then you do a review.

7 A third scenario would be, you continue with the
8 process you have, but there's real teeth in the afterlife of
9 the approval. If you learn things, if everything that we're
10 learning today is correct and you found out about this after
11 the fact, that there would be very severe penalties for
12 professionals or others that were involved in misrepresenting
13 things to the department. Do you think that would be a
14 significant deterrent?

15 MR. ANSTINE: I would say unquestionably it would
16 be a deterrent, significant penalties.

17 CHAIRMAN EICHELBERGER: Well, that's something we
18 can work on, I think.

19 Go ahead.

20 SENATOR BLAKE: Thank you, Mr. Chairman.

21 And thank you, again, to the three of you. The
22 issue of level debt not being applied to lease rental debt,
23 that analysis that you talked about that you do with respect
24 to, is that an improvement that we might want to consider,
25 where your analysis includes a look at the -- I guess what I

1 would call not general obligation, it would be municipal
2 authority's debt.

3 MR. ANSTINE: I think that would make sense,
4 Senator, since obviously, the city and the local government
5 unit is on the hook for the debt. Why shouldn't those
6 provisions also apply?

7 SENATOR BLAKE: Okay. And in agreement with the
8 Chairman, I think the issue of independent third party
9 reviews, which you really don't have the luxury to do, a
10 different threshold of review I think in regard to the -- what
11 you mentioned as the earlier exclusions sounds to me a little
12 bit here like you had something that happened way back when
13 that continued to follow each transaction. And we heard that
14 a little bit from the previous testimony. And there was a
15 reliance upon that that obscures the risk, in my estimation,
16 on the basis of following representations and projections that
17 were never questioned.

18 So again, per the Chairman, any recommendations
19 that can come from the department on how we can make it easier
20 and better for you to do the work that you do, and I do
21 commend you for the work that you do because I know how
22 important and how valuable it is. I know that municipal
23 officials across this Commonwealth depend on you, and that you
24 do extraordinary work within constrained resources. So let me
25 say that, and we'll revisit any recommendations that you can

1 provide the Chairman or I on ways to improve and omit the
2 prospect for this repeat anywhere in the State.

3 Thank you.

4 CHAIRMAN EICHELBERGER: One last thing, real
5 quick. You said a few moments ago, in response to Senator
6 Folmer's questions, about the liability for willful violations
7 or fraud. How is that triggered then? Who starts that? Is
8 that something that you could start on your own, or do you
9 need a complaint to start that, or how would that work?

10 MR. ANSTINE: We don't have any jurisdiction to
11 enforce those provisions. It would have to occur--

12 CHAIRMAN EICHELBERGER: Is that simply--
13 Go ahead.

14 MR. ANSTINE: It would have to occur either by a
15 taxpayer or the criminal complaints being filed. Attorney
16 General.

17 CHAIRMAN EICHELBERGER: Okay. Well, thank you
18 very much for being here today. You've been very helpful.

19 MR. ANSTINE: Thank you.

20 CHAIRMAN EICHELBERGER: Next, we'd ask Mr. Eric
21 Papenfuse, who was a former Authority member from the
22 Harrisburg Authority, to come up to the table.

23 Mr. Papenfuse, you're an attorney, or not an
24 attorney?

25 MR. PAPENFUSE: I am not an attorney.

1 CHAIRMAN EICHELBERGER: You sounded like you had
2 some pride in that response. I don't know.

3 MR. PAPENFUSE: I'm a small business owner, and I
4 am here willingly on my own to speak the truth.

5 (Whereupon, ERIC PAPENFUSE was duly sworn.)

6 CHAIRMAN EICHELBERGER: Do you have a presentation
7 for us?

8 MR. PAPENFUSE: I can make one. Yes, I wasn't
9 sure how you'd like to proceed.

10 But let me talk just a little bit. Today's an
11 important day to me because five years ago this month I stood
12 up and I urged then Attorney General Tom Corbett to
13 investigate a pattern of lawbreaking, of criminal behavior, at
14 the Harrisburg Authority. My calls for that investigation
15 were reported in the Patriot-News, on the television, and to
16 this day I don't think they've gone anywhere. We just ended
17 with DCED saying we would have needed a criminal complaint
18 with the Attorney General to actually effectuate some sort of
19 a fraud charge. Well, there were people at the time saying
20 that this was fraudulent, this was criminal, and the Attorney
21 General needed to investigate, because the Attorney General is
22 the one who is empowered under the Municipal Authorities Act
23 to regulate municipal authorities.

24 I'd like to look specifically at 2007, because
25 that is the period of time that I was on the Authority. I was

1 one of the appointees--I replaced Fred Clark on the
2 Authority--by city council. I didn't take my seat until
3 August of 2007. I called for the Attorney General's
4 investigation in September. I worked with the FBI and their
5 public corruption unit from September into October, and I
6 resigned from the Authority in November of 2007, after voting
7 against the working capital loan and after voting against the
8 Covanta loan and saying at the time, in public meetings both
9 at the Authority and in city council chambers, and to the
10 authorities, that the numbers didn't add up, that there was no
11 way that the debt should continue to be characterized as
12 self-liquidating.

13 And the issue of the 2007 debt, the fact that in
14 2007, at the same time a certificate is being filed which
15 basically says that the 2003 borrowings and the 1998
16 borrowings are still self-liquidating, you heard this morning
17 from the attorney who was speaking, there was no reason to
18 believe that at all. I'll turn you to page 106 of the audit
19 which he referred to this morning which basically says there
20 were 17 sets of financial projections that were run through by
21 the financial advisors in 2007. None of them, none of them
22 showed that the debt could have been characterized still - the
23 2003, and '98 debt - still characterized as self-liquidating.

24 So what I'm here to say is that there was a
25 deliberate, deliberate attempt perpetuated by a number of

1 different folks in 2007 to circumvent the Debt Act and to
2 essentially break the law to borrow money which we shouldn't
3 have been allowed to borrow. And that has, by law, that has
4 huge repercussions for the current state of the financial
5 crisis in Harrisburg, it has important repercussions for what
6 you all do. Because I firmly believe it's not a question of
7 whether or not you have laws on the books, it's a question of
8 whether or not there was any enforcement of those laws.

9 And the problem really lies, as the attorney said
10 this morning, that the professionals are the police. The
11 professionals were the police. The professionals were
12 policing themselves, and at no point would anyone step in and
13 basically say there are consequences for breaking the law.
14 And still to this day, that hasn't happened.

15 And I have to say as well, I'm deeply troubled by
16 the testimony that you just heard from Ms. Barratini, who I
17 don't know personally, but I can tell you I do have a specific
18 recollection in October of 2007 that then Authority Chairman,
19 James Ellison, and then bond counsel, Carol Cocheres, were
20 both very concerned that DCED would not accept the clean
21 certification letter that was filed, and that in fact they
22 would demand a downgrade. So those conversations occurred.
23 Presumably, they occurred between Ms. Cocheres and Ms.
24 Barratini.

25 She has no specific recollection of it, but I

1 think it strains credulity to say here today that she had no
2 real reason to believe that there was anything wrong, that she
3 didn't find out until later, based on what she read in the
4 papers, that there were problems with Barlow and the retrofit.
5 Those articles were published prior to the fall of 2007. And
6 I think if you drill down on the certification that was filed
7 in 2007, you'll see from the forensic audit that no one in
8 their right mind should have thought that the debt was
9 self-liquidating. No one, no financial advisor put forth any
10 set of projections that showed that it was self-liquidating,
11 and DCED certainly knew at that time the history of the
12 Harrisburg Incinerator and certainly should have stood up and
13 raised some red flags, and it was well within their
14 jurisdiction.

15 Now, Ms. Barratini is currently an attorney with
16 Mette Evans. Mette Evans -- she left the State to work for
17 them -- no one benefitted more from the 2007 borrowings than
18 Mette Evans. Mette Evans got paid, as the attorneys for the
19 county, hundreds of thousands of dollars from these
20 questionable working capital loans. Nobody benefits more to
21 this day from Ms. Barratini's decision to accept the clean
22 certification in 2007 than Mette Evans, arguably, because if
23 we weren't allowed to borrow the money and if Mette Evans was
24 knowledgeably pushing to file something that was fraudulent,
25 then the question becomes whether or not paying the money back

1 should fall on the backs of the taxpayers of Harrisburg that
2 had nothing to do with it, or there should be accountability
3 from the professionals that swore an oath to their profession,
4 as well as filed documents saying that this was, in fact, the
5 right thing to do.

6 If they're culpable and they're held accountable,
7 then theoretically Mette Evans could lose hundreds of
8 thousands of dollars and could be contributing to the
9 accountability fund, which is in the Receiver's plan. It was
10 part of Unkovic's plan that has been adopted by General Lynch.
11 There are provisions to recover money from the professionals
12 that were involved.

13 So the fact that she has been recently hired by
14 Mette Evans I think calls into question, at least it does to
15 me, her lack of specific recollection or her not recalling
16 conversations which I certainly recall, secondhand,
17 admittedly, because I've never met Ms. Barratini, and I think
18 you should call her back under oath to ask if she did speak to
19 Carol Cocheres at the time and why there aren't--

20 MS. BARRATINI: I would be happy to answer.

21 MR. PAPENFUSE: --and why there aren't records
22 that are kept five years into the future.

23 MS. BARRATINI: First of all, let me tell you --
24 first of all, I retired with the State in April. My decision,
25 I just up and retired. I turned 60 last year, had over 25

1 years in and decided to retire. I didn't even tell my husband
2 I was going to do it. I just went ahead and gave my notice.
3 I went home, I had not had any discussions or even
4 contemplated working. I had no discussions with anyone. I
5 had no one make any connections or contacts or calls or
6 e-mails or any kind of correspondence or contact whatsoever
7 with anybody about a job for me. I hadn't even thought that
8 far.

9 It wasn't till after I left, and I heard from a
10 lot of bond counsel through the State that I had worked with
11 over the years, including Mr. Unkovic, saying, oh, you know,
12 so sorry, it was a pleasure working with you, good luck; do
13 you know what you're going to be doing? That kind of thing,
14 after I left. And in the course of one of those
15 communications was asked, would you like to come in -- you
16 know, would you be interested in working? And if so, would
17 you like to talk to us? And I said, yeah, at some point, not
18 right now, but that would be something I'd be interested in
19 talking to you about. Again, I didn't have a job offer,
20 didn't even know if I was going to be working, had nothing to
21 do with the Harrisburg deal or any other deal.

22 Do you have any idea how many reviews I've done
23 over the years in the course of 26 years? I mean, this kind
24 of allegation is absurd. I happen to know a lot of bond
25 counsel through my work, but I never, during the course of my

1 employment with the Commonwealth, ever had dinner with them or
2 their spouses or significant others, didn't socialize with
3 them outside the office. I wouldn't even go to lunch with
4 them. I maintained -- I would see them possibly on occasion
5 at a few Bar Association functions maybe, and I didn't even go
6 to a lot of those.

7 But I had no prior arrangement, no connection, no
8 contact, no head-hunter doing a search, nothing whatsoever
9 before I left employment with the Commonwealth. So to try and
10 tie that in with any decision, any review I did in 26 years,
11 is just patently untrue and absurd. I'm sorry, but it is.

12 Now, if you have any other questions. I do not
13 recall specifically, and I told Mr. Goldfield this when I met
14 with him last year, I don't have any specific recollection
15 other than I know I reviewed debt proceedings for the city,
16 and I know I reviewed some but not all for the county. But I
17 don't recall the specifics of them. I reviewed a lot of
18 proceedings. I don't know what to say.

19 And yes, maybe there were articles here and there.
20 I didn't know that I read every single one of them or exactly
21 when I became aware there were problems, but if you're going
22 to rely on everything that's in the newspaper as true, I don't
23 know what the people who are now at DCED doing reviews, I
24 don't know what you're going to hold them to. But this kind
25 of allegation is just absurd and offensive.

1 they were doing.

2 What's interesting about 2007 is that you have
3 essentially a new cast of characters. You don't have anymore
4 working for the Harrisburg Authority: Dan Lispi, Andrew
5 Giorgione, even Steve Reed is marginalized at this point.
6 What you have is a takeover of the Harrisburg Authority by
7 James Ellison of Rhoads & Sinon, who is essentially running a
8 sort of new political campaign out of the Harrisburg
9 Authority, and that campaign is designed to get Linda Thompson
10 elected mayor.

11 And if you look at that graph that you've put out
12 which has the two lines showing when everything comes due,
13 those lines are after the mayoral election. And it was no
14 mistake, no simple accident that none of the bills came due
15 until after the mayoral election. The goal of James Ellison,
16 as expressed to me at the time, was to elect Linda Thompson
17 the next mayor, and that meant not upsetting the apple cart of
18 the incinerator's financings at that time and to push through
19 a plan which he admitted to me was something which we could
20 not pay for. And it's not just my opinion, it is the forensic
21 audit's conclusion that nobody thought that this could be paid
22 for.

23 I spoke out, I voted against it, I called on the
24 Attorney General to investigate, and I was contacted in 2007
25 by the FBI Public Corruption Office here in Harrisburg. They

1 told me they had an active, ongoing investigation into the
2 incinerator's finances and that I needed to work with them. I
3 proceeded to give them documentation, including at least all
4 of the copies that I had of the 17 sets of financial numbers
5 that show that this wasn't working, and I, in 2007, had every
6 expectation that they were the sort of investigative body that
7 was going to handle the enforcement of what I saw as a crime
8 being committed in front of my eyes. And they did nothing for
9 a fair period of time. They encouraged me to stay out of the
10 press and less vocal, which I did.

11 I did resign, I did write -- I did speak publicly
12 and I did write a resignation letter explaining that the debt
13 was not self-liquidating, which the Patriot-News did not
14 publish at the time. And then I was told that if I said
15 anything else publicly at the time, I would be prosecuted for
16 obstruction of justice by the then U.S. Attorney. I was told
17 that by Agent Eric Patterson, and the other agent who was part
18 of the public corruption unit here in Harrisburg was an agent
19 by the name of Tim Lynch.

20 As a private citizen, as not a lawyer, I felt that
21 at the time I did everything I could possibly do to alert
22 people to the fact that what was being done here was a
23 continuation of a deliberate attempt to circumvent the law.
24 And basically, since that time, I've dedicated my life to
25 creating a public space where people can come and hopefully

1 question their folks in their community who are their
2 politically elected leaders. I have spent my own fortune,
3 such as it is, on trying to run for office and trying to
4 reform what I see as a culture of corruption in which
5 basically the professionals are policing themselves. And
6 that's why I'm here today to speak out.

7 CHAIRMAN EICHELBERGER: Okay, thank you.

8 Do we have any questions from the panel here?

9 Senator Blake.

10 SENATOR BLAKE: Just one, Mr. Chairman.

11 And thank you for your candor, thank you for your
12 presence here, thank you for your commitment to your
13 community. I only want to ask one question: In the course of
14 the previous testimony, there was an avenue for taxpayer
15 complaint against the borrowing, and they indicated none were
16 filed. You never had a chance to, since you'd get into that
17 channel, if you will, of objection?

18 MR. PAPENFUSE: I was unaware that that was a
19 channel of objection open to me at the time.

20 SENATOR BLAKE: Okay.

21 MR. PAPENFUSE: I thought, and when you're told by
22 FBI officers that they have this investigation under control,
23 not to continue pressing for the Attorney General to
24 investigate, that in fact they've got an active, ongoing
25 investigation and not to speak out publicly, well, that's what

1 you do.

2 Now, I had to resign because I felt I was in a
3 completely untenable situation. It seemed to me that the FBI
4 was willing to continue to sort of watch the crime unfold,
5 continue to watch and make an effort to catch people in
6 action, and my personal inclination was to speak out and say
7 no, stop, stop, stop.

8 I resigned, I stayed quiet, and I did not say
9 anything about the investigation publicly then from 2007 until
10 2009, when I felt that the investigation was going nowhere.
11 And to this day, I do feel that the U.S. Attorney and the
12 Federal investigators have been a part of the problem and have
13 let down the people of Harrisburg. And I don't think that
14 they're particularly well-equipped to deal with matters of
15 very complicated financial procedures. They were always much
16 more interested in the fact that Steve Reed was taking tens of
17 thousands of dollars of money out personally from the Special
18 Projects Fund for questionable receipts and artifact
19 purchases, or they were more interested in finding out what
20 the dealers who had sold him the artifacts thought and whether
21 or not there was people profiting on the side than they were
22 about a clean certificate regarding self-liquidating debt.

23 These were guys in their 20s and 30s, and it was
24 complicated financial work. And I handed it all over to them
25 at the time, and they knew at the time that there was a group

1 of professionals and a group of individuals that were not
2 interested in following the law, and that law was the Debt
3 Act.

4 CHAIRMAN EICHELBERGER: Thank you.

5 Senator Folmer, do you have anything?

6 SENATOR FOLMER: Yes, just a couple questions.

7 Since the Special Project Fund is the, quote,
8 "Special Project Fund" is not part of the forensic audit,
9 where do we go to get that information?

10 MR. PAPENFUSE: I would be very happy to come back
11 and talk at a later point in time about the Special Projects
12 Fund. I think I, more than anyone else, have really
13 researched that issue and looked at the money that went in and
14 out of the Special Projects Fund. I did that on my time on
15 the Authority, and I made a lot of documents public.

16 It's my contention you can't understand the swaps
17 and how complicated and why they were done until you
18 understand that fees from swaps were used to pay for artifact
19 purchases. It's my contention you can't understand the real
20 issue of the intermingling of the school district, the Parking
21 Authority, the Harrisburg Authority, all under the leadership
22 of one political individual, until you see direct transfers
23 being dictated from the Parking Authority to the Harrisburg
24 Authority. You don't understand why Barlow failed until you
25 begin to see that money came out of the Resource Recovery Fund

1 to pay for artifacts that could have been used to hire a
2 financial person to check Barlow's books, or a project manager
3 to be out there and make sure what we're doing.

4 We're talking about over \$12 million over a
5 10-year period of questionable artifact purchasing, much of
6 which was not related to a Wild West museum, Egyptian mummies,
7 Summarian necklaces, questionable receipts, and tens of
8 thousands of dollars that went to the mayor personally,
9 personally as reimbursement for items that nobody saw, other
10 than the mayor, and that were listed in the inventory as being
11 unknown, whereabouts unknown, location unknown.

12 SENATOR FOLMER: And what are your recommendations
13 to hold the professionals accountable?

14 MR. PAPENFUSE: Well, you can't have the
15 professionals be the police. And maybe you do -- and I'm
16 sorry if my comments came across personally; again, I never
17 met Ms. Barratini, but maybe you do want some sort of rule in
18 place that says folks can't move from DCED as the regulators
19 to the very firms that they were regulating like that. Maybe
20 there should be time and distance between that.

21 I know it's a very small community, these
22 municipal finance experts and bond lawyers, that they all know
23 each other, but it's definitely part of the problem when
24 there's this shifting between DCED and the private
25 marketplace. I don't think you get that. That's one thing

1 that you can look to do.

2 I think, however, our law enforcement arms are
3 what let us down. I really don't believe you have a problem
4 with the law. You have a problem with nobody being willing to
5 enforce the law. I think the Attorney General could have
6 enforced the law, still could. Maybe you should contact the
7 Auditor General. Certainly, the U.S. Attorney could do
8 something. But part of what you can do through this hearing's
9 process is that you can bring people to the table who have not
10 yet cooperated with the forensic audit and get them to go on
11 the record. That's not prosecuting, that is establishing a
12 series of facts, which then those who are in the law
13 enforcement side of things can use to potentially make a case.

14 We have not heard from James Ellison. He has not
15 spoken, I don't believe he cooperated with the forensic audit.
16 He was the mastermind of the 2007 borrowings, along with the
17 county. We haven't heard from Chuck Zwally, we haven't heard
18 from Jay Wenger. These are folks that have not cooperated
19 with the forensic audit that knew what they were doing when
20 they were doing it and ought to be brought before you to
21 testify. And Carol Cocheres and Eckert Seamans.

22 You're dealing with some of the largest law firms
23 in the State, and part of what you should be concerned about
24 is not only that this happened in Harrisburg, but that the
25 very folks that did this are still professionals in the State

1 of Pennsylvania advising municipalities on how to file clean
2 certificates. What does that say, that nobody has been held
3 accountable from Eckert Seamans, or from Mette Evans, or from
4 Rhoads & Sinon, or from any of the other big firms that
5 benefitted professionally from these deals?

6 And that's what's in the forensic audit too.
7 You'll see it. The money wasn't going to fix the Harrisburg
8 incinerator. It was going to pay the professionals. And why
9 would the professionals stand up and stop the income coming in
10 unless they had some sort of strong moral sense of outrage,
11 which I believe that they should have had, but they had every
12 financial incentive to continue doing what they were doing.

13 And if DCED is going to take the position that
14 they are just bookkeepers who are not going to be reflective
15 of the public will or the legislature's will to effectively
16 take a look at these documents that are being filed, which
17 aren't just paperwork. These are statements of what is
18 believed to be true. These are legal filings that are being
19 made. If they're going to take that position, then you're
20 going to have to beef up or you're going to have to call for
21 the other enforcement arms of State government to step in.

22 So I would beef up DCED, I would put laws in place
23 to help regulate the professionals and their in-and-outs with
24 government and contributions.

25 I was also very concerned at the time that

1 professionals like Carol Cocheres, Bruce Barnes, who was the
2 financial advisor, were giving money -- this is not illegal --
3 but were giving money to the campaign committee for the mayor
4 at the very time that they were being awarded these contracts.
5 We have a real problem with that pay-to-play in the State of
6 Pennsylvania, and that's something that you could look at and
7 learn from as well.

8 But the number one thing that you can do is bring
9 people before you who haven't yet spoken to the public about
10 what happened, and I would encourage you to do that and let
11 the facts lead in the direction that the facts lead.

12 CHAIRMAN EICHELBERGER: Okay. Well, thank you
13 very much for coming today. We appreciate your help with this
14 hearing.

15 And next we have Mr. Fred Clark, who was also a
16 former Harrisburg Authority member.

17 Afternoon, Mr. Clark.

18 MR. CLARK: Good afternoon, Senator.

19 (Whereupon, FREDRICK CLARK was duly sworn.)

20 CHAIRMAN EICHELBERGER: Do you have any statements
21 you'd like to make?

22 MR. CLARK: No, I don't.

23 CHAIRMAN EICHELBERGER: Okay. We have, I'm sure,
24 some questions for you.

25 Would you like to start, Senator Blake?

1 SENATOR BLAKE: Hello, Mr. Clark. Thank you for
2 coming here and for your testimony. I guess -- I know you
3 don't have a prepared statement, but I guess I would ask you
4 for some perspective on your own experience at the Authority
5 and the decisions you faced on the record with respect to
6 these transactions that we've been discussing all day. Could
7 you give us a little historical perspective of your role on
8 the board, the period of time you served, and the decisions
9 that you made?

10 MR. CLARK: Well, I have to say one thing in that
11 Mr. Papenfuse is correct in one aspect: We do rely on the
12 professionals, lay people. I am not an attorney, I'm not an
13 architect, I'm not an engineer. I'm a public servant. And to
14 that degree, professionals we do rely on, and we trusted. So
15 as a member of the Harrisburg Authority, I've come to know,
16 and I've come to have grown much respect for those people that
17 advise us, who give us their legal, ethical, professional
18 opinion.

19 During the course of the time on the Harrisburg
20 Authority, the transitions surrounding the incinerator are
21 very, very sad. They're sad in the sense that we're here
22 today. And to that degree, I think that what you're doing
23 right now is very, very, very important, and that is trying to
24 get to the truth, trying to find out the facts, trying to
25 create laws and regulations and procedures and policies that

1 help from us getting into the situation that we are in today.

2 So from that degree, I think that today's hearings
3 serve a great public service.

4 SENATOR BLAKE: Thank you.

5 MR. CLARK: You're welcome.

6 SENATOR BLAKE: Thank you, Mr. Chairman.

7 CHAIRMAN EICHELBERGER: Senator Folmer.

8 SENATOR FOLMER: Thank you very much, and thank
9 you very much, Mr. Clark, for being here today.

10 On page 19 of the forensic audit, it states, and I
11 quote, "...former Authority Board member Fredrick Clark had a
12 conflict of interest arising from his dual roles as an
13 Authority Board member and as an employee of Reynolds.
14 Despite the identification of the conflict, Mr. Clark did not
15 resign from the Board, and the Authority awarded contracts (a)
16 directly to Reynolds, with Mr. Clark only abstaining from
17 votes...."

18 What are your comments or explanations for your
19 actions while you were a member of the Harrisburg Authority
20 board and as an employee of Reynolds Construction?

21 MR. CLARK: That's a very good question. I
22 appreciate you asking that. A couple of things. One is that
23 nobody, at any point in time, whole or in part, ever contacted
24 me from the forensic audit. No one. I mean, I'm named in the
25 audit, supposedly I have a conflict of interest, but no one

1 called me to find out, and I am right less than three blocks
2 away. So that's the first thing.

3 The second thing is this: At the time of this
4 vote of this procedure, one is that I had voted no. That's on
5 the record. That's a fact. Two, at the time of that vote
6 that you're referring to, I decided -- not the attorneys -- I
7 decided clearly not only to vote "no," but to recuse myself
8 from the vote, as should be reflected in that audit. I don't
9 have it in front of me, or the forensic audit, I'm sorry.
10 That I recused myself from it. That's a fact. That's what
11 they found, even though they never spoke with me.

12 Number three is that I read into the minutes, and
13 I don't know if that's reflected in it, but it should be, that
14 I read into the statement of the minutes that this vote is a
15 conflict of interest and that it pertains for me not to vote
16 or cast a vote affirmative yea or nay, and I did that. Now,
17 what the forensic audit, I believe, and correct me if I'm
18 wrong, states that I should resign from the board.

19 Since that time, I've spoken with a number of
20 attorneys. No one ever suggested, whole or in part, that that
21 would be the right thing to do, the ethical thing to do, or
22 the legal thing to do. At that time the right thing to do,
23 professional thing to do, the ethical thing to do, the legal
24 thing to do was to recuse myself and read into the motion why
25 am I recusing myself.

1 Now, there's another part to it, please, and I
2 won't take too much time. At the time of Reynolds doing
3 business with the Authority, I, Fred Clark, had never spoke to
4 one board member, one executive director, not the mayor, not
5 any official, whole or in part, about Reynolds doing business
6 with the Authority or Barlow. Never happened, not even with
7 Barlow. There's not one official. I would be happy at any
8 point in time to swear, take a lie detector test to that fact.

9 The other part: I never received one penny, one
10 compensation, no gift, no bonus, no nothing from Reynolds
11 Construction as it relates to them doing business with the
12 Authority. There's not one thing remotely close, and I would
13 be happy at any point in time to come back, take a lie
14 detector test, anything you would need to prove that.

15 SENATOR FOLMER: Thank you. My next question
16 then, Mr. Clark, is that beginning on page 48 of the forensic
17 audit, it talks about the 2003, quote, "City Council Fund,"
18 unquote, and notes "Reynolds," and you, and it says, quote,
19 "... (and Freddie) are getting paid \$1m and think they can
20 deliver the votes."

21 Would you give us your perspective on both this
22 fund and your involvement in that?

23 MR. CLARK: I don't really have any comments as
24 relates to the fund. I am -- I don't have it right in front
25 of me, but I am aware about the one sentence, I think it's

1 "Freddie and Reynolds Construction," da, da, da. I never
2 spoke with Mr. House; Mr. House never spoke with me. I chose
3 not to reach out to Mr. House or talk to Mr. House to find out
4 why he said such thing. I don't even know if Mr. House even
5 said such thing. I don't even know where he got that
6 information from. I never reached out to anyone, whole or in
7 part, to discuss why would you make such a statement?

8 Now, the other parts of that is that, if I'm
9 correct, and again, please correct me, because I don't have
10 that right in front of me, it's a conversation that's being
11 repeated from Mr. Giorgione in an e-mail to another party. So
12 even then it's third, fourth hand knowledge, if I'm correct.
13 He's saying that this person said this, and I'm repeating it
14 to another person. I think.

15 SENATOR FOLMER: Okay. Well, thank you very much.

16 MR. CLARK: You're welcome.

17 CHAIRMAN EICHELBERGER: Who did Rhoads & Sinon
18 represent in respect to the Authority? Because we have --
19 I'll tell you why I ask that.

20 MR. CLARK: Please.

21 CHAIRMAN EICHELBERGER: Because we have a legal
22 opinion here that was dated June 26, 2003, explaining that any
23 member -- "No member of the Authority or officer or employee
24 of the Authority may directly or indirectly be a party to or
25 be interested in any contract or agreement with the Authority

1 if the contract or agreement establishes liability against or
2 indebtedness of the Authority."

3 In other words, the mere fact that an Authority
4 member would be connected to a company that would be doing
5 business with the Authority would be illegal, and that would
6 be beyond simply an abstention from voting. In fact, it goes
7 on to explain that "It is of note that the Municipality
8 Authorities Section is self-executing and any contract or
9 agreement made in violation of the Section is void."

10 MR. CLARK: I'm not even aware of that document,
11 Senator. Not at all.

12 CHAIRMAN EICHELBERGER: You don't know who that
13 is?

14 MR. CLARK: But I don't know where.

15 CHAIRMAN EICHELBERGER: They must have had an
16 outside legal opinion, I assume, at the time.

17 MR. CLARK: Yeah. I've never seen it. I
18 apologize.

19 CHAIRMAN EICHELBERGER: Okay, let me ask you this.

20 MR. CLARK: Sure.

21 CHAIRMAN EICHELBERGER: I would like to know who
22 was guiding Authority members through this quagmire of all
23 this very complicated bonds and financial decisions that were
24 being made. We've heard a lot of reference today to
25 professionals calling the shots. What was it like when you

1 were on the ground there, when you were an Authority member
2 and things were happening and decisions were being made? Who
3 was really directing things and informing and explaining
4 things to the Authority members?

5 MR. CLARK: The executive director would make the
6 recommendation to the chairman, and the chairman then would
7 ask for votes upon that recommendation. There would be
8 presentations from the professionals, and those professionals
9 would be Mr. Lispi, Dan; would be Andy Giorgione; would be
10 Rhoads & Sinon, who would be counsel and special counsel. It
11 would be Milt Lopus and his company, who would be bond
12 counsel. It would be the attorneys and the architects and
13 engineers from those entities that were presenting their
14 services to us.

15 So at any given time on any given issue, you would
16 have five or six different professionals presenting the
17 rationale as to why the Authority should accept the
18 recommendation of the executive director through the chairman
19 of the board. So every time that there was a vote cast, there
20 were absolutely, unequivocally professionals there making a
21 case for why and what we were doing.

22 CHAIRMAN EICHELBERGER: In your personal opinion,
23 did you think this was a pretty coordinated effort, or were
24 they just -- everybody there was in perfect agreement that
25 everything was okay moving forward?

1 MR. CLARK: Absolutely. There was no evidence or
2 documentation or information to support contrary to what was
3 being recommended. By any of the professionals.

4 CHAIRMAN EICHELBERGER: Okay. Senator Blake.

5 SENATOR BLAKE: Again, thank you, Mr. Clark.

6 MR. CLARK: Sure.

7 SENATOR BLAKE: Two things.

8 MR. CLARK: Please.

9 SENATOR BLAKE: And forgive me for not knowing
10 through the date of the period of your service on the board,
11 but one of the big things that jumped out in the forensic
12 audit was the lack of a performance bond on Barlow. Could you
13 speak to that? Was that in your experience when you were on
14 the board during that period of time? There was a transition
15 between the requirement of a performance bond going into some
16 kind of alternative compensation to protect the Authority's
17 interest, and it turned out not to be protection enough, but
18 I'm wondering if you have any recollection of the
19 decisionmaking process or whatever process attended the move
20 from requiring a performance bond to waking up and finding out
21 we didn't have one when Barlow went out.

22 MR. CLARK: Okay. To answer your first question,
23 at no time, whole or in part, was it ever shared by anyone,
24 directly or indirectly, that what was being presented did not
25 have a performance bond. Nor was it asked. Nor would it be

1 something that any typical school board member or authority
2 board member or city council, county, would ask that type of
3 question. Now because, because one would obviously assume
4 that that would be in place.

5 Now, I would most likely think since then everyone
6 is asking that question before these type of deals. So up to
7 that point, having voted on a number of them, there was no
8 need, reason, expectation to ask that question. And I would
9 only imagine that all those transactions before that activity
10 all had that type of performance bond.

11 SENATOR BLAKE: I see. So it's an issue of the
12 professionals -- well, that they let us down with respect to,
13 I think, some of the certifications that went to the State,
14 but some of the professionals who were watching the store with
15 respect to the decisions of the Authority may not have been --
16 if it wasn't asked, you didn't get it. There was an
17 assumption of protection.

18 MR. CLARK: I'm not quite sure how -- well, let me
19 put it to you this way. I don't believe, and I don't speak
20 for any of these parties, I apologize. I don't believe city
21 council knew that there was not a performance bond. At least
22 I don't think so. They may, they may not. I'm not quite
23 sure. It was never discussed after all those hearings, months
24 of testimony, before it got to us. I don't think the county
25 commissioners may or may not have known, after months of going

1 back and forth, as to it. And then it comes to the Authority,
2 and we're casting the vote and the information is presented,
3 and the votes were cast. And it was not asked, and it was not
4 discussed, and it's not something that one would think about
5 asking, hey, by the way, does this have a performance bond?

6 SENATOR BLAKE: Understood. Thank you.

7 Thank you, Mr. Chairman.

8 CHAIRMAN EICHELBERGER: Senator Folmer, follow-up.

9 SENATOR FOLMER: Yeah, just one follow-up
10 question. In retrospect, Mr. Clark, do you think you were
11 given adequate information by the Authority staff and the
12 professionals to make informed decisions?

13 MR. CLARK: I believe that what was presented was,
14 in their opinion, the best course of action. I honestly
15 believe that. I honestly believe that hindsight being what it
16 is, you can look back and Monday-morning quarterback. We all
17 can.

18 SENATOR FOLMER: Right.

19 MR. CLARK: At that point in time, knowing all
20 those individuals, I have no reason to suspect, I have no
21 knowledge, whole or in part, to lead me to believe that the
22 attorneys from either Klett or Eckert or Mette Evans and
23 Woodside, or whomever, I don't know those individuals that way
24 that they would intentionally deceive, corrupt. I don't know.
25 I have no idea about that.

1 CHAIRMAN EICHELBERGER: And one last follow-up
2 from me, and that is, in respect to that, were you getting
3 some alternatives? I had asked a question earlier, I don't
4 know that you were here, about, for example, with the guaranty
5 fees that the city and the county were putting on the
6 Authority's borrowing, you were getting a better rate because
7 of that, but you also were borrowing a larger sum of money.
8 So was there ever discussions about where are our rates if we
9 don't have guarantees? Can we do it without guarantees? You
10 know, some competitive quotes on things. But were things like
11 that done for you folks regularly?

12 MR. CLARK: I apologize, are you talking about the
13 CIT loan, or are you talking about first one?

14 CHAIRMAN EICHELBERGER: I'm talking really about
15 any loan. Any loan that went through that -- there were
16 multiple loans where there were guarantees.

17 MR. CLARK: I only can talk about two that I
18 recall.

19 CHAIRMAN EICHELBERGER: Okay.

20 MR. CLARK: So let me try to do the first one.
21 The first one, there was never any discussion about that.
22 Basically, the conversation centered around that if we hired
23 this company, who's \$40 million cheaper than the other two,
24 that at the end of the day, that we would have an incinerator
25 that is up and running and functional. I believe that that's

1 what they're doing right now. I believe so.

2 CHAIRMAN EICHELBERGER: Can I interrupt you on
3 that?

4 MR. CLARK: Please.

5 CHAIRMAN EICHELBERGER: Can you explain that to us
6 a little bit better? Because I've read some conflicting
7 things here about this, about competitive bids for the project
8 that Barlow ended up doing.

9 MR. CLARK: Okay.

10 CHAIRMAN EICHELBERGER: How did that work, and
11 what are these other proposals? Were they formal proposals?
12 Was there a formal bidding process? How did that work?

13 MR. CLARK: As I recall it, the Authority -- no,
14 the board. Let's just talk about the board. As it relates to
15 executive director and staff, I have no idea. But I'll just
16 talk about the board. The board was not involved with the
17 selection, interview, RFP, anything relating to go out and
18 seek and find and bring to us the best person. That just
19 never happened. I believe that that was the city's
20 responsibility, and the city did that. They identified
21 Barlow, they brought it back to city council, to the county
22 commissioners, to us and said, hey, here's who we found. And
23 throughout those discussions, I don't have a piece of paper or
24 a document, but it was disclosed, it was discussed that this
25 one that we're bringing back is the lowest and the cheapest

1 and \$40 million cheaper than the next one. And if you said,
2 well, who are the other two, you would have to ask who those
3 people were.

4 So based on that, there was no reason at the time
5 to believe that what they were saying wasn't true. Okay? So
6 back to your original question. That talked about the
7 process. That was our involvement in the process, to approve
8 it. To approve it.

9 CHAIRMAN EICHELBERGER: Okay.

10 MR. CLARK: And that's the way, honestly, and
11 quite frankly, I'm sure people would disagree with me, how
12 much municipalities and school boards and authorities work.
13 You know, you have three or four or five laypeople. They work
14 full-time, they have jobs, they get off of work, they go to
15 these meetings, and the professionals present what is in the
16 best interest of the Authority. We think about it, we
17 deliberate it, and vote on it. That's typically how it
18 happens. So that was the process.

19 Back to your, to answer your question about the
20 first financing. No, there was no discussion as relates to
21 the approval process and who needed to do what.

22 The second one however, the CIT, it would be
23 disingenuous of me and untruthful of me not to say and
24 disclose that, yes, there was a discussion around that, what
25 would be the process. And basically, what had occurred, that

1 it would be legal, ethical, it would have the approval to vote
2 on this without city council's approval. And that there were
3 documents presented that indicated that what we were voting on
4 was okay. So that was the process on the second one.

5 So when you asked the question, was there any
6 discussion about the approvals on the loans and financing and
7 describing what was the pitfalls, yes, there was.

8 CHAIRMAN EICHELBERGER: So the direction to the
9 Authority was generally then coming from the city?

10 MR. CLARK: Coming from the city and the
11 professionals and the Authority that did take some
12 precautions. I mean, don't want to make us feel like we're
13 just rubber-stamping everything. We asked for other opinions,
14 which we did. For example, the CIT loan, we went back and
15 said, okay, here's what you're saying with your professionals,
16 Barlow; here's what you're saying, Authority, with your
17 professionals; here's what CIT is saying with their
18 professionals. We want an independent engineer approval
19 finance from a third party, which they provided, that said if
20 you borrow this money, it will fix the problem and it will be
21 sufficient enough. And we got that, and upon that document,
22 upon that presentation, we voted yes.

23 CHAIRMAN EICHELBERGER: Okay. Well, thank you
24 very much. The committee greatly appreciates you being here
25 today.

1 MR. CLARK: Thank you. I'd be happy to come back
2 anytime if I can clarify any of my points.

3 Thank you.

4 CHAIRMAN EICHELBERGER: Thank you.

5 SENATOR BLAKE: Mr. Chairman, just on the record,
6 I'm going to have to extract myself at 3:30. I thought I'd
7 say that now before we get into the additional panels, just as
8 a courtesy to the Members.

9 CHAIRMAN EICHELBERGER: The next witness is former
10 Mayor of Harrisburg, Stephen R. Reed.

11 Good afternoon.

12 MR. REED: How are you doing, Mr. Chairman?

13 CHAIRMAN EICHELBERGER: Good. Good.

14 (Whereupon, STEPHEN R. REED, was duly sworn.)

15 CHAIRMAN EICHELBERGER: Do you have any prepared
16 statement or want to discuss anything before we ask a few
17 questions?

18 MR. REED: Short prepared comments. I wrote it
19 this morning, so I apologize to the executive director,
20 wherever he's at, that I didn't turn it in before.

21 CHAIRMAN EICHELBERGER: That's all right. That's
22 fine.

23 MR. REED: If you'll bear with me, I didn't bring
24 extra copies with me.

25 Chairman Eichelberger, Minority Chairman Blake,

1 and Members of the Senate Local Government Committee, the
2 Harrisburg Resource Recovery Facility, which opened in the
3 early 1970s, provided an alternative to the landfilling of
4 municipal solid waste. From its initiation to present day, it
5 is a sophisticated set of components and operations.

6 The United States Congress adopted, and the U.S.
7 Environmental Protection Agency subsequently implemented, a
8 variety of changes and more restrictive standards regarding
9 emissions in the 1990s which would affect not only the
10 Harrisburg facility but a host of others across the nation.
11 This enactment in Washington gave rise to the planning and the
12 ultimate undertaking of the retrofit and upgrade to the
13 Harrisburg facility.

14 In the course of that planning, a variety of
15 options were considered, including, for example, a process
16 that involved solid waste disposal using a gasification
17 technology. Also considered was the retention of the existing
18 technology, the existing type of operation by putting in new
19 replacement equipment, as well as other options. A process
20 using forced air that provided better control of the
21 incineration of waste was the project ultimately selected. It
22 was in use elsewhere and was considered a better way to
23 dispose of waste through its patented newer technology.

24 The planned retrofit and upgrade of the facility
25 using this technology was subsequently the subject of many a

1 public meeting and hearing. The Pennsylvania Department of
2 Environmental Protection, as required, conducted its own
3 public meetings, as did city council, the Harrisburg
4 Authority, and the county.

5 At the very heart of the issue of the
6 significantly higher costs, and therefore the higher
7 borrowing--the subject of this hearing--that the project
8 precipitated is the question of how the initial project costs
9 would be so underestimated. To this day, I have never heard a
10 complete answer to this question. The inventor who developed
11 and had already put the newer technology into use had devised
12 the initial project cost estimate and was to be the one to
13 implement the project.

14 When city council reviewed this project in detail
15 and at length, they hired their own independent engineering
16 firm to review the project plan. The Dauphin County
17 Commissioners separately hired their own independent
18 engineering firm to do exactly the same thing. Additionally,
19 the Harrisburg Authority's engineering firm reviewed the
20 project.

21 At the public meetings and hearings, the project
22 details, including costs, which were a matter of full public
23 record for review, was not questioned or challenged. In no
24 independent review, nor in any testimony or submittals, was
25 there a conclusion or a warning that the project was

1 significantly underestimated in costs, and that the project
2 would therefore be far more expensive to undertake.

3 The decisionmakers in this matter, including the
4 city council, county commissioners, the Harrisburg Authority
5 board members, and the mayor, are not engineers and would not
6 have specialized knowledge to assess a cost estimate on a
7 project of this sophistication and technology. Absent any
8 information to the contrary, there was not an open question of
9 project costs being too low during the decisionmaking process.
10 Had there been, and if the much higher project costs were
11 known at the outset, I think it pretty accurate to say that
12 this project would not have been started. An alternative
13 would have had to have been selected, possibly involving the
14 creation of a new landfill in the area, as the question of how
15 to dispose of municipal solid waste still had to be addressed
16 by one means or another.

17 Having an upfront, accurate cost estimate is
18 obviously key to this entire matter, because all the financing
19 decisions later flowed from it. Not having accurate upfront
20 estimates, resulting in far higher costs later to complete the
21 project, would have and has had a cascading adverse effect on
22 the facility debt load.

23 I would, therefore, make the following
24 suggestions:

25 Number one, that the Local Government Unit Debt

1 Act be amended. We have fairly consistent cost measures and
2 standards for conducting such capital projects as water and
3 sewer and road construction. The various industries that do
4 those types of works have some pretty basic models of what it
5 costs to do those sorts of things. This, however, is far less
6 true when it comes to more specialized capital projects that
7 are not widely undertaken, such as the Harrisburg Resource
8 Recovery Facility's retrofit and expansion.

9 So I would suggest that as and when more
10 specialized projects come for submittal to the Pennsylvania
11 Department of Community and Economic Development, as required
12 by current law, that the law should be amended to further
13 require that the cost estimates shall be specifically reviewed
14 and verified by an independent reviewer or a panel selected by
15 DCED who would be expert in the specialized area of
16 construction that is being submitted for DCED review. This
17 review should be automatic. So as to negate any new costs to
18 taxpayers for doing such review, the costs of this review
19 should be borne by the applicant submitting the project debt
20 plan to DCED.

21 Presently, DCED has a limited time during which to
22 accept and act on any debt submittals. In order to conduct
23 the type of review suggested now, the law should be amended to
24 grant DCED the additional time necessary to do that more
25 intensive analysis. As and when cost estimates are verified

1 as credible, DCED can then act to approve the debt issuance.
2 If found not to be credible, DCED would have the option to
3 deny the filing.

4 And number two, further, the Local Government Unit
5 Debt Act should be amended to further set forth that for
6 specialized projects that require this type of intensive cost
7 estimate review by a reviewer or review panel, that any debt
8 that is listed as self-liquidating for that project would also
9 be subject to the same type of verification which could be
10 done by a reviewer separate from and in addition to whomever
11 is reviewing the cost estimates, which would be, of course, at
12 the option of DCED to determine. This, too, should be
13 automatic.

14 These statutory amendments are aimed at preventing
15 a recurrence of the experience involving the Harrisburg
16 Resource Recovery Facility. And I would be pleased to assist
17 the committee and its staff in drafting the amendatory
18 language.

19 Respectfully submitted, Mr. Chairman.

20 CHAIRMAN EICHELBERGER: Thank you very much,
21 Mayor.

22 Senator Blake, do you have some questions?

23 SENATOR BLAKE: Mr. Mayor, thank you for your
24 presence here and your testimony. I began my remarks earlier
25 today thinking about the good intentions that were at the

1 origin of this project, and as Attorney Goldfield mentioned
2 earlier, it was a series of disasters, and I expect as you
3 look back in retrospect, that's pretty much your sentiment as
4 well as it relates to the impact it's had on your taxpayers in
5 the City of Harrisburg.

6 MR. REED: Absolutely.

7 SENATOR BLAKE: The thing I guess I'm curious
8 about most is the level of confidence you had in the
9 recommendations you were making to council, whether you felt
10 council and you were adequately informed. I think you heard
11 the Chairman quiz our previous testifier on this matter. Did
12 you feel you had the information you needed in order to make
13 the judgments and the recommendations that were being made for
14 the decisions that the local governing body had to make?

15 MR. REED: At the time of making recommendations
16 to city council and others, we felt that the information in
17 hand was valid and accurate and comprehensive. Yes.

18 SENATOR BLAKE: Was there any time--

19 MR. REED: Let me put it another way. If we had
20 any idea that the project, the Barlow project, was going to
21 cost what it ultimately did cost, we wouldn't have pursued it.
22 It would never have been initiated. We had no information
23 from any of the independent engineering analyses, from any
24 source saying to us, whoa, take a look at this project closer.
25 The costs are significantly underestimated. It's going to

1 cost you a lot more. If we had known that, I can tell you
2 categorically the project would never have been started.

3 SENATOR BLAKE: Understood. I think the other
4 thing that I guess I'm curious about is this, and I posed this
5 question to Mr. Clark earlier, is was there ever a time when
6 you or council knew that there wasn't a performance bond
7 between the Authority and Mr. Barlow?

8 MR. REED: Heard about it after the fact.

9 SENATOR BLAKE: Only after the fact. Understood.
10 I guess the thing that jump out in some of the
11 earlier testimony too, and forgive me, Mr. Mayor, because this
12 is just my interpretation of reading the forensic audit, is
13 the deal for the sake of a deal. I think that there continued
14 to be, your words, cascading crises. Meaning you get pushed a
15 little further, you have additional obligations, another
16 obligation has to be made. But clearly, we've taken a look at
17 the forensic audit and there's some \$13 million, \$14 million
18 worth of fees paid to the firms that were involved. No one
19 had questioned the projections. We heard from earlier
20 testimony that there was no question on the projections that
21 were made and the issues associated with guaranty fees back to
22 the guarantors in favor of getting a better deal in capital
23 markets, but at the same time costing the city more.

24 I guess I'm wondering, you know, what your take is
25 in retrospect on the nature of transactions that kind of gave

1 you and probably the county a little bit of a break in some of
2 the more tough decisions you had to face with respect to your
3 own budgets.

4 MR. REED: Well, we were told -- "we," meaning the
5 city, was told, and I know that the county was told the same
6 thing, as was the Harrisburg Authority advised, that if you
7 have, in the issuance of bonds, in this case for a Resource
8 Recovery Facility, that if there are guarantees from governing
9 bodies of different taxing jurisdictions, in this case the
10 city and the county, and supplemented further, as was the case
11 for most or many of these bonds, bond insurance on top of it,
12 that you get a pretty favorable interest rate in the market.
13 That it's cheaper to sell those bonds than if you go out on a
14 stand-alone credit basis.

15 SENATOR BLAKE: Let me ask you this. One of the
16 operative language in the exchange I had with our first
17 testifier this morning about the forensic audit was the issue
18 of the reliance upon those guarantees without an appropriate
19 appreciation for the underlying cash flows of the facility.
20 Two things were happening here. You're being told by your
21 professionals that this is going to work.

22 MR. REED: Yes.

23 SENATOR BLAKE: The other thing you're being told
24 by your professionals is that your guaranty helps it happen.
25 And I guess I'm trying to reconcile in some way, and I'm sure

1 that you see this in retrospect, that you almost were an
2 enabler by virtue of your good will to make it possible for
3 the capital markets to meet the project at that time. And at
4 the end of the day, there was never an analysis that
5 challenged the projections about the cash flow of the
6 facility. And again, it was the guarantees that drove the
7 borrowing, and not the cash flow.

8 MR. REED: And there would have been another thing
9 that probably drove the review by the capital market, and that
10 would have been the rate covenants of the Harrisburg
11 Authority, because they had the right to set rates for the
12 disposal of municipal solid waste and the other types of waste
13 that the facility would have been permitted to incinerate, to
14 process.

15 The cash flow analyses actually was the cumulative
16 work of the project financial advisors, attorneys, the
17 investment bankers involved in the sale of the project bonds.
18 At that time, hindsight being 20/20, at that time there was no
19 information in front of any of us - Harrisburg Authority,
20 county, or the city - saying to us these numbers do not work,
21 that the actual cash flows will be whatever. That they will
22 be substantially different.

23 Just as a side note to that, I remember one of the
24 pro formas, and I don't remember, was it 2003, 2007, or
25 whatever, making a projection as to the annual income of the

1 facility once it would be retrofitted and completed. And it
2 was estimating it in the neighborhood of \$25 million. I
3 remember the number because it was such an easy number to
4 remember. It's actually taking in more than that today. And
5 the technology involved in this project actually works, and
6 has gotten some pretty favorable reviews. Not the debt, but
7 the technology of how the plant operates has gotten some
8 fairly favorable reviews in the solid waste disposal industry.
9 So some of that which was projected back then, on which
10 obviously we had reliance, did turn out to be true.

11 SENATOR BLAKE: Time is money.

12 MR. REED: Yes. You aren't kidding. Absolutely.

13 SENATOR BLAKE: Thank you, Mr. Chairman.

14 CHAIRMAN EICHELBERGER: Senator Folmer.

15 SENATOR FOLMER: Yes, I have several questions.

16 Thank you for being here today, Mayor.

17 MR. REED: Sure.

18 SENATOR FOLMER: Given your comments about the
19 lack of warnings about the incinerator financing, how do you
20 explain the 2007 refinancing which the forensic audit states,
21 "it should have been clear to the Authority, the City, the
22 County and the respective advisors..." that the "Net revenues
23 would not be sufficient to pay the existing debt..." and that
24 the facility "had no prospect of generating income from
25 operations....

1 "Despite these indications, the Authority issued
2 the 2007 debt, and the City and the County provided guarantees
3 of repayment."

4 MR. REED: Well, I can tell you that at that time,
5 there was not any report, any information from any source in
6 front of the county or the city or the Harrisburg Authority
7 that I've ever heard of or seen that said that the cash flow
8 projections and the other pro forma data was invalid. We can
9 look back on it these years later and say, yeah, it wasn't
10 correct. But at that time, that's what we had in front of us.

11 SENATOR FOLMER: Well, see, on page 106 of the
12 forensic audit, at the top, it would be the first full
13 paragraph, it says, "In the documents that have been produced
14 to date, we have identified 17 sets of financial projections
15 that were prepared in 2007, for the period of 2007 through
16 2011. Under all 17 sets of projections, the RRF would not
17 generate income sufficient to service the existing debt and
18 the new debt that was contemplated."

19 MR. REED: My recollection is that, I don't know
20 which document you're referring to because I don't remember
21 it, but my recollection is that that document included also
22 supplemental information talking about the rate covenants. In
23 other words, the ability of the Authority to exercise its
24 ratemaking authority to fill in the gap. As a matter of fact,
25 the Harrisburg Authority subsequently took action to do

1 exactly that. Got into a whole quagmire with the county over
2 it, but that's another story.

3 SENATOR FOLMER: Just changing a little bit here
4 with my next question, would you explain the CIT deal?
5 Specifically, whose idea was it, how was it done, who was
6 involved, and what were the goals and objectives of the CIT
7 deal?

8 MR. REED: I had never heard of CIT.

9 SENATOR FOLMER: Okay.

10 MR. REED: James Barlow, who was the principal of
11 the Barlow project, had apparently done business with them
12 elsewhere, or knew of them, had some familiarity with them.
13 And CIT apparently had an appetite, if you would, for studying
14 and financing energy-related projects. Barlow Associates
15 brought CIT into the picture. The city played almost no role
16 in the discussions with them. I do not recall ever meeting
17 the folks from CIT.

18 Why was CIT financing sought by the project? Why
19 was it approved by the Harrisburg Authority? Very simply,
20 because they needed the money to complete the project. As
21 simple as that.

22 SENATOR FOLMER: Okay.

23 MR. REED: If I could add something to that. I
24 remember this discussion ad nauseam, that at the time, the
25 project was well more than half completed, if my memory is

1 correct, and it had run out of money, so it needed more money.
2 Good Lord. Mind boggling, and extraordinary outraging to all
3 of us. So the question was, do you complete the project so
4 that there is a revenue producing asset in place, or do you
5 just simply stop the project and it never would be completed?
6 The decision was to finish the project.

7 SENATOR FOLMER: Well, I mean, as I talked to you
8 and others involved in these transactions, the common theme is
9 that no one did anything wrong. If that's true, how did the
10 city, the Authority, and the county end up with the huge
11 financial challenges they are now facing?

12 MR. REED: Because the initial cost estimate for
13 the project to retrofit and expand the Harrisburg Resource
14 Recovery Facility was significantly underestimated. That is
15 the genesis of all of this.

16 SENATOR FOLMER: All right, then would you explain
17 your rationale for the guaranty fees the city charged? I'm
18 especially interested in your thoughts on the forensic audit's
19 comments on these fees, which states, and I quote, "The
20 guarantee fees added more debt on the" incinerator "and more
21 cost to the financings, but provided little, if any, benefit
22 to the retrofit project."

23 MR. REED: My recollection of the guaranty -- I
24 don't know what the county did with their guaranty fee. My
25 recollection of the city's guaranty fee was that it was used

1 to cover the costs of some of the Resource Recovery Facility
2 employees that had been retained by the city and assigned to
3 other departments awaiting their return to the expanded and
4 retrofitted facility.

5 SENATOR FOLMER: Thank you very much.

6 CHAIRMAN EICHELBERGER: How about we go back to
7 when the city owned the incinerator.

8 MR. REED: Yes.

9 CHAIRMAN EICHELBERGER: Why would the city sell
10 that asset at that point?

11 MR. REED: Because it was my view that a municipal
12 government is not an appropriate entity to both own and
13 operate such a facility. That an authority, or frankly,
14 preferably a private enterprise, would have more latitude and
15 more capacity to own and provide for the operation of the
16 facility.

17 And incidentally, the ultimate plan, following the
18 retrofit and expansion, was and should be, and as far as I
19 know, it still is, to transfer the ownership to sell it to the
20 private sector. I am more than fully convinced that a
21 governmental body owning and operating a facility that's that
22 sophisticated is probably not a good idea. That the larger
23 entities in the private sector that have a presence in the
24 solid waste disposal industry, and there are at least three
25 that come to mind, are far better positioned -- far better

1 capitalized and in a far better position to create the
2 efficiencies, frankly, that government cannot create. So the
3 ultimate objective, and we said this publicly on multiple
4 occasions, was to eventually sell the facility. And it should
5 be sold. It should be privately owned and operated.

6 CHAIRMAN EICHELBERGER: Do you remember at the
7 time if there was a profit made on the sale to the city?

8 MR. REED: On the sale. I think the answer is
9 yeah -- I'm not 100 percent sure. That I wouldn't -- we're
10 talking about 1992 or 1993, somewhere in there.

11 CHAIRMAN EICHELBERGER: '93, I believe.

12 MR. REED: '93. I probably shouldn't guess at the
13 answer. The answer is I don't know, off the top of my head.
14 I want to do some checking first.

15 CHAIRMAN EICHELBERGER: Okay. And I was curious
16 too, if you could shed any light on any conversations you had
17 with the county. I mean, the county, and Commissioner Haste
18 was supposed to be here today but had a personal issue and
19 he's going to be at our next hearing. But for the county to
20 step into this and take on that obligation, that liability,
21 that's a risk for a government entity. You were in a
22 different position as the city. You had the incinerator, you
23 created the Authority, you were integrally part of the
24 situation. They weren't. So how did that come about? Did
25 they think that they were getting, they charged a guaranty

1 fee, but was that the sole advantage for them, or were there
2 other advantages that they wanted to be part of this system
3 somehow? I mean, can you shed any light on that?

4 MR. REED: Well, I'm very reluctant to speak on
5 behalf of another entity. At the time, I do know that the
6 county was concerned that if the Harrisburg Resource Recovery
7 Facility was not retrofitted and did not -- and it permanently
8 closed, that it would engender the re-opening of frankly what
9 had been a very controversial landfill in upper Dauphin County
10 called the Fulkroad Landfill, if my memory is correct. And
11 there was huge opposition to it in upper Dauphin County.

12 There was no other in-county alternative but the
13 Harrisburg Resource Recovery Facility to the disposal of
14 municipal solid waste for businesses and residents throughout
15 Dauphin County. So I think that was part of -- well, I know
16 that was part of their thinking as to why they would want to
17 see the Harrisburg Resource Recovery Facility retrofitted and
18 expanded. As to whatever else went into their thought
19 process, I couldn't speak to.

20 CHAIRMAN EICHELBERGER: Getting back to a question
21 Senator Folmer asked about money from -- you asked, Mike, did
22 you ask about the guaranty fee money? What did he ask you
23 about, Mayor? He asked you about something.

24 SENATOR FOLMER: Yes.

25 CHAIRMAN EICHELBERGER: Guaranty fee money.

1 MR. REED: Guaranty fee money for the city.

2 CHAIRMAN EICHELBERGER: Now, didn't that go into
3 that special projects account, or did some of that go into
4 that and some of it went somewhere else?

5 MR. REED: I'm speaking off the top of my head
6 now, without the benefit of having the budget from whatever
7 year that was. My best recollection is that the guaranty fee
8 of the city was used to offset city costs of the employees
9 from the Resource Recovery plant that had not been laid off,
10 that were reassigned to other departments during the
11 construction period and would be returned to the facility when
12 it was completed and opened. That's my recollection.

13 CHAIRMAN EICHELBERGER: Well, I mean, I have a
14 memo here saying that there was \$515,000 that went into a
15 special projects account for the, mayor's wild west museum.
16 So, I don't know what year--

17 MR. REED: From the city's guaranty fee? That's
18 news to me.

19 CHAIRMAN EICHELBERGER: It says from bond issue.
20 So I don't know what else -- what other money you would have
21 derived from the bond issue.

22 MR. REED: I don't know, and I don't remember even
23 seeing that, frankly.

24 CHAIRMAN EICHELBERGER: The other thing you
25 mentioned a while ago that surprised me was when you said you

1 didn't know about the performance bond.

2 MR. REED: Correct. Well, not at the time.

3 CHAIRMAN EICHELBERGER: Until afterwards.

4 MR. REED: That's correct.

5 CHAIRMAN EICHELBERGER: From what I've read, the
6 person that was -- the two people, actually, that were -- that
7 designed the securities walkaround agreement here both worked
8 under your direction, Mr. Lispi and Mr. Giorgione. Mr. Lispi
9 is going to talk later, so maybe we'll hear from him. But it
10 just surprised me that you weren't aware of that at the time.

11 MR. REED: Not at the time. I learned of it
12 later.

13 CHAIRMAN EICHELBERGER: Okay. Well, any other
14 questions?

15 SENATOR FOLMER: Yes, just one more.

16 CHAIRMAN EICHELBERGER: Go ahead. One more from
17 Senator Folmer.

18 SENATOR FOLMER: And this is to expand, just as a
19 follow-up on the Special Projects Fund. Would you explain the
20 Special Projects Fund, how it was created, the purpose, and
21 the uses of it?

22 MR. REED: The Special Projects Fund was actually
23 created by the Harrisburg Authority. They used it to do all
24 manner of projects. I know the Harrisburg Authority was a
25 sponsor of different events, community and civic projects.

1 That would have been the funding source for that. It was a
2 funding source for -- well, let me put it this way, the
3 Harrisburg Authority owned then -- well, it still owns now --
4 the water system which serves all or part of five
5 municipalities, including all of the city; owns the wastewater
6 treatment plant and conveyance system which serves seven
7 municipalities, or part of them; and owns the Resource
8 Recovery Facility. Special Projects Fund was used to fund
9 anything that didn't have to do with water, sewer, or
10 incinerator. So that's, I guess, the simplest explanation.

11 SENATOR FOLMER: Thank you.

12 CHAIRMAN EICHELBERGER: Why was that housed at the
13 Authority then instead of the city? The fund. The fund was
14 under the control of the Authority, not the city, but the city
15 was the one that made the decisions on the money.

16 MR. REED: No, the city didn't make the decisions
17 on all the money. The Special Projects Fund used Authority
18 money. It wouldn't have been part of the city budget. The
19 city had its own Special Projects Fund as well that would have
20 been related almost entirely, if not exclusively, to economic
21 development related projects. But it's Authority money, so
22 they wouldn't have sent it over to us.

23 CHAIRMAN EICHELBERGER: But wasn't -- wasn't the
24 city the one -- who was making decisions how that money was
25 spent then?

1 MR. REED: Well, the board actually made the
2 decisions. They voted in public session, I might add, on
3 every allocation from all of their funds - water, sewer,
4 incinerator, Special Projects Fund, or any other fund that
5 they may have had.

6 CHAIRMAN EICHELBERGER: Okay. Anything else?

7 All right, thank you very much for being here
8 today, Mayor. Can we have a copy of that?

9 MR. REED: Absolutely.

10 CHAIRMAN EICHELBERGER: And our next witness is
11 Mr. Dan Lispi, who is the former Director of Special Projects
12 for the City of Harrisburg.

13 Let me ask you a question, Mr. Lispi. Are you an
14 attorney?

15 MR. LISPI: No, I'm not.

16 CHAIRMAN EICHELBERGER: Okay, could we swear or
17 affirm you at this time?

18 MR. LISPI: Sure.

19 (Whereupon, DANIEL R. LISPI, was duly sworn.)

20 CHAIRMAN EICHELBERGER: Thank you for being here
21 today. Do you have any opening statement?

22 MR. LISPI: Well, maybe I should give you some
23 background on my involvement in the project that leads us here
24 today. I first got involved in matters relating to the
25 Harrisburg Resource Recovery Facility in 1989. The mayor

1 asked me to become involved in a matter that was ongoing at
2 the time. The city had put out an RFP to sell the Resource
3 Recovery Facility, and that was prior to my involvement. The
4 RFP was issued, but out of that process, there was a firm that
5 was selected and negotiations were underway with that firm.
6 The mayor asked me to become involved in the negotiations, and
7 that's how it started.

8 Ultimately, the negotiations to sell the facility
9 broke down and the city elected to continue to operate and own
10 the facility until it was sold to the Authority in 1993, and
11 the structure of that ownership by the Authority and operation
12 by the city remained in place until Covanta was hired to run
13 the plant in 2007. So I was intimately involved in all
14 matters relating to the incinerator from 1989 until 2004, when
15 I left city employment to start my own business. And I was
16 engaged as a consultant by the Authority in 2004 until 2007.

17 So I was kind of surprised this morning to hear
18 testimony that the forensic audit seemed incomplete because
19 they were unable to speak to the parties who had involvement
20 in this project. I'm not saying it as a badge of honor, but
21 there's no single human being alive that knows more about the
22 project than I do. The forensic audit authors contacted me
23 for documents, which I produced, and I never heard another
24 word from them. I was not interviewed, asked or consulted
25 about any of the things in the audit. And I can tell you,

1 from what I read and what I heard today, that there are
2 serious statements, misinformation, and a lot of innuendo in
3 that report that potentially could mislead you in what you're
4 trying to do.

5 I'd be happy to address any of the issues in the
6 forensic audit to the best of my ability. I am here
7 voluntarily. I've never been represented by an attorney in
8 any of these matters, and I am not now.

9 CHAIRMAN EICHELBERGER: Thank you. I appreciate
10 you being here, and I'll note for the record that when we've
11 asked you for information, you've been very quick to give it
12 to us, and we appreciate that.

13 MR. LISPI: Thank you.

14 SENATOR BLAKE: Thank you, Mr. Lispi. I'm on a
15 very short clock here, so I was going to say that you are
16 probably the one who knows the most, given your explanation of
17 your experience with it going back so far and leading all the
18 way up to today.

19 I'm probably going to be repeating some of the
20 same questions that I've already offered out to some of our
21 testifiers. There are issues here that relate to professional
22 representations about the performance of the facility. Again,
23 I'll allow you to maybe bring some clarity to some of the
24 things in the forensic audit that you may object to, innuendo,
25 using your word, but part of what has been stated in the

1 forensic audit is that the projections on the cash flow don't
2 support, you know, the amount of debt that was being incurred.
3 What's your take from the inside on the fact that there were
4 no challenges to those projections?

5 MR. LISPI: There was a lot said about that and
6 self-liquidating debt, and there was an inference that there
7 was some misrepresentation on the part of the ability of the
8 facility to generate the necessary revenues. I heard that, if
9 I'm not misstating it. Yesterday, I went back to the 2003
10 bond documents. I pulled out a section of the bond documents,
11 which was a public document that all the investors saw, all of
12 the public bodies saw. In it there is a financial pro forma
13 that was prepared by Barlow, with input from the city and
14 other professionals, that estimated the revenues, expenses,
15 and debt service that would be related to the retrofit
16 project. When I looked at that pro forma yesterday, you heard
17 the mayor accurately say that in 2010, I believe it was, the
18 projected revenue from the facility was \$25 million total
19 revenues. That would be tipping fees, electric, all other
20 sources of revenue. And as the mayor pointed out, it turns
21 out today that it is actually producing more than that in
22 revenues.

23 The unfortunate part, as has been discussed
24 before, is that the project cost more than it was estimated at
25 the time. The operating expenses that I looked at in the pro

1 forma, they looked to be fairly accurate with what is going on
2 today of what it costs to operate the facility. So it's not
3 that difficult to answer some of the follow-up questions that
4 occurred, which was how much of this debt should be self-
5 liquidating? Because you can take the total revenues from the
6 facility, subtract the operating expenses, and you're left
7 with an amount that's available to service debt. You can look
8 at what the cost of that debt is and figure out, fairly
9 readily, how much of the debt can be supported by revenues,
10 and because of the cost overruns of the project, I would
11 definitely think that there would be stranded debt. In other
12 words, there would be debt that could not be serviced solely
13 by revenues from the facility alone.

14 But based on the revenues that are being generated
15 now, my rough idea of what the expenses are, because I have no
16 information from the Authority on what they're paying for
17 operating costs now, but I would think that a significant
18 portion of the outstanding debt could be paid for by revenues.
19 If \$225 million was, on paper, able to be supported by
20 revenues from that facility, and those projections of revenues
21 and expenses being fairly accurate, I can't think that it
22 would be too farfetched to say that around \$200 million or
23 \$225 million of that debt could be self-liquidating or
24 supported by revenues.

25 SENATOR BLAKE: I understand. And I appreciate

1 your testimony, and I also appreciate the clarity with which
2 you can deliberate without having to refer to anything. So
3 that tells me a little bit about what you know. But I have to
4 ask you this: There was a pivot point, right, it's going up a
5 million a month. Right now it's \$340 million, at least that's
6 what I've read in the news, and I think the debt load
7 increases. There was a pivot point as to whether, the issue
8 that explains, perhaps, the position that the city finds
9 itself, and that the Authority finds itself, is time. It
10 wasn't done on time, it wasn't done on budget, and they
11 essentially, if I can use the expression of the previous
12 testifier, doubled down to try to catch up, get it done right,
13 and make it, even to the mayor's words, a performing asset.

14 But there had to be some judgment at some point, I
15 believe, in the public interest about whether or not that risk
16 was appropriate, and I wonder if you can explain, in
17 retrospect, whether or not as you look back that that
18 double-down decision was in the public interest.

19 MR. LISPI: You're asking me in 2003 when the
20 original bonds were issued, what was the thinking at the time
21 on whether to proceed with the project, right?

22 SENATOR BLAKE: Um-hum.

23 MR. LISPI: Okay. Contrary to some of the
24 statements in the report and other things that I've read and
25 heard, there was an exhaustive process to look at alternatives

1 to rebuilding this project. We had actually tried to do the
2 project in the '90s and come up with the answer that the
3 project wasn't financially feasible at the time. We looked at
4 other technologies. The mayor mentioned gasification. That
5 was one. There were many different ones. We actually had a
6 full feasibility study done on gasification. We looked at the
7 option of shutting the plant down, just walking away and
8 cutting our losses. We looked at recycling, combinations of
9 the above - rebuilding the facility, increasing recycling.

10 So at the end of the day, the only project, the
11 only idea that appeared to be technically, environmentally,
12 and financially feasible was retrofitting the project. Had we
13 decided to shut down in 2003, testimony was given today that
14 we were under a consent order from EPA that after June 18 of
15 2003, we were done, if we had not proceeded with the retrofit
16 of the facility, and the City of Harrisburg at that time,
17 without any revenues to be generated from the facility, would
18 have been responsible for paying the existing debt, which at
19 that time, when it was all rolled up, the various bond issues
20 in 2003, it was about \$100 million. So that we had a very
21 reasonable expectation from what we had seen over the
22 three-year period that we had worked with Barlow to get to the
23 point of developing the project that that facility would
24 support operating expenses, the old debt, and the new debt.
25 And that's the pro forma that I looked at today.

1 So there were all kinds of ideas that were
2 explored to try to address the situation that we were in.
3 That was the only one that met the criteria. So the decision
4 to move forward was based on that information that we had at
5 the time.

6 SENATOR BLAKE: Understood. Last question, Mr.
7 Lispi, and I have to excuse myself, so my apologies for that.
8 But the performance bond I brought up a number of times with
9 other testifiers. Speak to your experience on it, if you can.
10 Most of the people we've talked to, including the mayor and
11 others, indicate that it was only after the fact, Mr. Clark
12 mentioned it wasn't really a question that was raised at the
13 Authority level. Can you speak to your memory about that
14 issue?

15 MR. LISPI: I was involved, I was still a city
16 employee at the time that the negotiations began with Barlow
17 to finalize the contract, which was ultimately signed in April
18 of 2004. So for most of that period of time, in fact,
19 probably all of it, I was a city employee and sat on the
20 Authority side of the table as the city representative. There
21 were counsel for the Authority, their solicitor, there were
22 counsel for Barlow, Barlow's representatives, the Authority's
23 executive director. So the Authority and the city were well
24 represented at the table.

25 We negotiated many, many different aspects of the

1 contract, including the performance bond. The initial
2 position was the city wanted a performance bond from Barlow to
3 cover 100 percent of the costs of the construction of the
4 project.

5 So what happened was that Barlow went looking for
6 a surety to do that. They found out that the technology, they
7 were the engineer, okay, and the patent holder. The project
8 relied on their patented technology to perform. To get a
9 surety to bond the technology that it was all going to work
10 together was financially impractical. The cost would have
11 been so enormous, and I don't remember what the figure was,
12 but Barlow indicated that it would make the project
13 infeasible. So we began to explore an alternative security
14 package.

15 Many people have said there were no bonds for the
16 project. That's not true. In fact, all of the actual
17 construction work that was done at the project, people who
18 physically were putting the project together, they all had
19 bonds. And contrary to what was stated in the report, the
20 bonds were in favor of the Authority. Some of the bonds were
21 also in favor of Barlow, but they were by two parties. I'm
22 sorry, excuse me.

23 SENATOR BLAKE: Okay, that's a specific contrary
24 to what was in the report--

25 MR. LISPI: Yes.

1 SENATOR BLAKE: --that there was only one bond,
2 that it was for the benefit of Barlow, and that none were for
3 the benefit of the Authority.

4 MR. LISPI: What I specifically remember, when
5 Cianbro, who was a subcontractor to Barlow, who had posted a
6 bond for their construction, it was about \$18.5 million, when
7 the project was behind schedule, Barlow and Cianbro got into a
8 dispute, and a settlement was finally reached with Cianbro,
9 and one of the aspects of the settlement was the Authority had
10 to agree to release Cianbro from their bond. So that's why I
11 remember that it was also in favor of the Authority.

12 In addition to that, the Authority withheld a
13 20-percent retainage on every bill that Barlow submitted.
14 It's customary in public works projects for retention to be
15 held, but the standard number is 10 percent. So we negotiated
16 a double figure of 20 percent, so the Authority had more
17 security than they would have under a 10 percent. You hold
18 the retainage until you're sure that the contractor has
19 faithfully performed and you can release the retainage at the
20 time when you're satisfied that that's occurred. So that was
21 another form of security that was added.

22 And also, there were separate projects that were
23 outside of the Barlow patented technology area, which was the
24 furnace, boiler, and air pollution control systems. We had a
25 turbine generator project, a smoke stack repair. There were a

1 whole bunch of related projects that were outside of the
2 technology area. And those were bid separately by the
3 Authority and contracted directly between the contractor and
4 the Authority, and all had bonds.

5 So while there's a grain of truth to everything,
6 and it's obvious after what happened, that the security didn't
7 address the problem.

8 SENATOR BLAKE: Understood. Thank you, Mr. Lispi.
9 I appreciate it.

10 Mr. Chairman, I have to excuse myself. So thank
11 you.

12 CHAIRMAN EICHELBERGER: Senator Folmer.

13 SENATOR FOLMER: Yes, thank you.

14 Since you're the best informed person on this
15 project, what should we be asking that we haven't been asking?
16 What are we missing?

17 MR. LISPI: I don't know how you prevent something
18 like this from occurring absolutely. There's risk in every
19 construction project. There's ways to mitigate the risk and
20 make it less, but it cannot be completely eliminated. Some of
21 the mayor's suggestions I thought were pretty good, in that if
22 there was an independent review. But we had independent
23 engineers look at this project beforehand. None of them
24 identified actually what the problem was. In fact, it hasn't
25 even been discussed today what really went wrong.

1 Another factual error in the forensic audit
2 report--

3 SENATOR FOLMER: Can I just ask you something, not
4 to interrupt your answer, but you just made a statement that,
5 and repeat it, maybe I heard it wrong, to this day there was
6 no discussion of what went wrong?

7 MR. LISPI: No, I said I haven't heard anyone talk
8 about what really went wrong.

9 SENATOR FOLMER: Why was that?

10 MR. LISPI: I'm going to apologize in advance,
11 because this is going to get technical, okay?

12 SENATOR FOLMER: Okay.

13 MR. LISPI: But the report says that eventually
14 Covanta came in and took out all of Barlow's equipment that
15 was part of the -- that's completely false. The furnace, the
16 incline grate, the forced air system that is the crux of their
17 patented technology remains in place. What really went wrong
18 was the back end of the facility, where the hot gases escaping
19 from the furnace are cooled and treated to remove dioxin,
20 mercury, and particulate matter. They go through a series of
21 processes, ending up in a bag house, which traps the fine
22 particulate matter.

23 Long story short, because of the equipment that
24 was specified by Barlow in the back end of the plant, the ash
25 was not hot and dry, as is needed to move it easily from the

1 bag house to the back end of the facility where it's finally
2 disposed of. It was wet, moisture was making it clump and
3 clog the back end of the facility to an extent where it would
4 shut the facility down.

5 When we first saw it light off, it performed
6 beautifully. Shortly thereafter, the problems appeared
7 because of the ash.

8 SENATOR FOLMER: Well, and--

9 MR. LISPI: When Covanta came in and looked at
10 what needed to be done, they made many modifications to the
11 back end of the facility to address the ash issue, and those
12 were primarily what was needed to get the facility into
13 operating condition. So the mayor had no idea that you
14 shouldn't use an air heater in combination with this
15 equipment. I didn't. None of the professionals on the
16 project had -- even the engineers who looked at it never
17 identified this weakness in the design. It only became
18 apparent after the plant was actually lit off and tested. It
19 actually tested perfectly when it was first lit off. But then
20 within a week's time, the ash problem surfaced. And the
21 project would not have operated properly had those issues not
22 been addressed as they have been now by Covanta.

23 SENATOR FOLMER: So are we missing anything that
24 we should be asking?

25 MR. LISPI: It was an engineering flaw. It wasn't

1 a performance bond issue. You couldn't have gone back to
2 those contractors and said, we want your bond, because they
3 put in what Barlow told them to put in.

4 SENATOR FOLMER: Okay. My next question is, I'm
5 going to actually repeat a question as I asked Mayor Reed. It
6 seems to be the common theme is that no one did anything
7 wrong. And if that's true, again, how did the city, the
8 Authority, and the county end up with a huge financial debt
9 for the citizens of Harrisburg to contemplate at this present
10 time?

11 MR. LISPI: Well, the mayor referred to a cascade
12 of event. The cascade began with the problem that I just
13 described to you, which meant that the facility couldn't be
14 completed on time and within budget. And then that required
15 raising additional capital. Raising additional capital to
16 finish the project took time and cost money. And delays,
17 further delays, compounded the problem of the cost overrun.
18 And that cascade is what has led to the increase in the amount
19 of debt that exists today at the facility.

20 SENATOR FOLMER: Well, as was noted earlier, this
21 committee is about trying to get information and trying to
22 find any things that maybe we need to do as a legislative body
23 and so forth. And recognizing that hindsight is always 20/20,
24 what, if anything, you would have done differently or
25 recommended be done differently? And again, I know it's

1 always 20/20.

2 MR. LISPI: The one thing that I thought of, I
3 kind of knew this question would be asked, the one thing that
4 I look back on, I regret the fact that we didn't terminate
5 Barlow earlier.

6 SENATOR FOLMER: Okay. Okay. As you look back,
7 tying into that, as you look back, would you say the mistakes
8 that were made were errors of omission or commission?

9 MR. LISPI: I think omission.

10 SENATOR FOLMER: Omission?

11 MR. LISPI: Yes.

12 SENATOR FOLMER: Okay. And then finally, what, if
13 anything, do you think the General Assembly should do to avoid
14 such mistakes in the future?

15 MR. LISPI: I just don't know how you eliminate
16 risk.

17 SENATOR FOLMER: Okay. Thank you. I'm done.
18 Thank you.

19 MR. LISPI: You're welcome.

20 CHAIRMAN EICHELBERGER: Mr. Lispi, getting back to
21 the performance bond, retainage isn't ever considered part of
22 security. I mean, that's standard practice. It might have
23 been beefed up a little bit, but it's clearly not security.
24 That's interesting. I mean, I don't know where the folks that
25 put the forensic audit report got their information about who

1 was named on the bonds. That should be an easy thing to
2 check.

3 But so you know, the law requires either a
4 performance bond or other security that would be acceptable,
5 and that concoction that was put together was not acceptable
6 under the law. More specifically, though, the bond indenture
7 in that case specifically states that a performance bond for
8 100 percent must be provided. So no one must have looked at
9 that bond indenture, I assume. Were you aware of that at the
10 time?

11 MR. LISPI: It was looked at. The Authority was
12 represented by their solicitor. Their solicitor approved the
13 contract including the bonding that was put together for the
14 project. Barlow's counsel wrote a memorandum looking at the
15 issue of the performance bond and how it could be addressed.
16 And those are the things that led to the formation of the
17 package of security that you see in the forensic audit. So
18 those lawyers -- and I told you, I'm not one, I believed that
19 it was legal, that it met the requirements of the law at the
20 time. Those lawyers representing the company and the
21 Authority believed that it was legal, and they signed the
22 agreement.

23 As I recall, the crux of the matter was that
24 construction requires 100 percent performance in payment bond.
25 The purchase of materials and equipment does not. So a good

1 part of the costs of the project was the purchase of materials
2 and equipment, and I think that's what led to the creation of
3 the performance bond package that you see to meet the
4 requirements of the statute.

5 CHAIRMAN EICHELBERGER: Well, the bond indenture
6 did specify furnishings and material, et cetera.

7 MR. LISPI: I think that the interpretation of
8 that was for construction, for actual construction, rather
9 than materials and equipment. But I'm not speaking as -- I'm
10 not giving you a legal opinion, I'm just telling you what I
11 saw and what I heard.

12 CHAIRMAN EICHELBERGER: Well, we're going to have
13 some professional people in the next day of hearings, so I'm
14 anxious to talk to some of them about how people were led
15 through this process.

16 MR. LISPI: Okay.

17 CHAIRMAN EICHELBERGER: And to follow up, and I
18 hate to put you in this spot, but I had asked the mayor how he
19 didn't know about this situation, when you worked directly for
20 him he didn't know that this was happening until after fact.

21 MR. LISPI: Are you talking about the bonds, or
22 the CIT? The bonds?

23 CHAIRMAN EICHELBERGER: The lack of the
24 performance bond.

25 MR. LISPI: I don't think we ever specifically

1 discussed that issue with the mayor, because it was all part
2 of the contract negotiations, and when it was presented to the
3 mayor and the Authority, the professionals and the lawyers
4 were saying, you know, the contract is here, here are the
5 major terms and conditions, this is the cost. We believe that
6 it's all good. So I think that at the time it wasn't a detail
7 that anyone thought had to be specifically discussed, that it
8 was part of the contract.

9 CHAIRMAN EICHELBERGER: You didn't have any
10 insurance or bonding professionals looking at this? Just a
11 couple of attorneys?

12 MR. LISPI: No, there weren't. No.

13 CHAIRMAN EICHELBERGER: I'm an insurance guy and I
14 always ask the attorneys where their insurance license is
15 whenever they start to give insurance advice sometimes.

16 MR. LISPI: Well, we had insurance on the project,
17 Builder's Risk.

18 CHAIRMAN EICHELBERGER: Yeah, that's different.

19 MR. LISPI: So there was like a big OCIP
20 wraparound program and all that, but not to cover -- the
21 performance bond of course is different.

22 CHAIRMAN EICHELBERGER: What do you know about the
23 Special Projects Account? We had some questions about that
24 along the way here.

25 MR. LISPI: I don't know anything about it. That

1 account was held by the Harrisburg Authority, and just like
2 all of the other funds that they had, they were under their
3 control. I never approved any invoices, I never made any
4 requisitions to, other than for my own consulting services.
5 But that never came out of the Special Projects Fund, it came
6 out of the construction fund. So I remember sitting in
7 meetings where they would, in public, talk about a requisition
8 from the Special Projects Fund, and it would go to the floor
9 and they would approve it. And that's all I know about it.
10 Other than that, I have no specific knowledge of what went on
11 with it.

12 CHAIRMAN EICHELBERGER: And perhaps my last
13 question is, and I had asked other testifiers today, when you
14 were at an Authority meeting, how did you see things
15 happening? Who was directing things? How did the flow of
16 information come to the Board members, and how were decisions
17 made?

18 MR. LISPI: There would be a written agenda that
19 everyone could pick up when you came into the meeting showing
20 what was on the agenda to be voted on that night. The
21 executive director would guide the meeting, bring up the
22 resolution or the action that was before the Authority for
23 approval. A discussion might ensue, where a professional who
24 had direct knowledge of the issue before the board would
25 speak. And the Authority then would vote on the measure in

1 public, and it would either be approved or denied right at the
2 meeting, in the public meeting.

3 CHAIRMAN EICHELBERGER: Were a lot of
4 professionals there for a lot of the financial decisions?

5 MR. LISPI: There were always a representative for
6 each of the systems - the water system, the sewer system, the
7 incinerator - and staff from each of those facilities and
8 professionals for--

9 CHAIRMAN EICHELBERGER: I'm talking about the
10 financial people, the bond counsel.

11 MR. LISPI: If there was a financing, there would
12 be bond counsel there, sometimes underwriters. At the behest
13 of the executive director, he would request that a certain
14 person would be there for the meeting because that measure was
15 going to be voted on that they were involved in.

16 CHAIRMAN EICHELBERGER: Who do you think the
17 executive director got their direction from?

18 MR. LISPI: Who did he take his direction from?
19 He was employed by the Authority board, so if he was taking
20 direction from anybody, it would have been the board. Mr.
21 Mealy at the time also worked for the City of Harrisburg as
22 the director of the wastewater facility, so he wore two hats.

23 CHAIRMAN EICHELBERGER: So you don't think that --
24 in some prior testimony it appeared to me that the city was
25 calling the shots more than the Authority members were making

1 independent decisions.

2 MR. LISPI: The city obviously had a direct and
3 immediate interest in the outcome of this project, okay, and
4 that's what I'm testifying to here. We had a lot -- the city
5 had a lot of input into what was going on with the retrofit
6 project. So I would agree that there was a joint effort going
7 on. I looked on it as a team. We were all trying to get to
8 the same place.

9 CHAIRMAN EICHELBERGER: Okay, well, thank you very
10 much.

11 MR. LISPI: You're more than welcome.

12 CHAIRMAN EICHELBERGER: I appreciate it.

13 Last, but certainly not least, on the agenda today
14 is Mr. William Cluck, who is currently a Harrisburg Authority
15 member. And I'll repeat for those who maybe were in and out
16 today, that we've been asking folks to take an oath or an
17 affirmation, but I was instructed that members of the Bar are
18 not required to undergo that. So that's why some we do it and
19 some we don't. We're not discriminating, we're just
20 recognizing their obligation under their oath as an officer of
21 the court.

22 MR. CLUCK: It's my professional responsibility to
23 tell the truth.

24 CHAIRMAN EICHELBERGER: So would you like to start
25 with any opening remarks?

1 MR. CLUCK: Good afternoon. It's been a long day.
2 I'm Bill Cluck. I'm a current member of the board, but I want
3 to emphasize, I'm not here on behalf of the board or the
4 Authority. I do not speak for the board. We have a
5 three-member board and we make decisions as a group. I'm here
6 today basically as a private incinerator, but historically,
7 I've been I guess called an incinerator activist in terms of
8 monitoring or watching what was going on with the incinerator
9 project.

10 What I've prepared for the committee--I e-mailed
11 it last night and I believe copies were made for everybody--is
12 a rather lengthy document that I'm not going to read.
13 However, what it does do is it provides a summary of the
14 history of the Authority so you have a little idea of the
15 legalities of the name of the Authority, when it was changed
16 from the Incinerator Authority, et cetera. Then there is a
17 brief summary of the waste management facility prior to the
18 retrofit. How many tons per day, the types of issues that it
19 had, a list of the repair projects.

20 At this point, what I'm going to do is sort of
21 interject responses to comments I heard today. The retrofit
22 project isn't 2003. The decision was made as early as the
23 summer of 2000. That's three years of a process that led up
24 to the \$125 million retrofit financing. In August of 2000 was
25 the first time that representatives of the city and the

1 Authority met with Barlow. The contract, the only contract
2 ever voted on by the board of the Harrisburg Authority was
3 November 16, 2000, a professional services agreement, never
4 subject to public competitive bidding. And it's not required
5 to, because it's professional services. There has never been
6 any other vote on a Barlow contract, yet they got paid
7 millions of dollars without board action.

8 If there was a process to seek competitive bids
9 for the retrofit of the incinerator, it had to come from the
10 city. It is not in the files of the Harrisburg Authority, and
11 it was not presented in the forensic investigation when they
12 sought documents. We were told there was a flood at the
13 warehouse at the incinerator, so all of the records of the
14 former Department of Incineration no longer exist. We were
15 told that Dan Lispi's files from the time that he was head of
16 special projects for the city are missing. I mean, we heard
17 the story that they were transferred to the Harrisburg
18 Authority in 2007, the people at the Authority didn't know
19 what to do with them, so they sent them back to the city, and
20 now the city can't find them.

21 So what I know from reading through these is
22 Barlow prepared a Phase 1 feasibility study, and it cost
23 \$700,000. They were then authorized to do a Phase 2 study,
24 but, and I'll quote this, "the design basis Barlow initially
25 proceeded with proved to be too expensive." Barlow's purpose

1 was to design a facility so it could generate sufficient
2 revenue to pay off the old and new debt. Now, that sounds
3 logical, but it sounds like they were tweaking the engineering
4 and the design for a financial purpose rather than an
5 operational purpose. And as we now know, there were
6 significant engineering defects that occurred.

7 My questions are, who was in charge? Was it the
8 Authority or the city? You heard today from a former member
9 of the board, you know, they're busy people. They're
10 volunteers. We don't get paid to serve on municipal authority
11 boards, so we rely upon the professionals. Well,
12 unfortunately, this was the most important project in the
13 history of the city, and I don't accept the explanation that,
14 well, I'm too busy to read through a 100-page prospectus. I'm
15 too busy to ask questions of my legal and financial team.

16 I can't believe there was not more public
17 discussion at Authority Board meetings. The city council did
18 hold public hearings throughout the city in 2003, to their
19 credit, and there were people who spoke out against this
20 project. And there were people who said you're
21 underestimating the costs. Mike Ewa, an environmentalist from
22 Philadelphia, testified before city council the night of
23 November 3, 2003, and said, you are underestimating the costs,
24 the revenues are off, you will go bankrupt. And he repeated
25 that phrase over and over and over.

1 And in response, the gentleman from Buchart Horn,
2 the so-called independent contractor that city council paid
3 \$50,000 to, pooh-poohed their criticism of the report. And if
4 you read the forensic audit, the Buchart Horn so-called
5 independent report has a so-called worst-case scenario. Well,
6 that worst-case scenario isn't actually close to what actually
7 occurred here. But everybody then relied upon the Buchart
8 Horn report.

9 Dauphin County's professionals all said, looks
10 reasonable to me. HRG, the engineers: We read the Buchart
11 Horn report. Now, we didn't actually look at the assumptions
12 that are in the Barlow pro forma, or the Buchart Horn report,
13 but it all seems reasonable. And that's the magic word. PFM,
14 on behalf of the county, it all seems reasonable. Mette
15 Evans, the law firm, here's the opinions of the engineers,
16 here's the independent opinion; all of this seems reasonable.
17 Nobody did a close analysis or adequate due diligence of
18 Barlow. Nobody looked at Barlow's history and financials.
19 They do drop little sentences that say, oh, by the way,
20 they've never done a project this big. That should have set
21 off some warnings. And what it should have set off was people
22 to oversee the construction of this project.

23 So what did we do? We hired Reynolds
24 Construction. Reynolds Construction Management, an excellent
25 firm based in the city, they are politically connected, as is

1 everybody involved, and I think I used the term political
2 cronyism. That's what goes on here. Now, they're all
3 qualified professionals, but when you look down who gets the
4 bids, who gets the work - lawyers, financial advisors,
5 construction - now go compare it to the campaign finance
6 donations. There's a pay-to-play that goes on here.

7 Now, chicken versus the egg, which one comes
8 first? I don't know, I don't care. What I would like the
9 committee to look at is I think constitutionally you can
10 prohibit someone who makes a political contribution from
11 receiving a contract. I'm not saying you can prohibit
12 campaign contributions, but I think you can prohibit the
13 contracting with that professional. The City of Philadelphia
14 now has a law in place in terms of their bond deals, that
15 their professionals who do the bond deals can't be people who
16 contribute. And that's part of the problem here. You've got
17 people who are wedded to each other, no one was willing to
18 stand up and say, Mr. Mayor, this project shouldn't go
19 forward. It's not going to work.

20 Now, I don't know that there was bad intent, but
21 clearly, there was a mindset to get a deal done. This deal
22 had to get done or else we got \$100 million in stranded debt,
23 we're going to have to increase property taxes 400, 500, 600
24 percent; all the good things that happened in the city from
25 1980 until 2000 goes down the toilet. If this project fails,

1 the city fails.

2 So the Harrisburg Authority contracts with
3 Reynolds Construction. Now, I don't know if they knew, but
4 Reynolds Construction was serving as the construction manager
5 for Barlow. Now, the forensic investigation says that's sort
6 of a conflict, that the Authority as the owner hires somebody
7 to oversee the construction manager, and the construction
8 manager appears to be the same entity. That's a problem.

9 The other problem is a former member of the board
10 appears to have been employed by Reynolds at the time that
11 person was on the board. Now, I've read the Rhoads & Sinon
12 June 26 legal opinion, and it's accurate. There are two
13 different statutes to govern conflicts of interest. That
14 opinion was requested by that former member of the board at a
15 public meeting of the Harrisburg Authority on June 25, the day
16 before. That member said, I need to speak to the executive
17 director and the solicitor because I may have a financial
18 interest in the project. On June 26, Rhoads & Sinon writes a
19 legal opinion that says, as a public official, as you all well
20 know, you must abstain from any vote and disclose the reason.

21 But that's not what the Municipality Authorities
22 Act says. The Municipality Authorities Act is a flat-out
23 prohibition on any member of the board having any direct or
24 indirect financial interest in any contract. And in fact,
25 recently the Pennsylvania Ethics Commission entered into

1 consent agreements with two other former chairpersons of the
2 Harrisburg Authority based on violations of the public
3 officials law.

4 What was interesting to me was in those consent
5 agreements, there's no mention of the Municipal Authorities
6 Act. And when contacted, the executive director of the Ethics
7 Commission said, we do not have jurisdiction under the Ethics
8 Act to prosecute or go forward under the Municipal Authorities
9 Act. Then who does? All the statute says is, if that
10 conflict occurs, the contract is void. Well, the contract was
11 performed eight years ago. What's the remedy? Who has any
12 rights? Is this another statute with no teeth?

13 If, and I went off a little bit there, but going
14 back to my presentation, I've included a chart. And I'm big
15 on chronologies. If you put things in a chronological order,
16 you can see what happened. And I start in 1972, and you can
17 go through and see who the party is, what the event was. If
18 there's a financing, I included the amount of the financing
19 and a list of the cost of issuance, who got paid at closing.
20 And it's the same law firm, sometimes they're the
21 underwriter's counsel, sometimes they're the bond counsel.

22 What wasn't discussed today is the relationship
23 between Dauphin County and the City of Harrisburg. This is an
24 old political fight that goes back, it could be the '80s. In
25 1988, the legislature passed this Act 101 statute that

1 requires 10-year waste plans. And Dauphin County, in their
2 plan, excluded the incinerator. And obviously, the mayor
3 wasn't happy about that. And there was litigation, there was
4 appeals to the Environmental Hearing Board, and ultimately in
5 1995, there was a settlement. And in the settlement, the
6 county agreed they would use their best efforts to assist the
7 city with the incinerator.

8 The real change occurs in November of 1999, with
9 the election of John Payne and Lowman Henry to the Dauphin
10 County Commissioners. They ran on the platform, one of their
11 issues, to close Dauphin Meadows, formerly known as Fulkroad
12 Landfill, because there was incinerator opposition, and not
13 only incinerator opposition, our local State Senator was
14 opposed to that landfill.

15 The Commissioners formed a task force. The first
16 thing they did when they took office in January of 2000, and
17 who was on the task -- at the time, Dauphin County had their
18 own Solid Waste Authority, and they incurred a lot of debt and
19 there was a lot of issues with them and a lot of
20 mismanagement, and there was reasons why they should be looked
21 at. So the Commissioners appointed a task team consisting of
22 three people - Commissioner Payne, Mayor Reed, and Andy
23 Giorgione.

24 Andy, at the time, was a former city solicitor.
25 At the time, he was appointed and approved by Dauphin County

1 court to serve as a special counsel to Dauphin County. And
2 throughout this process, Andy ended up representing everybody
3 at some point in time throughout this process. It's not for
4 me to say whether or not there was a conflict of interest
5 because they all seemed to be on the same side of the goal of
6 we need waste from Dauphin County to be committed to the
7 incinerator so that we can finance the retrofit of the
8 incinerator.

9 It starts with the task force report that
10 recommends a change in the structure of how Dauphin County
11 does business. In 2002, the Commissioners pass a resolution
12 that says all waste shall go to incinerator once the retrofit
13 is done. Then comes the issue of, well, now the county has to
14 do a secondary guaranty and make the financing reasonable.

15 Throughout that process, that's when I get
16 involved. And my concern is although this is happening at a
17 meeting of the Commissioners held in public in a room like
18 this at 10 o'clock on a Wednesday morning, their agendas are
19 not public before the meeting, nobody has any idea what
20 they're going to do at the business portion of the meeting.
21 At the time they weren't -- well, they're still not televised
22 in Dauphin County. So unless you're an employee or an
23 insider, you don't know what goes on.

24 I was starting to go to meetings because I was,
25 you know, what are you going to do about the 10-year plan?

1 And I show up at a meeting where I look at the agenda and Andy
2 Giorgione is on the agenda talking about this resolution that
3 would commit all waste to the incinerator. And I just went,
4 where's the public notice and opportunity for the 39
5 municipalities to comment? When does the public get to chime
6 in on whether or not this is appropriate? Should all waste
7 go?

8 Well, Dauphin County, they get a \$50 tipping fee.
9 If they agree to commit all the waste, they get a fixed
10 tipping fee, \$50 per ton. That's the deal. If you
11 participate in the financing, that's your rate. And it can
12 only go up based on inflation. However, although the contract
13 limits rate increases, Dauphin County is now up about \$78, \$79
14 a ton. The City of Harrisburg is now \$200 per ton, the second
15 highest rate in the country. That's how the incinerator can
16 generate the revenue in 2012 that was predicted in 2003,
17 because the rates have gone through the roof, and it has
18 burdened the taxpayers and ratepayers of the county and the
19 city, and it may or may not get better, depending on if the
20 incinerator is sold.

21 One thing you didn't hear, if you go through the
22 chronology, in 2004 Mr. Lispi left the employment of city.
23 And at the direction of the mayor, the board of the Harrisburg
24 Authority was told to hire him as a consultant under a
25 three-year contract to oversee the construction management of

1 the retrofit project. Now, there is logic to that. Dan is
2 probably accurately one of the most knowledgeable people here.
3 But I don't necessarily know his qualifications, other than
4 running the mayor's special projects and making sure, you
5 know, the Hilton and City Island and all the good things Dan
6 did for the city, I don't know that he's the solid waste
7 engineer specialist that should have been overseeing what
8 Barlow was doing.

9 Why wasn't the Harrisburg Authority auditing the
10 bills that Barlow was submitting? Why didn't they know that
11 the subcontractor for the boiler hadn't ordered the steel, at
12 a time when prices in China for steel were going through the
13 roof? How does all of this happen without our knowledge? And
14 we all point the finger at Barlow. Barlow bad, Barlow bad,
15 Barlow bad.

16 Well, that is probably true, but shame on us for
17 not having the systems in place to insure it didn't happen.
18 With a project of this size and this importance, the
19 professionals were negligent. They were not only negligent in
20 how -- and you heard from Mr. Goldfield this morning on the
21 financing, and that's way over my head. But as a incinerator
22 sitting here, I say to myself, when do I get to participate?
23 When, in the process?

24 I mean, I heard about a taxpayer complaint today.
25 I've never heard that before. I'm a practicing lawyer for 25

1 years. I know I can file an appeal of a decision and I have
2 30 days to file an appeal, and nobody within 30 -- and first
3 of all, when do I know something is submitted to DCED for them
4 to review? What's the standard of review that DCED is
5 supposed to undertake? Is it a checklist of legal documents
6 submitted, or do they read it? Do they ask questions about
7 it? Now, I understand questions were asked and I understand
8 political influence occurred in some of those transactions.
9 I'm not sure exactly who spoke to whom. I don't know if it
10 was the mayor to the Governor, or the mayor to the secretary,
11 or an outside lobbyist to a secretary. I don't know that. I
12 don't have any facts, I can't make an allegation. But I have
13 heard it occurred, and that's troublesome.

14 I can understand that Mrs. Barratini sees 700 of
15 these and it just goes over her head. There appears to be no
16 documentation, e-mails about meetings that would have occurred
17 between the attorneys for the Authority and DCED to review
18 some of these documents. I know there was meetings, I know
19 there was phone calls. But nobody writes a memo. What
20 happened? What were the questions that were asked, and how
21 were they resolved? There's no record of that anywhere.

22 Thank you for your indulgence, by the way. I get
23 to tell this story every once in a while.

24 What I want to do is just, because the hour is
25 late. I took some notes as everybody spoke this morning and I

1 just want to sort of -- I call this cleaning up. A question
2 was asked of DCED whether or not they have a process for
3 referral to the Attorney General. I'm not positive about
4 this, but I don't think the Attorney General has jurisdiction
5 to investigate and prosecute financial crimes without a
6 referral from the appropriate agency. Now, I'm not positive
7 about that, so don't take that as legal advice, but that's a
8 change that has to happen. The Attorney General's Office has
9 to be given the ability to independently investigate financial
10 crimes without the need for a referral from a politically
11 motivated State agency. The Attorney General is supposed to
12 be independent, they're supposed to be law enforcement, they
13 should be all over this.

14 I think our district attorney should have been all
15 over this, but frankly, the district attorney in Dauphin
16 County, who is a wonderful man and a good person, has received
17 campaign contributions from every single professional involved
18 in all of these transactions. So as a result, that person
19 should recuse themselves and refer the matter to the Attorney
20 General. That has not happened here. Instead, I've read
21 public comments that the district attorney hasn't read the
22 forensic investigation; that sometimes mistakes are made but
23 they don't rise to the level of crimes. Well, if you haven't
24 read the investigation, how can you reach that conclusion?

25 And I've also heard people say sometimes public

1 projects fail. Well, that's unacceptable, because we have
2 professionals paid a lot of money to insure there's adequate
3 security, financing is appropriate. These people get paid a
4 lot of money, and it's imperative that members of the board of
5 public authorities do their due diligence and ask the
6 appropriate questions. I am very proud of my current board
7 members, Mr. Kurowski, Mr. Majors, and myself. We spend hour
8 after hour after hour going over everything. And it's
9 primarily because in the past, the Harrisburg Authority was a
10 rubber stamp for whatever the mayor wanted.

11 Let me tell you about special projects. Special
12 Projects was started in 1991 by resolution of the Harrisburg
13 Authority that said you can take administrative fees from
14 noncity financings and put them into a special account, the
15 Special Projects Account. Later, the Harrisburg Authority
16 Board passed a resolution delegating the Authority to spend
17 that money to the mayor of the City of Harrisburg. I have no
18 idea if that's legal. I'm just telling you, pursuant to
19 resolution, Mayor Reed had the power to spend that money. And
20 it was millions of dollars, and he traveled around the country
21 and he bought artifacts, and we now have a Civil War Museum.
22 And the concept was seek the structural money from the State,
23 and the local match would come from the city or the Authority,
24 and that would be the artifacts. That's how the Civil War
25 Museum was built, and it's a gorgeous facility. I'm just not

1 aware of a business plan. I'm not aware of any public vetting
2 where we were asked, can we sustain this? Are we going to be
3 able to do this?

4 Well, the vision was multiple museums, and the
5 next one is the Sports Hall of Fame, and the next one is an
6 African-American Museum, and then the next one is the Wild
7 West Museum. And that's fine, and that was the mayor's
8 vision. It was never vetted. There was never a buy-in from
9 the public. So when it -- and by the way, this all occurred
10 at public meetings. The Harrisburg Authority Board meetings
11 are public. Requisitions to authorize repayment of invoices
12 for artifacts Steve Reed bought, they're public. Now, whether
13 the Patriot-News deemed to send a reporter to a meeting would
14 depend on, I don't know, the level of staffing. And even when
15 the reporter was there, there was never any coverage of this.

16 Do members of the public go to these meetings?
17 You know, no, we don't. Only idiots like me who have nothing
18 better to do, we go to the meetings and we watch closely to
19 see what's going on, and we still don't get very many people
20 to our meetings, as controversial as we are.

21 Finally, the artifacts goes public in 2003 because
22 the Business Journal wrote about it, and that's when city
23 council says, uh-uh, no more spending money on artifacts. But
24 when it comes time to do the financing in 2003, the president
25 of city council holds up the vote. The vote is delayed

1 because they want something. Everybody is getting something.
2 What's in it for city council? So you see in the forensic
3 audit on pages 49 and 50, there's a series of e-mails where
4 Mr. Giorgione reports to Mr. Lispi and Randy King, who was the
5 mayor's spokesperson, and sort of chief of staff at the time,
6 Stan Mitchell, one of the lawyers, was speaking to City
7 Council President Richard House, that apparently Reynolds and
8 Mr. Clark--I'm assuming that's who Freddie is--have something
9 about a million dollars. Now, my reading of that is Reynolds
10 is going to get the contract for construction management. So
11 that's how I interpret that. But what I want to know is, it
12 says, and they believe they have secured the votes of city
13 council.

14 Now, I'm interested in that because the members of
15 city council were holding public hearings throughout the
16 summer all over the city getting input. And what I was
17 hearing from certain council people was the tremendous
18 pressure being put on them to approve this project, to the
19 point the former, now deceased, Councilperson John Wright
20 publicly complained at the level of pressure being put by
21 people on behalf of the administration to vote for this
22 project.

23 And if you read the forensic investigation,
24 there's a reference to let's put some money aside for a
25 Special Projects Fund. This is a separate fund. This is not

1 the artifacts, et cetera. This is what we ended up calling
2 councilmanic funds, councilmanic grants. What you all know as
3 WAMs. Walking around money for the members of city council to
4 pass out around the city for whatever purpose they deemed
5 appropriate.

6 I don't know how much it was supposed to be. It
7 looks like \$500,000. The best I can determine, based on a
8 review, and this is not in the audit report, this is my work
9 product, 2004-2005 the members of city council passed
10 resolutions, and all of these were pursuant to applications
11 from people asking for money that the city went through the
12 appropriate process to make sure there was legitimate
13 application, council voted and the money was given to let
14 people go to a midget football game or a Miss America pageant,
15 or some conference. And some of it went to some decent
16 programs throughout the city. Most of the nonprofits don't
17 exist anymore. But it ended up being about \$270,000. Where
18 did that money come from?

19 In the 2003 financing, \$4.2 million was given to
20 the city as a guaranty fee. Now, I don't know off the top of
21 my head if all of that money was the amount that was needed to
22 pay the former workers of the incinerator who had to transfer
23 within the city because they were part of the AFSCME union. I
24 thought that payment came from other aspects of the financing.
25 My understanding is these guaranty fees were put into the

1 general fund of the city, which meant the city didn't have to
2 raise taxes. And that's fine. So we kicked things down the
3 road. But the cost of the borrowing was increased by \$4.2
4 million, and apparently because the money went into the
5 General Fund, I can't do a direct tie, but the \$270,000 that
6 city council used for their WAMs had to have indirectly come
7 from that.

8 So in essence, city council held up the vote in
9 order to get WAMs and increase the cost of the borrowing. Is
10 that illegal? Not to my knowledge. But it's wrong. It
11 didn't benefit the city, and it's costing the taxpayers today.

12 CHAIRMAN EICHELBERGER: How much longer do you
13 have, Mr. Cluck?

14 MR. CLUCK: Last thing I wanted to say, bring in
15 Covanta at your next -- at one of your hearings. I'd like to
16 hear from Covanta about what it took for them to fix the
17 Barlow project, because my understanding is the Barlow
18 technology generally is not there anymore. It's Covanta, and
19 Covanta is the reason we're doing as well as we are for the
20 revenue side. But we're getting our butts kicked because we
21 just can't afford to pay debt service.

22 Thank you for your time, for your attention. If
23 you have questions as you read through that little chronology,
24 I'm always available.

25 CHAIRMAN EICHELBERGER: Thank you.

1 questions I want to get through, and I would like to get them
2 on the record.

3 MR. CLUCK: Oh, certainly.

4 SENATOR FOLMER: First of all, I want to thank you
5 for the history of the Harrisburg Authority. Now, one thing
6 that both strikes me and also makes this whole issue confusing
7 are the changes in the board and the staff, especially the
8 executive directors. To the best of your knowledge and
9 memory, would you walk us through the Authority's changes from
10 the period of 2002 to 2003, through 2007 and today? And as a
11 follow-up to a number of Senator Eichelberger's questions,
12 who, if anyone, was orchestrating these changes?

13 MR. CLUCK: Tom Mealy was the longtime executive
14 director, but he was also an employee of the City of
15 Harrisburg, so he was part-time executive director. And
16 that's because everything was being run by the city. Mr.
17 Mealy, I do not know the reason, but he left I think it was in
18 October 2006. He was replaced by Robert Ambrose, who was a
19 Professional Engineer, formerly employed by HRG. He was there
20 for I think six or seven months. The memos that I saw, he was
21 asking some significant questions to the administration about
22 significant issues. I don't know why he left.

23 But you have to remember, in January of 2007, the
24 city council took the power to appoint the board away from
25 Mayor Reed, and this started a lengthy legal process. There's

1 the Reed board, and then the council board, and who's on the
2 board? And over the year 2007, it was in flux. But that was
3 the year we did the Covanta contract, that was the year we did
4 the 2007 \$30 million financing.

5 At some point during the year Michele Torres
6 became the executive director. She had a historical
7 relationship with James Ellison I believe through the
8 Harrisburg School District. Michele served as executive
9 director till sometime in 2010. I'm now guessing on the
10 dates. We brought on Shannon Williams as interim. Shannon
11 had been serving as our engineer director, and she has done a
12 magnificent job, and we've now named her the permanent
13 executive director. And she is phenomenal.

14 The difference in the Harrisburg Authority, and
15 basically started with Michele, was we started hiring our own
16 people. If you look at all these transactions - you got bond
17 counsel, authority counsel - there's never a CPA or a
18 financial advisor for the city. There's never the taxpayer
19 representative. There's Milt Lopus on behalf of the
20 Authority, and you heard everybody today talk about the
21 financial professionals making the -- well, the city's
22 interest isn't necessarily aligned with the Harrisburg
23 Authority.

24 And in my retrospect and second-guessing and
25 Monday-morning quarterbacking, I think the city should have

1 had an independent financial advisor who would have been able
2 to look and say, you know what, maybe there's an alternative.
3 In 2000, it wasn't \$104 million in stranded debt. In 2003 it
4 was. But you made the decision in 2000 to do the retrofit.
5 So you borrowed \$17 million in 2002, you then restructured --
6 you borrowed more money. The debt wasn't that high. If you'd
7 shut it down in '99 when you knew you weren't going to meet
8 the emissions standards, maybe we could have done a GO bond
9 for the city. I don't know because nobody ever gave that
10 advice, to our knowledge, to the city for city council or the
11 administration to evaluate that is the option, instead of
12 doubling down on a risky project.

13 SENATOR FOLMER: Thank you very much for your
14 time.

15 CHAIRMAN EICHELBERGER: And I didn't have
16 anything, Mr. Cluck. Thank you very much.

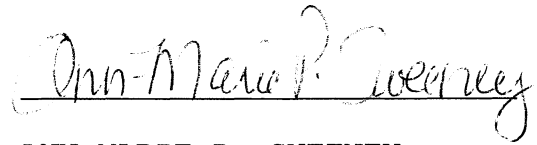
17 MR. CLUCK: Thank you.

18 CHAIRMAN EICHELBERGER: And thanks to everyone who
19 was here today, and we had a very friendly audience join us as
20 well. So we're adjourned, and we will have a second day of
21 hearings on October 29, I believe same room, with a different
22 group of people. So thank you all.

23 Meeting adjourned.

24 (Whereupon, the proceedings were concluded at 4:28
25 p.m.)

1 I hereby certify that the proceedings and evidence
2 are contained fully and accurately in the notes taken by me
3 during the hearing of the within cause, and that this is a
4 true and correct transcript of the same.

5
6
7
8 

9
10 ANN-MARIE P. SWEENEY
11 Chief Official Reporter
12 Senate of Pennsylvania
13
14

15 THE FOREGOING CERTIFICATION DOES NOT APPLY TO ANY
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21 Chief Official Reporter
22 Senate of Pennsylvania
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25 (717) 787-4206

EXHIBITS



Senate Local Government Committee

Senator John H. Eichelberger, Jr.
Chairman



Room 460, Main Capitol Building, Senate Box 202030, Harrisburg, PA 17120-0030 • 717.787.5490 • Fax 717.783.5192

Public Hearing On Debt Structure of Distressed Harrisburg Incinerator

Thursday October 4, 2012
10:00 a.m.

~ Agenda ~

- 10:00** **Call to Order and Introductory Remarks**
 Senator John H. Eichelberger Jr., Chairman
 Senator John Blake, Minority Chairman
- 10:10*** ***Summary of Forensic Investigative Report***
 Steven A. Goldfield, Esq.
- [Lunch]**
- 12:30-** ***Department of Community and Economic Development***
 Bernadette Barratini, Esq.; Tim Anstine, Esq.; and Fred Reddig
- 1:30** ***Representatives of Local Government***
 Eric Papenfuse (former Authority Board member)

 Fred Clark (former Authority board member)
- 2:30** Stephen R. Reed (former Mayor, City of Harrisburg)

 Dan Lispi (former Director of Special Projects)
- 4:00** William Cluck, Esq. (current Authority Board member)
- 4:30** **Adjournment**

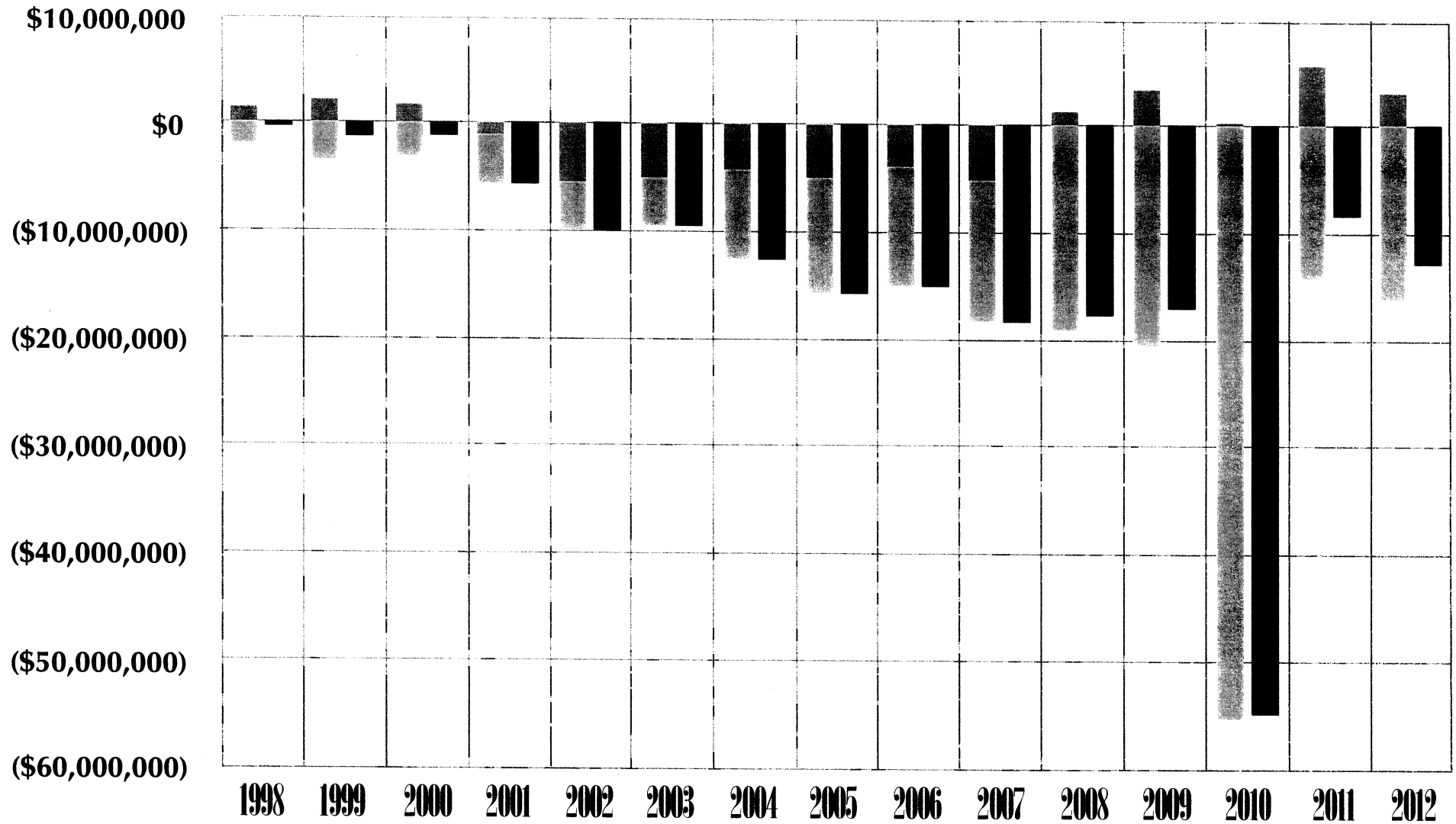
* All times are approximate, depending on length of testimony, questions/answers



10:10*

Summary of Forensic Investigative Report
Steven A. Goldfield, Esq.

Revenues Available for Debt Service and Shortfalls



- Shortfall
- Annual Debt Service
- Revenue Available to Pay Debt Service



PRIVILEGED & CONFIDENTIAL
ATTORNEY WORK PRODUCT

**THE HARRISBURG AUTHORITY
RESOURCE RECOVERY FACILITY
FORENSIC INVESTIGATION REPORT**

By

Douglas F. Schleicher, Esquire
Glenn A. Weiner, Esquire
Klehr Harrison Harvey Branzburg LLP

David M. Duffus, CPA/ABV/CFF, CFE
James T. O'Brien, CPA/CFF
ParenteBeard LLC

January 12, 2012

TABLE OF CONTENTS

I. INTRODUCTION	1
A. INVESTIGATIVE TEAM	2
B. THE PARTIES	4
1. <i>The City</i>	4
2. <i>The County</i>	5
3. <i>The Authority</i>	5
4. <i>The Contractors</i>	6
5. <i>The Law Firms & Lawyers</i>	7
6. <i>Financial Advisors</i>	9
7. <i>Technical/Engineering Consultants</i>	10
8. <i>Bond Insurer</i>	11
C. SCOPE OF WORK	11
D. PROCEDURES UNDERTAKEN	12
II. SUMMARY OF OBSERVATIONS AND FINDINGS	15
III. OBSERVATIONS AND FINDINGS	19
A. PRE-RETROFIT HISTORY OF THE FACILITY	19
1. <i>The Pre-Retrofit Operating History</i>	19
2. <i>Development of Retrofit and Selection of Barlow</i>	21
3. <i>The Pre-Retrofit Debt Status</i>	26
4. <i>The Pre-Retrofit Insurance Status</i>	31
B. FINANCIAL ASSESSMENT OF THE RETROFIT AND THE 2003 RETROFIT BONDS	32
1. <i>Critical Assumptions in Projections</i>	33
2. <i>No Meaningful Challenges to the Projections</i>	38
3. <i>Guarantees and Fees – Added Expense, and Knowledge and Acceptance of Risk</i>	42
4. <i>Relaxed Contract Requirements Allowed Incurrence of Additional Debt</i>	46
5. <i>2003 City Council Fund</i>	48
6. <i>Local Government Unit Debt Act Concerns</i>	50
7. <i>Actual vs. Projected Results</i>	56
8. <i>Conclusions Regarding the 2003 Debt</i>	60
C. BARLOW CONTRACT ISSUES AND SECURITY FOR PERFORMANCE	61

1. <i>The Retrofit Contracts</i>	61
2. <i>Lack of a Performance Bond</i>	64
3. <i>Release of the Retention</i>	71
4. <i>Conclusions Regarding Barlow's Contracts and Security for Performance</i> ..	73
D. 2005 & 2006 NEGOTIATIONS TO SELL THE RRF	74
1. <i>Conclusions Regarding Sale Negotiations</i>	78
E. CITY/AUTHORITY FINANCES DURING 2003-2006.....	78
1. <i>SWAPS</i>	80
F. COMPLETING THE FACILITY AND THE 2007 DEBT	98
1. <i>Terminating Barlow and Financial Difficulties</i>	98
2. <i>Resistance to Request for Additional Funding, and Response</i>	101
3. <i>Change in Authority Board</i>	104
4. <i>Financial Analyses Prepared in 2007 Evidence an Inability to Service Debt</i>	106
5. <i>Transactions to Keep Covanta on the Job</i>	109
6. <i>Concerns With 2007 Debt Issuances</i>	112

I. INTRODUCTION

The Harrisburg Authority (the “Authority” or “THA”) is a municipal authority created by the City of Harrisburg (the “City”). The Authority provides various utility services to the City and certain surrounding communities. The Authority owns the Harrisburg Resource Recovery Facility (the “RRF” or the “Facility”), a waste-to-energy plant.

The Authority has accumulated more than \$300 million in debt and other obligations related to the RRF. The debt on the RRF arises primarily out of the issuance of numerous bonds and notes by the Authority. About two-thirds of the debt was incurred in connection with projects undertaken in 2003 and 2007, both of which were designed to retrofit the RRF to comply with environmental regulations and to increase its efficiency and capacity. (In this report, we sometimes refer to these projects as any combination of the words “project,” “projects,” “retrofit” or “retrofits.”) Despite these projects, the RRF is not generating sufficient net operating revenues to service the debt on the Facility. The Authority’s inability to service the debt on the RRF has resulted in the City and Dauphin County (the “County”), and the bond insurer (Assured Guaranty Municipal Corp. (“AGM”), as the successor to the interests of Financial Security Assurance (“FSA”)), making debt service payments on the Authority’s debt and has been a significant factor in the well-publicized financial distress of the City.

In late 2010, the Authority conducted a public search, through a formal proposal process, for an accounting firm and a law firm to perform “...a forensic audit¹ of certain financings in 2000, 2002, 2003 and 2007, including swap agreements, as well as certain

¹ The term forensic audit reflects the nomenclature chosen by the Authority for use in the Request for Proposal. The term forensic audit has not been defined by the American Institute of Certified Public Accountants (“AICPA”), although the term often is used interchangeably with the terms forensic investigation, forensic accounting and/or forensic examination. The forensic accounting work that has been performed in this matter is based upon the scope of work set forth by the Authority Board and its Solicitor, and the procedures discussed in this report. Further, those forensic procedures have been performed in accordance with the AICPA’s consulting standards, not the audit standards. As such, the forensic accounting procedures performed do not constitute a financial statement audit, the objective of which is the expression of an opinion on the fairness with which the financial statements of the entity subject to audit present, in all material respects, the financial position, results of operations and cash flows in conformity with generally accepted accounting principles.

contracts with Barlow Projects and Reynolds Construction. These financings and contracts have resulted in over \$282 million in debt² which cannot be repaid by the Authority from receipts and revenues at the RRF.”³ Following receipt of written responses to the Authority’s requests for proposal and public interviews of responding parties, the Authority selected the law firm of Klehr Harrison Harvey Branzburg LLP (“Klehr Harrison”) and the accounting firm of ParenteBeard LLC (“ParenteBeard”) to conduct the forensic investigation. The Authority also engaged the financial advisory firm of Public Resources Advisory Group (“PRAG”) to consult with, and to provide quantitative analysis and support to, Klehr Harrison and ParenteBeard regarding the plan of finance for the RRF, the debt issued and related swaps entered into by the Authority. These firms were engaged by the Authority in late December 2010 and began work on the investigation in January 2011.

A. INVESTIGATIVE TEAM

Numerous individuals contributed to the overall analyses that were performed. The work was performed under the direction of the following individuals:

Douglas F. Schleicher is a partner with Klehr Harrison and the Chair of the firm’s Environmental practice group. Mr. Schleicher has experience with a broad range of environmental matters, including regulatory, transactional and litigation matters.

Glenn A. Weiner is a partner with Klehr Harrison in the firm’s Litigation department. Mr. Weiner handles various kinds of complex business issues in litigation matters and has experience in conducting internal investigations for clients and in representing them in connection with investigations by administrative agencies and self-regulatory organizations.

² The figure does not include all debt and obligations.

³ Request for Proposal dated September 28, 2010.

James T. O'Brien is a Certified Public Accountant and is certified in Financial Forensics. He is a Partner with ParenteBeard's Forensic, Litigation & Valuation Services department in Philadelphia, Pennsylvania.

David M. Duffus is a Certified Public Accountant, Accredited in Business Valuation, certified in Financial Forensics, and is a Certified Fraud Examiner. He is a Partner with ParenteBeard, and manages the Pittsburgh Forensic, Litigation & Valuation Services department.

Steven A. Goldfield has been an independent financial advisor for the past six years. He was a Senior Managing Director at PRAG until October 31, 2011, and is currently a Senior Counselor with PRAG. Prior to that, Mr. Goldfield was a bond counsel and underwriters' counsel. Mr. Goldfield is the Principal of Municipal Advisor Solutions, a company formed to assist financial advisors with compliance with the new regulations being promulgated under Dodd-Frank Wall Street Reform Act.⁴

Each member of the investigative team brought a specific set of skills to assist the investigative process. Our observations and findings are presented in combined fashion in this report, and the individual experience each team member brought to the investigative team helps to bring insight to the conclusions that have been drawn. The conclusions presented are based primarily upon the experience of the respective member(s) of the team with relevant background in the subject matter addressed. No member of the team is providing any formal opinion on any matter, nor is any member of the team purporting to advise you, by virtue of providing input into this joint report, on subject matters that are outside of his or its respective area(s) of practice.

⁴ Mr. Goldfield and PRAG professionals undertook quantitative analysis and provided insights based upon their experience with respect to certain of the issues reviewed in the investigation and addressed in this report, including among other things, the swaps, caps and plan of finance, as well as structuring of and customary practices involved in municipal finance transactions.

B. THE PARTIES

There were many entities and individuals who were involved with the financings for the RRF and the retrofit projects. To place their involvement into context, the following identifies the key individuals and entities that have been identified in our analysis.

1. *The City*

The key individuals from the City who had involvement with the RRF were:

- Stephen Reed. Mayor of the City of Harrisburg from 1982^{4,5} through 2009.⁵
- Daniel Lispi. Assistant to the Mayor for Special Projects,⁶ and later a consultant to the Authority and the City on the project.⁷
- Linda Lingle. Business Administrator.⁸
- John Lukens. Director, Department of Incineration and Steam Generation Materials & Energy Recycling and Recovery Facility.⁹
- Robert Kroboth. Finance Director.¹⁰
- Linda Thompson. Harrisburg City Council (“City Council”) member, Chair of the Public Works Committee,¹¹ and current Mayor of the City of Harrisburg.

^{4,5} http://www.citymayors.com/mayors/harrisburg_mayor.html.

⁵ Mayor Linda Thompson was sworn into office in January 2010.

http://www.pennlive.com/midstate/index.ssf/2010/01/linda_thompson_sworn_in_as_har.html.

⁶ Mr. Lispi’s title as stated in the November 19, 2003 letter from Ronald Barmore to Mr. Lispi regarding the “security” package.

⁷ Consulting Agreement between DRL Consulting and Development LLC and the City and the Authority dated April 2, 2004.

⁸ Ms. Lingle’s title was obtained from various e-mail correspondence.

⁹ May 30, 2007 Letter from The Harrisburg Authority to Mr. Lukens, among others.

¹⁰ February 6, 2008 letter from Richard Michael to Mr. Kroboth.

¹¹ August 2, 2007 memo from Carol Cocheres to Ms. Thompson.

2. *The County*

Because of the limited documents the County provided, our identification of County officials and representatives that had involvement with the RRF was gleaned from documents provided by others.¹² Those individuals include:

- County Commissioner Jeffrey Haste.
- County Commissioner Lowman Henry.
- County Commissioner Anthony Petrucci.¹³

3. *The Authority*

Individuals affiliated with the Authority who had involvement with the RRF were:

- Thomas Mealy. Executive Director of the Authority through late 2006.¹⁴
- Robert Ambrose. Executive Director of the Authority in 2007.¹⁵
- John Keller. Authority Board member from at least 1998¹⁶ to September 2007,¹⁷ serving over that time as Vice-Chairman and subsequently Chairman of the Board of the Authority.
- Fredrick Clark. Authority Board member from at least 1998¹⁸ through August 2007¹⁹ and Chairman of the Board of the Authority in 2006.²⁰

¹² The County declined to produce documents to the forensic team, but did provide certain documents directly to the Authority in response to Right-to-Know requests by the Authority staff.

¹³ County of Dauphin Ordinance No. 4-2003 dated November 6, 2003.

¹⁴ November 30, 2006 Authority Board Meeting Minutes.

¹⁵ December 22, 2006 Authority Board Meeting Minutes.

¹⁶ General Certificate of the Harrisburg Authority dated August 27, 1998, included in the 1998 A, B, C and D Transcript of Proceedings.

¹⁷ The September 5, 2007 Authority Board Meeting Minutes indicate James Ellison is appointed Chairman. The Authority's Board Minutes evidence no further activity by John Keller after the December 19, 2007 meeting.

¹⁸ General Certificate of the Harrisburg Authority dated August 27, 1998 included in the 1998 A, B, C and D Transcript of Proceedings.

¹⁹ The Authority's Board Minutes evidence no further activity by Fredrick Clark after the August 22, 2007 meeting.

²⁰ Authority Board Meeting Minutes from February 22, 2006 identifying Mr. Clark as Chairman.

- Michele Torres. Acting Executive Director of the Authority in the fall of 2007.²¹ Later, Executive Director. Ms. Torres left the Authority in 2011.
- James Ellison. Chairman of the Board of the Authority from September 2007²² to March 2010.²³
- Trent Hargrove. Chairman of the Board of the Authority from at least 1998²⁴ to June 2004.²⁵

4. *The Contractors*

The following were key contractors on the retrofit project:

- Barlow Projects, Inc. (“Barlow”).²⁶ Hired by the Authority as early as September 2000²⁷ to assess the feasibility of the retrofit. Later provided project design, bid management and financial analysis services. Ultimately, Barlow served as the lead contractor on the project. Key Barlow representatives were:
 - James Barlow, President;²⁸ and
 - Ronald Barmore, Senior Vice President.²⁹
- Barlow also hired a number of subcontractors to assist with the retrofit contract. We will discuss the subcontractors in more detail during our analysis of the retrofit.

²¹ September 26, 2007 Authority Board Meeting Minutes.

²² The September 5, 2007 Authority Board Meeting Minutes indicate James Ellison is appointed Chairman.

²³ March 31, 2010 Authority Board Meeting Minutes.

²⁴ General Certificate of the Harrisburg Authority dated August 27, 1998 included in the 1998 A, B, C and D Transcript of Proceedings.

²⁵ See June 23, 2004 Trent Hargrove resignation letter.

²⁶ A related Barlow entity, Barlow Projects Harrisburg, LLC, was involved with the project, and was the contracting entity with the Authority for the Amended and Restated Agreement for the Sale and Installation of Equipment. Throughout the report these parties will be referred to collectively as Barlow.

²⁷ December 13, 2001 memo from Mayor Stephen Reed to Harrisburg City Council regarding the retrofit decision. The memo discusses Barlow’s September 2000 preliminary report to the City and Authority.

²⁸ December 4, 2000 Opinion Letter to the Authority regarding project feasibility.

²⁹ March 24, 2003 report certifying the self-liquidating status of the 2003 Series A, B and C debt.

- Reynolds Construction Management, Inc. ("Reynolds"). Hired by the Authority on February 16, 2004 to provide pre-construction services³⁰ and in August 2006 to provide close-out services on the project.³¹ Also hired by Barlow on April 1, 2004 to support Barlow with procurement and construction management services.³² At the time that Reynolds was awarded these contracts and was working on the project, Fredrick Clark, a member of the Authority's Board, was also a Reynolds executive.³³
- Covanta Energy ("Covanta"). Hired in January 2007 to complete the construction on the RRF and to operate the Facility.³⁴ Covanta continues to operate the Facility for the Authority.

5. *The Law Firms & Lawyers*

The following law firms and lawyers were involved with the RRF:

- Obermayer, Rebmann, Maxwell & Hippel, LLP ("Obermayer"). Retained by the Authority as early as 1994 regarding the RRF.³⁵ Key lawyers included:
 - Andrew Giorgione. Lead attorney at Obermayer who advised the Authority and the City on issues related to the RRF and who had a close working relationship with Mayor Reed.³⁶
 - Hugh Sutherland. Bond attorney who worked with Mr. Giorgione on RRF-related bond issues in 2003.³⁷
- Klett, Rooney, Lieber & Schorling, P.C. ("Klett Rooney"). Mr. Giorgione left Obermayer in 2005 to join Klett Rooney, and brought the client relationships with

³⁰ Scope of services attached to the February 16, 2004 agreement between the Authority and Reynolds.

³¹ August 23, 2006 Agreement between the Authority and Reynolds.

³² Agreement for Professional Consulting Services between Barlow and Reynolds dated April 1, 2004.

³³ http://www.fclarkresources.com/index.php?option=com_content&task=view&id=29&Itemid=5.

³⁴ Harrisburg Authority Resolution 2006-031, adopted December 22, 2006.

³⁵ December 21, 1994 engagement letter between the Authority and Obermayer.

³⁶ Based upon our observations from the documents produced.

³⁷ For example, refer to the May 9, 2003 memo from Mr. Sutherland to Andrew Giorgione regarding the Barlow Self-Liquidating Debt Report.

the City and the Authority with him.³⁸ Klett Rooney later merged with Buchanan Ingersoll, P.C. to become Buchanan Ingersoll & Rooney, P.C. ("Buchanan"). In addition to Mr. Giorgione, Kenneth Luttinger also provided counsel.

- Eckert, Seamans, Cherin & Mellot, LLC ("Eckert"). Eckert attorneys were involved with the RRF in various capacities from 1993, when the Authority acquired the RRF from the City, through 2011. Eckert attorneys were involved in the original acquisition financing; as bond counsel to the Authority for the 1998 refundings;³⁹ as Note Counsel to the Authority for the 2000 A and B Notes;⁴⁰ as Authority Special Counsel and Underwriters' Counsel for the 2002 Variable Rate Notes;⁴¹ as Underwriters' Counsel for the 2003 Note and Bond issues;⁴² and as Note Counsel and Special Counsel to the Authority for the 2007 Notes.⁴³ Further, based upon other documents and information analyzed, the scope of the representation appears to have been broader than these limited roles. Key attorneys at Eckert included:
 - Carol Cocheres.⁴⁴
 - Richard Michael.⁴⁵
- Rhoads & Sinon, LLP. Solicitor for the Authority from 1998⁴⁶ to 2004.⁴⁷
- Foreman & Foreman. Solicitor to the Authority from 2004⁴⁸ to at least 2007.⁴⁹
- Mette Evans & Woodside ("Mette Evans"). Counsel to the County.⁵⁰ Mette Evans attorneys include:

³⁸ See e-mail correspondence in November 2005, showing Mr. Giorgione was with Klett Rooney. Note that we have identified one engagement letter dated January 6, 2006 between Klett Rooney and the Authority regarding Barlow Contract Matters.

³⁹ Closing Memorandum for the 1998 A, B, C and D debt.

⁴⁰ Official Statement for the 2000 Notes, dated November 16, 2000.

⁴¹ Closing Memorandum for the 2002 A debt.

⁴² Closing Memorandum for the 2003 A, B and C debt issues, and Closing Memorandum from the 2003, D, E and F debt issues.

⁴³ Transcript of Proceedings dated December 26, 2007.

⁴⁴ August 2, 2007 memo from Carol Cocheres to Ms. Thompson.

⁴⁵ For example, refer to the comments provided by Richard Michael on the March 2003 self-liquidating debt report.

⁴⁶ Engagement letter dated September 18, 1998.

⁴⁷ Per its engagement letter, Foreman & Foreman was retained as solicitor in August 2004.

⁴⁸ Ibid.

⁴⁹ March 8, 2007 Authority Board Meeting Minutes. The firm is now known as Foreman & Caraciolo, P.C.

⁵⁰ Transcript of Proceedings dated December 26, 2007.

- Charles Zwally.
- Thomas Smida.^{50.5}

6. *Financial Advisors*

The following financial advisors were involved with the Facility and its finances during the course of the retrofit projects:

- RBC Dain Rauscher and Royal Bank of Canada (collectively, “RBC”). Investment banking firm involved in performing numerous financial analyses on the RRF and counterparty on swap transactions undertaken by the Authority. We have not observed any engagement letters retaining the firm. The point person for RBC was James Losty.⁵¹
- Milt Lopus & Associates, Inc. (“Milt Lopus”). Financial advisor to the Authority over the period 1990⁵² through summer 2007.⁵³ The point person for Milt Lopus was Bruce Barnes. Mr. Barnes had previously been employed as a staff person at the City under Mayor Reed.⁵⁴
- Public Financial Management, Inc. (“PFM”). Financial advisory firm retained by the County to provide advice on the bond guarantee fee paid to the County in connection with its guarantee of certain bonds issued by the Authority in 2003, the plan of finance for the retrofit project and the swaps guaranteed by the County in 2003 through 2006.⁵⁵ Retained by the Authority in 2007 to provide independent financial advisory services to the Authority in connection with the RRF.⁵⁶

^{50.5} December 27, 2007 letter to purchasers of the 2007 C Notes from Mette, Evans & Woodside.

⁵¹ For example, refer to the May 2, 2003 letter from Mr. Losty to Mayor Reed.

⁵² Engagement letter between the Authority and Devon Capital Services, Inc., dated October 25, 1990. Devon Capital Services later changed its name to Milt Lopus.

⁵³ Termination Letter dated November 16, 2007.

⁵⁴ Interview conducted with Bruce Barnes on April 7, 2011.

⁵⁵ October 21, 2003 Financial Review report for the County.

⁵⁶ September 18, 2007 engagement letter between the Authority and PFM.

- Investment Management Advisory Group (“IMAGE”). IMAGE served as co-swap advisor to the Authority and the City⁵⁷ and provided a fairness opinion with regard to the pricing on each of the swaps the Authority entered into, and the City and County guaranteed, between 2003 and 2006.⁵⁸ IMAGE was retained by the City and Authority to satisfy the requirement under the Local Government Unit Debt Act, 53 Pa. C.S.A. §§ 8001 *et seq.*, that an independent financial advisor certify that the financial terms and conditions under the swaps and caps the Authority entered into were fair and reasonable to the City, County and Authority, and as bidding agent for certain investments of bond proceeds.

7. *Technical/Engineering Consultants*

The following firms provided technical and engineering services in connection with the retrofit:

- DRL Consulting & Development, LLC (“DRL”). Firm founded by Mr. Lispi by at least April 2004. Engaged by the Authority in 2004 to assist with the retrofit.⁵⁹
- Herbert, Rowland & Grubic, Inc. (“HRG”). Engineering firm retained by the County in 2003 to evaluate the technical and financial merits of the RRF retrofit.⁶⁰
- Buchart Horn, Inc. (“Buchart Horn”). Engineering firm retained by City Council in 2003 to evaluate the technical and financial merits of the RRF retrofit.⁶¹
- HDR Engineering, Inc. (“HDR”). Engineering firm retained by the Authority in October 2007 to, among other things, review key data issues and identify budget gaps.⁶²

⁵⁷ Closing Memorandum for the 2003 D, E and F debt.

⁵⁸ Reaffirmation of Certificate of Independent Financial Advisors signed by IMAGE and Milt Lopus Associates dated December 30, 2003. Certificate and Reaffirmation of Certificate of Independent Financial Advisors signed by IMAGE and Milt Lopus Associates, both dated September 23, 2005. Market Pricing Letter signed by IMAGE dated December 30, 2003 and August 31, 2005.

⁵⁹ Consulting Agreement dated April 2, 2004.

⁶⁰ October 21, 2003 Assessment Report addressed to Charles Zwally of Mette Evans.

⁶¹ September 18, 2003 Final Report.

⁶² Agreement Between the Harrisburg Authority and HDR Engineering, Inc. for Professional Services dated October 10, 2007.

8. *Bond Insurer*

The bonds issued in connection with the retrofit project were insured by:

- Financial Security Assurance (“FSA”). Bond insurer on the Authority’s 1998 Bonds, 2000 Notes, 2002 Notes, and 2003 Bonds and Notes.⁶³ FSA subsequently was acquired by Assured Guaranty, Ltd. and is now known as Assured Guaranty Municipal Corp.

C. SCOPE OF WORK

Based upon consultation with the Authority’s Board and its Solicitor, the law firm of Goldberg Katzman, P.C., work on this matter focused on analyzing certain matters that were believed to be important to understanding the current financial difficulties involving the RRF. The forensic investigation has been focused on documenting and addressing specific issues related to the RRF retrofit projects initiated in 2003 and 2007 and the accumulation of debt and other obligations that currently exist. The issues on which we have focused can be grouped broadly as follows:

- The financial assessment of the retrofit undertaken by Barlow in 2003 (the “Barlow Retrofit”), including the review of Barlow’s financial projections and of the contemporaneous assessments of Barlow’s projections;
- The Authority’s issuance of bonds in 2003, guaranteed by the City and, to a certain extent, the County, and insured by FSA, to finance the Barlow Retrofit;
- Defects in the processes for selecting and contracting with Barlow for the retrofit project and in handling issues regarding security provided by Barlow during the course of the project;
- Negotiations in 2005 and 2006 to sell the RRF to Barlow;

⁶³ November 21, 2007 letter from FSA to the Authority, the City and the County. Also see the 2000 A and B Note Official Statement dated December 1, 2000.

- The Authority's entry into and termination of swap transactions during 2003 through 2006;
- The Authority's issuance of notes in 2007 to finance further improvements to the RRF and its actions relating to working capital and capitalized interest; and
- Other issues identified by the Authority based upon our analysis of the documents and information produced.^{63.5}

The scope of our investigation and analysis necessarily was subject to the Authority's budgetary constraints and the extent to which persons and entities voluntarily cooperated with the investigation. Because of these constraints, our investigation was focused on the issues defined by the Authority's Board and its Solicitor, and employed the procedures and approach discussed below. There may be material information that has not been available to us that could affect our conclusions. Accordingly, we make no representations as to the sufficiency of the procedures we have undertaken for any particular purpose and reserve the right to modify our conclusions if additional material information becomes available and we are asked to consider it.

D. PROCEDURES UNDERTAKEN

In evaluating the issues identified, we reviewed and considered tens of thousands of pages of documents and other information that was provided cooperatively by certain parties who had involvement with the RRF or was obtained from publicly available sources.⁶⁴ Because we neither could compel cooperation with our investigation, nor had the resources to review documents from every possible source, documents were requested primarily from public bodies and advisors and contractors of the Authority, who we

^{63.5} The Authority asked us to review campaign contributions to Mayor Reed by persons and entities involved in the retrofit projects. A summary of the information obtained from publicly available records is shown at Exhibit J.

⁶⁴ We did not obtain any representations as to the completeness of the production of documents in response to our requests from any parties and make no representation here that such productions were complete. In certain instances, we noted what appeared to be gaps in the productions, although we do not have any reason to believe that there was any deliberate destruction or withholding of documents by any cooperating party.

believed owed a duty to provide documents to the Authority. In addition, we conducted interviews with certain cooperating persons. Documents were not sought from other participants in the retrofit who had no obligation to provide documents to the Authority and, in some cases, are in active litigation with the Authority. While not exhaustive, the documents reviewed provide a reasonable basis for our analysis. The parties that have produced information are as follows:

- The Authority;
- The City;⁶⁵
- The County;⁶⁶
- Obermayer;
- Eckert;⁶⁷
- Rhoads & Sinon;
- Daniel Lispi;
- Reynolds; and
- PFM.⁶⁸

⁶⁵ The City produced approximately one filing cabinet of documents. Clearly, this does not represent all documents that have been in the City's possession over the course of time relating to the Resource Recovery Facility. We believe the City produced the documents in its possession it was aware of. We believe other documents once in the City's possession exist, but we do not know where they are located. In addition, the City was unable to provide information from before 2010 that is stored on computer files.

⁶⁶ As noted previously, the County declined to provide documents to the forensic investigators, but did provide certain documents to Authority staff in response to Right to Know requests.

⁶⁷ The request to Eckert was limited to documents related to its representation of the Authority in 2007. We did not request, and Eckert did not produce, documents from prior representations of other parties in connection with RRF matters.

⁶⁸ PFM provided documents from its representation of the Authority in 2007. With the exception of a report widely circulated at the time, PFM declined to provide documents from 2003, when it represented the County.

Documents were requested from other sources, including: Buchanan, James Ellison⁶⁹ and Milt Lopus;⁷⁰ however, to date, those parties have not provided the information requested.⁷¹

Refer to Exhibit A for the identification of the documents and information analyzed.

Additionally, interviews were conducted with the following individuals:

- Bruce Barnes of Milt Lopus;
- Bernadette Barattini, Esquire of the Pennsylvania Department of Community and Economic Development ("DCED");
- Carol Cocheres, Esquire of Eckert;
- Richard Michael, Esquire (now employed by PFM) with respect to his work at Eckert;
- Glen Williard of PFM; and
- John Frey of PFM.

An interview with Andrew Giorgione, Esquire was requested, but refused.⁷² As will be discussed at length in this report, Mr. Giorgione had significant involvement with the retrofit from its inception.

In addition to the interviews noted above, we have spoken informally with other persons who have provided information, including current Authority Board members, the

⁶⁹ Mr. Ellison is an attorney with Rhoads & Sinon and, as noted previously, also served as Chairman of the Board of the Authority. Documents were requested from Rhoads & Sinon for Mr. Ellison in his capacity as Chairman of the Authority Board. Further, documents were requested from Mr. Ellison personally. In both cases, no documents were produced.

⁷⁰ Mr. Barnes of Milt Lopus told us that relevant documents were lost due to a computer failure some years earlier.

⁷¹ Documents were produced by the City, Mr. Lispi, Reynolds and Rhoads & Sinon to the Authority's Solicitor, who conveyed the documents to us. The Solicitor reviewed Reynolds and Rhoads & Sinon documents and did not provide documents that clearly were not relevant to us. The Solicitor provided all documents from the City and Mr. Lispi without reviewing them first.

⁷² Counsel for Mr. Giorgione and Buchanan declined to cooperate with the investigation.

Authority's current Solicitor, Bruce Foreman of Foreman & Caraciolo, P.C., and Daniel Lispi.

There were many other individuals who were involved with many of the critical decisions related to the retrofit of the RRF and the related debt with whom we have not spoken because of limitations of time, cost, cooperation or availability. Additional information and documents could have a direct and material impact on our findings and observations. As a consequence, we reserve the right to amend our analyses and this report if additional or updated information becomes available and the Authority requests that we consider it.

II. SUMMARY OF OBSERVATIONS AND FINDINGS

Based on our review and analyses of information, our observations and findings are as follows:

1. The projections developed by Barlow to support the retrofit left little room for the changes in scope, costs, and timing that are common in such large scale construction projects. These changes were particularly likely here because the retrofit involved new technology that never before had been used on a facility the size of the RRF. Further, the financing that was obtained left no room for error or modification, since typical debt service coverage ratios were not observed. Thus, it was critical to the success of the retrofit that Barlow complete the project on time and at the price agreed upon, and achieve the feasibility assumptions that supported the assertion that all of the RRF debt, both existing and new, would be self-liquidating. Unfortunately, Barlow was unable to achieve any of these goals.
2. Perhaps more fundamental, however, was the lack of an adequate process to evaluate if Barlow had the capability and qualifications to perform the project and whether the project made economic sense. All parties involved, including the Authority, the City, the County, and FSA, should have required a robust,

independent evaluation of the technical and financial feasibility of the project, as well as reviewing alternatives, including not undertaking the retrofit, prior to proceeding with the project or its financing. Such a process was particularly appropriate here given the substantial expense of the retrofit, the consequence to public entities if the retrofit failed, and the risk involved in using new technology not previously used on such a large scale. The documents analyzed to date do not indicate to us that any of the parties, their employees or retained professionals adequately evaluated or assessed the potential risks associated with the RRF retrofit between 1999 and 2003, including the economics of the project. Further, we have not been provided with any evidence of evaluation of any other contractors, alternative technology or other solutions beyond that offered by Barlow. Moreover, there is no evidence to indicate that any of the parties, or their professional advisors, identified or recommended actions to address the conflicts of interest arising from Barlow's multiple roles in assessing the project's feasibility, providing the engineering services that certified that the project debt would be self-liquidating, and constructing the retrofit project.

3. All parties proceeded with the Barlow Retrofit project in 2003 without adequate security in place to ensure Barlow's performance. It was clear that Barlow was unable to obtain a performance bond due to its poor financial condition. The limited "security" that was obtained was inadequate and the retainage held was released prematurely. Barlow's inability to obtain adequate security for its performance should have caused serious questions about proceeding with Barlow as the contractor for the project. Not obtaining adequate security and prematurely releasing the retainage has contributed significantly to the Authority's inability to generate the cash flow from the RRF necessary to make its debt service payments.
4. The outcome of the retrofit, including the current debt crisis related to the City, reflects the accumulated effects of bad decisions on critical project issues, ranging from contractor selection at the outset to the \$60 million in debt taken on in 2007

when the Facility was still incomplete and not fully operational. In some cases, the Authority, the City and the County took strained positions on state law regarding municipal debt financing and other issues to allow the retrofit and related financings to proceed. The professionals, consultants and advisors who were paid significant fees to assist the Authority, the City and the County in the decision making process do not appear to have adequately identified or responded to numerous red flags that, if heeded, could have led to a different outcome. As a consequence, the overall financial condition of the RRF is far worse than what existed prior to the retrofit.

5. It is evident that most, if not all, of the parties involved with the RRF knew or should have known that, at a minimum, there was substantial risk that the RRF would not generate revenue sufficient to service the debt being issued, but they proceeded with the retrofit projects and their financings anyway. Proceeding with the Barlow Retrofit and the financings in 2003 enabled the City and FSA to delay having to pay debt service as guarantor or insurer of then-existing Facility debt, and proceeding with the further retrofit project and related financings in 2007 had the same effect for the City, the County and FSA. Both projects and related financings worsened the Authority's financial condition.
6. The City, the County and FSA provided guarantees or insurance on some (as to the County and FSA) or all (as to the City) of the Facility's debt. They received significant guarantee fees or insurance premiums for doing so, knowing the risks associated with default, both in 2003 and even more so in 2007, when all evidence pointed to the RRF's inability to service existing and contemplated debt upon completion. As stated by more than one professional involved in the retrofit financings, the financings were sold based upon the City and, even more so, County guarantees, and not the financial merits of the project. Each of these parties had information available to them in 2003 and again in 2007 sufficient to conclude that, if the RRF did not generate cash flow sufficient to service the debt,

the City would be unable to bear the full burden of the debt service, causing the burden to fall on the County and FSA.

7. The structure of the financial transactions related to the debt issued to fund the retrofit projects, including multiple swaps, was unnecessarily complex, and resulted in the payment of excessive fees, increased risks and the potential for greater financial burden on the Authority. RBC, whose principal representative on the transactions worked closely with Mayor Reed, was given a primary role in the development of the plan of finance, even though RBC's interests were not aligned with those of the Authority, the City or the County in many respects. RBC and IMAGE, the Authority's co-swap advisor, incorporated multiple and complex swap transactions into the plan of finance. It appears at least some of these swaps were entered into and terminated for short-term gains, irrespective of additional risks or negative long-term effects of the transactions. The use of swaps in this manner does not appear to be consistent with prudent management of interest rate risk or costs. From the documents reviewed, the Authority's and the County's independent financial advisors do not appear to have seriously challenged the plan of finance, suggested alternatives to the recommended swap transactions, or expressed concerns to their clients about management of interest rate risk or cost relating to specific transactions or long-term planning.
8. The decisions related to the retrofit and the related financial issues were directed by and vetted through the highest levels of leadership at the City, as Mayor Stephen Reed and his closest advisors, including Andrew Giorgione, Daniel Lispi, and James Losty, were prominently involved in the decision making process. Further, based on our analysis of the documents, many of the professionals who were retained to represent the Authority maintained close ties to the Mayor.
9. Reynolds played numerous and conflicting roles on the retrofit project, including simultaneously working as a contractor for both the Authority and Barlow.

Further, as identified by the Authority's solicitor, former Authority Board member Fredrick Clark had a conflict of interest arising from his dual roles as an Authority Board member and an employee of Reynolds. Despite the identification of the conflict, Mr. Clark did not resign from the Board, and the Authority awarded contracts (a) directly to Reynolds, with Mr. Clark only abstaining from votes involving Reynolds, and (b) indirectly to Reynolds, through Barlow. To our knowledge, none of the contracts or subcontracts awarded to Reynolds was competitively bid.

The bases for our observations and findings are discussed at length in this report.

III. OBSERVATIONS AND FINDINGS

A. PRE-RETROFIT HISTORY OF THE FACILITY

1. *The Pre-Retrofit Operating History*

The RRF was experiencing operational and regulatory problems at the time that the City sold the Facility to the Authority in December 1993.⁷³ As early as 1990, the City knew that the RRF required a major retrofit to comply with the requirements of the Federal Clean Air Act, and to address ongoing maintenance problems at the Facility.⁷⁴

In the early 1990's, the RRF experienced reduced waste flow and increased competition. Toward the end of the decade, circumstances began to improve, largely due to restored waste flow from the County. In 1995, the City settled a number of lawsuits with the County and its solid waste authority that resulted in a long term disposal agreement with

⁷³ 1998 Official Statement.

⁷⁴ In 1988, the City entered into Consent Orders and Agreements with the Commonwealth of Pennsylvania's Department of Environmental Resources to assure the Facility's compliance with air quality and solid waste regulations. Major capital repairs were completed in 1990 and 1991 to comply with the 1988 Consent Orders and Agreements and regulations, which enabled the Facility to operate with a reasonable degree of efficiency. 1998 Official Statement.

the County.⁷⁵ In addition, to the extent permitted by law, the County and its solid waste authority agreed to assist the City in obtaining a waste stream sufficient to generate revenues to finance a retrofit of the RRF to comply with the Federal Clean Air Act.⁷⁶

In January of 2000, the Dauphin County Commissioners created a task force, comprised of County Commissioner John Payne, Mayor Reed and Mr. Giorgione, to determine whether the County should create an intergovernmental solid waste management office with the City to fulfill the County's municipal waste management duties.⁷⁷ Mr. Giorgione, a former City solicitor under Mayor Reed, was then in private practice.⁷⁸ Subsequently, the task force recommended that the County create the City/County intergovernmental solid waste management office to carry out jointly the County's responsibilities for solid waste management in the County.⁷⁹ The County signed the Intergovernmental Cooperation Agreement on March 20, 2000, with Mr. Giorgione listed as a participant on behalf of the County.⁸⁰

In December 2002, the County approved a revised solid waste management plan. In connection with the revision, in the spring of 2003, the County decided to seek waste combustion capacity, after being urged by County municipalities to address rising landfill costs and to forestall any re-opening and re-permitting of the Dauphin Meadows landfill.⁸¹ The County issued a request for proposal to municipal waste combustion facilities in seven states.⁸² The Authority and a facility in Chester, Pennsylvania submitted bids.⁸³ On September 23, 2003, the County awarded its waste disposal contract

⁷⁵ Dauphin County Municipal Waste Management Ordinance 03-2004, page 2.

⁷⁶ Ibid, page 3.

⁷⁷ Dauphin County Municipal Waste Management Ordinance 03-2004, page 3. January 17, 2000 article authored by Jack Sherzer in the Harrisburg Patriot-News, titled "Cooperative offer appears hard to refuse."

⁷⁸ See February 17, 2000 correspondence between Mr. Giorgione and Mayor Reed regarding the Intergovernmental Cooperation Agreement with Dauphin County.

⁷⁹ Dauphin County Municipal Waste Management Ordinance 03-2004, page 3.

⁸⁰ Intergovernmental Cooperation Agreement between the City and the County dated March 20, 2000, page 10.

⁸¹ Dauphin County Municipal Waste Management Ordinance 03-2004, pages 4 - 5. The County continued its opposition to the Dauphin Meadows landfill. On June 2, 2004, it adopted Resolution 13-2004 opposing a proposed western expansion of the landfill.

⁸² Dauphin County Municipal Waste Management Ordinance 03-2004, page 5.

⁸³ Ibid, page 5.

to the Authority and designated that all regulated waste generated within the County be disposed at the RRF beginning in May, 2006.⁸⁴

2. *Development of Retrofit and Selection of Barlow*

To be designated the County's sole waste disposal facility, the RRF had to be operational. To be operational, it needed a major makeover. The EPA's requirements under the Clean Air Act limited the volume of materials that could be processed by the RRF, and the RRF could not meet future EPA Clean Air Act mandates.

In 2000, approximately \$80 million of debt was outstanding on the RRF; this increased to over \$100 million by the summer of 2003. At the same time, the carrying value of the RRF on the Authority's books stood at \$18 million.⁸⁵ The limited volume of waste the RRF processed was not generating revenues sufficient to repay the RRF debt or cover operating costs. If the RRF was going to continue to operate, the Authority and the City (then the RRF's operator) needed to modify the RRF so that, in addition to complying with EPA's requirements, it would be able to generate net revenues sufficient to repay (i) the existing debt load (approximately \$100 million), (ii) the construction and equipment costs of the retrofit (approximately \$73 million) and (iii) the working capital required to pay for costs of issuance, capitalized interest during construction and operating expenses while the RRF was not operating during the retrofit construction, and during start-up (approximately \$52 million). As projected at the time, the debt load would total approximately \$225 million at the completion of the retrofit. This was a significant financial challenge.

As discussed in an extensive article regarding the history of the RRF that the *Harrisburg Patriot-News* published on October 28, 2007, Barlow originally came to the attention of

⁸⁴ *Ibid.*, page 6.

⁸⁵ The Harrisburg Authority Audited Financial Statements for the year ended December 31, 2002.

Mr. Lispi, then a City employee, in 1999 as a result of an article *Waste Times* published.⁸⁶ The *Patriot-News* article reports that Mr. Lispi was intrigued by Barlow's technological approach, which used forced air to churn the trash and to control the burn, instead of the moving grates that the RRF used at the time, which constantly were breaking down.⁸⁷ Further, Mr. Lispi thought that a smaller company might be more willing to complete the retrofit at a lower price.⁸⁸

Following an internal City evaluation based upon the *Waste Times* article, in late 1999, Mr. Lispi and Mr. Giorgione traveled to Perham, Minnesota to evaluate a Barlow installation that had the capacity to burn between 50 and 100 tons per day, a fraction of the 800 ton per day capacity contemplated for the RRF.⁸⁹ The waste volume contemplated for the RRF was significantly larger than any of the other projects undertaken by Barlow, identified as between 80 and 115 tons per day in a 2003 HRG report prepared for the County.⁹⁰ In conjunction with the evaluation of the Perham facility, representatives from Barlow stated that Barlow could complete the Barlow Retrofit project for \$45 million to \$47 million and that the Barlow technology could be scaled to meet the capacity contemplated for the RRF.⁹¹

By 2000, the City was evaluating the merits of undertaking the retrofit using Barlow's technology. In a December 13, 2001 memo to the members of City Council, Mayor Reed stated that, in September 2000, Barlow provided the City and the Authority with a preliminary report that proposed a retrofit based upon Barlow's technology.⁹² Based upon that report, on November 27, 2000, Barlow and the Authority entered into a Professional Services Agreement, which was designated as exempt from public bidding

⁸⁶ Article entitled, "Harrisburg incinerator: History of the project and how taxpayers got saddled with the debt," by John Luciew, originally published October 28, 2007 and published again in the Harrisburg Patriot-News on July 20, 2011. This article contains extensive quotes from Mayor Reed, Mr. Lispi and Mr. Giorgione, among others. As such, it is assumed that they contributed to the article.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ October 21, 2003 Assessment Report addressed to Charles Zwally of Mette, Evans.

⁹¹ Second Amended Complaint in the matter The Harrisburg Authority v. Barlow Projects, Inc. et al., paragraphs 17 and 18.

⁹² Memo from Mayor Stephen Reed to Members of Harrisburg City Council dated December 13, 2001.

requirements. Under this agreement, Barlow agreed to provide the Authority with a plan to complete the retrofit in a manner that would enable the RRF to meet federal air quality standards. The agreement further stated that Barlow was retained to conduct the specialized technical engineering and design work required to support the retrofit, to obtain pricing on the retrofit's construction, to conduct financial analyses to identify the optimum project sizing and approach, and to prepare various performance calculations.⁹³

On December 4, 2000, Barlow provided a report setting forth its technical opinion of the ability of the retrofit project to meet air quality standards based upon a specified retrofit plan and set of equipment. Barlow concluded that the retrofit project would enable the RRF to meet the EPA air quality requirements.⁹⁴ While it is not explicitly clear, it is assumed that the specified retrofit plan, as well as the equipment necessary for the retrofit, incorporated the Barlow technology and approach.

On July 25, 2001, Barlow issued its Final Report on the Phase I Retrofit Design Engineering and Feasibility Study (the "Barlow Feasibility Study"), which appears to be the plan contemplated under the Professional Services Agreement. In that report, Barlow provided a detailed cost estimate for the retrofit, by area of contemplated work, which totaled \$64.2 million. Further, the report contained financial projections which indicated the Facility had an ability to service existing debt (annual debt service costs projected at approximately \$4 million per year), plus the \$77.7 million in debt that would be incurred to build and support the project (annual debt service of \$5.2 million per year). The report projected that a cumulative cash surplus would be generated by the RRF by the year 2028 of \$57.4 million.⁹⁵

In the litigation the Authority filed against Barlow for failing to deliver the project as contemplated, the Authority stated that, following the execution of the Professional

⁹³ November 27, 2000 Professional Services Agreement between the Authority and Barlow.

⁹⁴ Letter from James L. Barlow, P.E. of Barlow to Thomas J. Mealy of the Authority dated December 4, 2000.

⁹⁵ Final Report – Phase I Retrofit Design Engineering and Feasibility Study prepared by Barlow Projects, Inc. dated July 25, 2001. This document contains a handwritten note indicating "Draft."

Services Agreement, Barlow worked through 2003 to perform the design and engineering work related to the retrofit.⁹⁶ Based on the documents analyzed to date, there is no indication that the City or Authority considered or involved any other potential contractors in this process. Further, the Authority then used Barlow's design and engineering work to support the 2003 bond issues that provided the funding for the retrofit construction that Barlow undertook.⁹⁷

It is not uncommon for the general contractor or construction manager on a project to have involvement prior to the actual construction phase, particularly involvement in connection with developing the overall project cost estimate and bidding. However, the assessment of project feasibility and financial implications typically are handled by other parties, such as architects or consulting engineers. In addition, public projects generally have a robust bidding process, with the public body evaluating bids and selecting the lowest responsible and responsive bidder. The extensive involvement of Barlow in the analysis of the project's feasibility, the planning of the scope of work, the estimating of the costs, and the development of the financial projections is unusual, particularly with no bidding for the work.

More generally, in our analysis of the information produced to date, we have seen no indication that the Authority, the City, or their professionals and advisors performed any meaningful evaluation of any contractors other than Barlow, of any technology other than that offered by Barlow, or of alternatives to the retrofit plans crafted by Barlow. Further, we have seen no documents showing that the Authority, the City, or any of their advisors, performed a serious analysis of not doing the retrofit project and "mothballing" the RRF. Bruce Barnes of Milt Lopus told us that he had performed this kind of analysis prior to issuance of the 2003 bonds. Mr. Barnes stated that he had developed a plan that would have allowed the City to issue general obligation refunding bonds that would "wrap the [incinerator debt] around the City's general obligation bonds," allowing the debt to be

⁹⁶ Second Amended Complaint in the matter The Harrisburg Authority v. Barlow Projects, Inc. et al., paragraph 21.

⁹⁷ Ibid., paragraph 22.

paid off over the long term, but that the plan ultimately was rejected by the City.^{97.5} However, Mr. Barnes was not able to provide us with documentation of his analysis, having stated that he lost any relevant files when his computer failed in 2009. We have not identified such analyses from any other source of documents produced.

Instead, the documents available to date indicate that undertaking the retrofit was not strongly questioned, and that Barlow was identified very early in the retrofit planning process and provided with the sole-source opportunity to certify the viability of the project, report on the feasibility of its technology, and develop projections to support the project's financial feasibility, upon which everyone then relied. After doing so, Barlow was awarded contracts to develop the plans and specifications, manage the project bidding, and conduct the retrofit work. Barlow's significant involvement prior to the formal decision to proceed with the retrofit using the Barlow technology and approach created a conflict in its roles for the Authority. Barlow's poor performance in executing the project, including its failure to complete the project on time, and its poor performance in estimating its financial implications, demonstrate that the decision to allow Barlow to certify the feasibility of its technical approach, to estimate the project's cost and purported financial benefit, and then to obtain the contracts to actually conduct the work, appears questionable at best. There are no indications that the City, the Authority or their advisors identified the conflict or potential problems.

^{97.5} Interview conducted with Bruce Barnes on April 17, 2011.

3. *The Pre-Retrofit Debt Status*

By 2003, there was significant debt on the RRF, and the Facility reflected a retained earnings deficit of more than \$44 million, reflecting its history of losses.⁹⁸ This posed a challenge to the Authority and the City and their ability to incur substantial new debt to fund the retrofit. The Authority had borrowed a significant portion of its outstanding RRF debt--about 55 percent⁹⁹--to pay for outstanding principal and interest, and current operating expenses. In other words, the Facility had a history of using new borrowing to pay old debt, often at higher rates and with greater expense. Nonetheless, prior to 2007, substantially all of the RRF-related debt issued was certified to the Commonwealth as "self-liquidating," or able to be re-paid out of net operating revenues of the RRF.¹⁰⁰

a. 1993 Purchase of the Facility

The Authority purchased the RRF from the City for approximately \$26.7 million, all funded by debt. At the time of purchase, the Authority borrowed an additional \$7.5 million to improve the Facility, making the total cost of acquisition plus improvements approximately \$34.2 million.¹⁰¹ At this time, the County was not sending its waste to the RRF.

b. 1996 and 1997 Financings

In 1996, the Authority issued additional debt of \$3.5 million, approximately \$2.86 million of which was for working capital and approximately \$540,000 for purchasing equipment.¹⁰² "Working capital" signifies money used to pay operating expenses and/or

⁹⁸ The Harrisburg Authority Audited Financial Statements for the year ended December 31, 2002.

⁹⁹ Based on sources and uses contained in Official Statements for 1993 Bonds, 1998 Bonds, 2000 Notes and 2002 Notes, 2003 A, B and C Bonds and Notes and Federal Tax Certificates for 1996 and 1997 loan transactions.

¹⁰⁰ The 2002 Note, with debt service of approximately \$1.6 million per year had not been certified as self-liquidating. See <http://dced.state.pa.us/lguda/debt-reports/h.pdf>.

¹⁰¹ See 1993 Official Statement.

¹⁰² Non-Arbitrage Certificate for the 1996 Notes dated November 26, 2006.

debt service coming due within the next 12 months. This is the earliest indication in the information we have reviewed that the RRF could not generate revenues sufficient to pay for all operating expenses and debt service.

Less than one year later, the Authority issued the 1997 A Note, in the amount of \$3 million, to refinance the 1996 borrowing. The Authority also issued a 1997 B Note in the amount of approximately \$7.9 million to fund capital repairs and additions, and the design, permitting and construction of a transfer station.¹⁰³ Capitalized interest and working capital accounted for about \$539,000 of this issuance.¹⁰⁴ We have been told in interviews that the City and Authority simultaneously were looking either to sell the RRF, or to expand revenues from transfer station operations and locate additional contracts to improve cash flow.¹⁰⁵

c. 1998 Refunding

In 1998, the Authority issued debt of approximately \$55.8 million to refinance the 1993 and 1997 borrowings. It appears that this refinancing was not to save costs,¹⁰⁶ but was used to create working capital, and resulted in hundreds of thousands of dollars of additional expense. Approximately \$1.6 million of the borrowing was used to replenish both the Facility's operating reserve account and its renewal and replacement fund.¹⁰⁷ The operating reserve provides cash during times when the RRF is not generating sufficient revenues. The renewal and replacement fund is required under bond documents to support the renewal and replacement of equipment at the Facility. The Authority's use of funds from the operating reserve account and from the renewal and replacement fund to pay for current operations and maintenance again suggests that the

¹⁰³ Authority Resolution 1997-005 dated June 19, 1997 related to the 1997 A Note. Schedule A to the Reimbursement Agreement dated April 10, 1997 related to the 1997 B Note. Schedule of Design, Permitting, and construction costs related to the 1997 B Note related to borrowing from the Pennsylvania Pool Financing Fund.

¹⁰⁴ Schedule A to the Reimbursement Agreement dated April 10, 1997 related to the 1997 B Note.

¹⁰⁵ Interview of Richard Michael, December 1, 2011.

¹⁰⁶ Self-liquidating debt report of HDR Engineering, dated July 27, 1998, Ex. 2, p.2.

¹⁰⁷ 1998 Official Statement.

revenues from Facility operations were not sufficient to pay for these costs. The City guaranteed payment of the 1998 Bonds, and FSA insured the 1998 Bonds.¹⁰⁸

d. 2000 Notes

The Authority issued additional notes in 2000 in the amount of approximately \$25.2 million to restructure some of its existing debt and effectively reimburse itself for prior payment of a portion of existing debt.¹⁰⁹ At this time, the Facility was not generating revenues sufficient to pay debt service on the 1998 Bonds and the new 2000 Notes. Even more problematic was that the Facility faced potential shut-down by EPA for air emissions issues. A derating agreement with DEP and the EPA, reducing the volume of waste the RRF could receive, was the best case scenario at this time (rather than complete shut-down).

As noted in the disclosure to potential note purchasers, while the transfer station was fully authorized, it would not be able to generate revenues sufficient to pay for operations and debt service on both the 1998 Bonds and 2000 Notes.¹¹⁰ Noteholders further were informed that, “under a number of circumstances the operation of the existing Resource Recovery Facility may be restricted, halted or terminated. In any such case debt service on the 2000 Notes would have to be paid partially or solely to the extent of payments made by the City pursuant to the Guaranty Agreement.”¹¹¹ A significant portion of the proceeds from this issuance was used to generate working capital and to pay for interest on existing debt, another indication that the Facility was unable to pay for these costs from operating revenues.

¹⁰⁸ Closing Memorandum for the 1998 debt.

¹⁰⁹ According to the Official Statement, the Authority “advance refunded” its 1998B Bonds maturing in 2006 through 2021, the 1998 D Bonds and “advance refunded” all of the 1998 Bond debt service coming due in 2000 and 2001.

¹¹⁰ Official Statement for 2000 Notes, dated November 16, 2000.

¹¹¹ Ibid.

The City provided a guarantee for the 2000 Notes, and FSA insured the 2000 Notes.¹¹² About \$4.2 million of the proceeds were paid to the City as a guarantee fee,¹¹³ which appears to be a disproportionate fee given the size of the debt issuance and the value of the City's credit enhancement. This fee was used to help the City balance its budget.¹¹⁴

e. 2002 Notes

The Authority issued the 2002 Notes in the original aggregate principal amount of \$17 million. Only about \$1.9 million of these proceeds were used to fund capital projects (including approximately \$400,000 to fund studies related to the retrofit). Over \$12 million was used for working capital, and about \$1.1 million was used to pay for interest on debt, indicating that the Facility was not servicing its existing debt.¹¹⁵ The City guaranteed payment of the 2002 Notes, and FSA insured them.¹¹⁶

f. 2003 A, B, C Notes

In 2003, the Authority issued its Series 2003 A, B and C Notes in the aggregate principal amount of approximately \$75.9 million.¹¹⁷ This bond issue restructured a large portion of the 1998 Bonds and the 2000 Notes by borrowing to pay the current interest obligation and deferring principal repayment into later years.¹¹⁸ Below is an illustration of the aggregate debt service outstanding on the RRF prior to issuance of the 2003 A, B and C Notes, and the amount of debt service that was restructured by issuing the 2003 A, B and C Notes.

¹¹² Ibid.

¹¹³ Ibid.

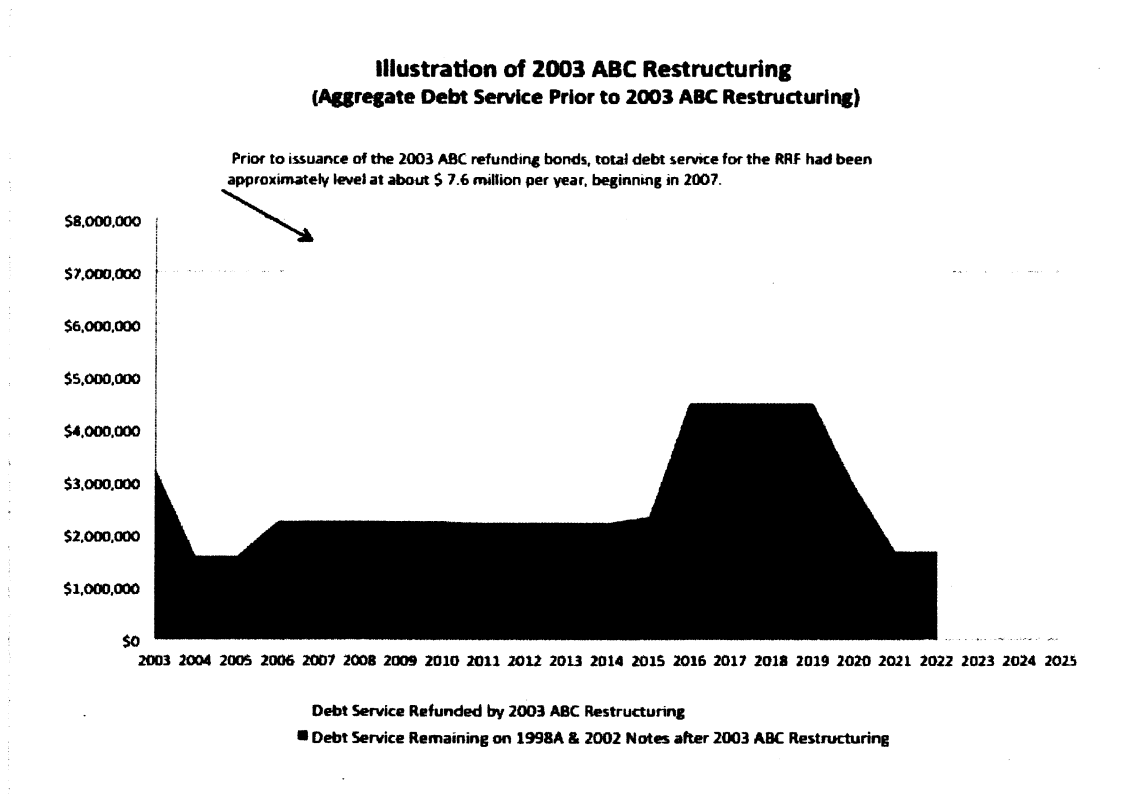
¹¹⁴ Ibid.

¹¹⁵ Official Statement for the 2002 Notes, dated August 2, 2002.

¹¹⁶ Closing Memorandum for the 2002 debt.

¹¹⁷ Closing Memorandum for the 2003 A, B, and C debt.

¹¹⁸ Official Statement for 2002 Notes, dated August 2, 2002.



This financing was used to generate working capital to pay existing expenses, and to fund upcoming principal and interest payments on existing debt with new debt. Ultimately, the aim was to enable the Authority to issue and pay debt service on bonds to be issued to fund the anticipated retrofit of the Facility. It was a very expensive restructuring, resulting in approximately \$10 million¹¹⁹ of additional interest expense. The City guaranteed the 2003 A, B and C Notes, and FSA insured them.¹²⁰

Following the issuance of the 2003 A, B and C Notes, the outstanding debt on the RRF was as follows:

¹¹⁹ This sum is determined on a present value basis.

¹²⁰ Closing Memorandum for the 2003 A, B and C debt.

TABLE 1: SUMMARY OF OUTSTANDING DEBT AFTER 2003 A, B & C ISSUANCE

Issue	Amount
Series A of 1998 ¹²¹	\$ 11,970,000
Series A of 2002 ¹²²	17,000,000
Series A of 2003 ¹²³	22,555,000
Series B of 2003 ¹²⁴	29,085,000
Series C of 2003 ¹²⁵	24,285,000
Total	\$104,895,000

The above bond issuances reflect that the RRF was unable to pay operations and debt service during 1996 through 2003. This is not surprising given the reduced operations and problems at the Facility. In addition, as noted above, the City used money derived from Facility operations (in the form of guarantee payments) to help fund the City's budget, further damaging the RRF's ability to pay its operating expenses and debt service.¹²⁶

4. *The Pre-Retrofit Insurance Status*

FSA was the municipal bond insurer on THA's 1998 Bonds (issued in the original aggregate principal amount of approximately \$55.8 million), 2000 Notes (issued in the aggregate principal amount of approximately \$25.2 million), and 2002 Notes (issued in the aggregate principal amount of \$17.0 million). All of the foregoing was secured by a full faith and credit guarantee of the City of Harrisburg.¹²⁷

In 2003, FSA insured THA's Series 2003 A, B and C Notes, issued in the aggregate principal amount of approximately \$75.9 million.¹²⁸ FSA did not take on a significant amount of additional exposure with the 2003 A, B and C Notes as it already insured the

¹²¹ Represents the balance after refinancing per the 2003 A, B and C Closing Order and Receipt dated June 4, 2003.

¹²² City of Harrisburg Ordinance 15-2002.

¹²³ Closing Order and Receipt dated June 4, 2003 related to the A, B and C Bonds.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ Based on interviews and financial statements of the City included in Official Statements for 2000 Notes and 2002 Notes.

¹²⁷ FSA letter to the Authority, County and City dated November 21, 2007.

¹²⁸ Closing Memorandum for the 2003 A, B, and C debt.

debt that was being refinanced by that issuance. In addition, FSA presumably was able to take into revenues at that time the premiums previously paid for debt issuances that were refinanced by the 2003 A, B and C Notes, as the liabilities insured were being paid in full by the refunding bonds.¹²⁹

By the time the Barlow Retrofit project was ready to be financed, FSA had made it clear to Mr. Losty of RBC, Underwriter for the 2003 A, B and C Notes and also for the 2003 D, E and F Bonds, that FSA was unwilling to take on more exposure to the RRF and the City's full faith and credit guarantee.¹³⁰ Total principal and interest related to the RRF would exceed \$446 million after issuance of the 2003 D, E and F Bonds.¹³¹ If the retrofit did not work, it appears that FSA understood that the City would not have the financial capacity to repay the outstanding debt relating to the RRF.

B. FINANCIAL ASSESSMENT OF THE RETROFIT AND THE 2003 RETROFIT BONDS

Barlow's financial projections demonstrated its view that the retrofit project was financially feasible. Barlow presented reports in March 2003 and November 2003¹³² that were used to certify the new and refinanced debt in 2003 as self-liquidating and showed that revenues from the retrofitted project would be sufficient to pay for the new and existing debt on the Facility.

Based upon our analysis of the projections, and the circumstances surrounding their development, the projections appear to have been highly dependent on assumptions that

¹²⁹ To our understanding, municipal bond insurers count premiums paid at closing on a debt issue as revenues for the insurer on a proportional basis as principal is repaid. When the outstanding principal is paid off entirely, the insurer can count any premium not previously treated as "earned" as revenues at time of the pay off of the debt.

¹³⁰ August 27, 2003 memorandum from Mr. Losty to Mayor Reed regarding Harrisburg Resource Recovery Facility Financing Options.

¹³¹ Appendix H to the Official Statement for the 2003 D, E and F Bonds. The figure presented represents the cumulative principal and interest payments. Other references to the debt load in this report pertain only to the principal amount due.

¹³² March 24, 2003 Barlow Self-Liquidating Debt Report, including the supplemental report dated May 13, 2003 related to the 2003 A, B and C debt. November 6, 2003 Barlow Self-Liquidating debt Report, including the supplemental report dated November 26, 2003 related to the 2003 D, E and F debt.

the retrofit would be completed on-time and on-budget, with virtually no margin for error. If certain assumptions are adjusted even slightly, the project was not feasible. Because a reasonable cushion for debt service coverage was not built into the structure, the finance professionals, City, County and FSA left no margin for error.

Furthermore, our review of the documentation and information produced to date has not identified meaningful vetting or challenging of the projections, despite their review by multiple sets of professional advisors, including those retained by City Council and the County. Our analysis is set forth below.

1. Critical Assumptions in Projections

From an economic perspective, the retrofit project was a \$73 million¹³³ capital investment project that was supposed to improve the operations of the RRF. Assuming the retrofit was completed in early 2006 as planned, the RRF was supposed to generate cash flow from operations sufficient to repay debt approximately three times the amount of the capital investment. The overall debt load consisted of the more than \$100 million in Facility debt that existed prior to the inception of the Barlow Retrofit,¹³⁴ plus \$125 million in debt that was incurred to fund (a) the retrofit construction, (b) related construction period operating expenses, and (c) debt issuance costs.¹³⁵ Table 2 presents the overall debt load on the RRF after the 2003 debt issues.

¹³³ Under the Amended and Restated Agreement for the Sale of Equipment dated December 31, 2003, Section 3.01, the initial contract price was \$45.8 million. Under the Amended and Restated Professional Services Agreement dated December 31, 2003, Section III, the fee for the consulting work was \$12.8 million, while the guaranteed maximum price for the separate construction contracts was \$14.8 million.

¹³⁴ As of December 31, 2002 the existing debt was \$80.2 million. The 2003 A, B and C debt issues refinanced a portion of this debt, while adding approximately \$20 million in additional debt.

¹³⁵ This represents the cumulative total of the 2003 Series D, E and F debt.

TABLE 2: SUMMARY OF OUTSTANDING DEBT AFTER 2003 D, E & F ISSUANCE

Issue	Pre-Retrofit Debt	Retrofit Debt	Total
Series A of 1998 ¹³⁶	\$11,970,000		\$ 11,970,000
Series A of 2002 ¹³⁷	17,000,000		17,000,000
Series A of 2003 ¹³⁸	22,555,000		22,555,000
Series B of 2003 ¹³⁹	29,085,000		29,085,000
Series C of 2003 ¹⁴⁰	24,285,000		24,285,000
Series D (D1 and D-2) of 2003 ¹⁴¹		\$96,480,000	96,480,000
Series E of 2003 ¹⁴²		14,500,000	14,500,000
Series F of 2003 ¹⁴³		14,020,000	14,020,000
Total	\$104,895,000	\$125,000,000	\$229,895,000

The November 2003 Barlow projections estimated that the RRF would generate cash flow from operations sufficient to service the existing and retrofit-related debt, and yield a cash surplus of \$49.6 million by 2034.¹⁴⁴ However, it should have been clear at the time that small changes to the assumptions underlying the projections would have had a significant impact, evidencing limited margin for error in the execution of the project.

First and foremost, because debt service could increase over time due to the large amount of synthetic variable rate debt, completion of the project on-time and on-budget was critical to allow the RRF to generate the cash surplus needed before the RRF bore the full weight of the annual debt service. As demonstrated in Table 3 below, and in Exhibit B in detail, between 2006 and 2009, the RRF was projected to build up a cash surplus of \$10.8 million, reflecting annual debt service payments of between \$8.3 million and \$13.6 million during those years. Over the period 2010 through 2020, the annual debt service was projected to reach as high as \$15.3 million, and the expectation was that there would be four years (2016 through 2019) during which the debt service would exceed net operating income by more than \$500,000 per year. As such, the surplus that was

¹³⁶ Represents the balance after refinancing per the Closing Order and Receipt dated June 4, 2003 related to the 2003 A, B and C debt.

¹³⁷ City of Harrisburg Ordinance 15-2002.

¹³⁸ Closing Order and Receipt dated June 4, 2003 related to the 2003 A, B and C debt.

¹³⁹ *Ibid.*, page 7.

¹⁴⁰ *Ibid.*

¹⁴¹ Closing Order and Receipt dated December 30, 2003 related to the 2003 D, E and F debt.

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

¹⁴⁴ Projections attached to the December 31, 2003 Equipment Agreement.

projected to be generated in the years 2006 through 2009 was critical to fund the Facility given the limited margin for error in the period 2010 through 2020.

TABLE 3: BARLOW PROJECTION – CASH SURPLUS

Periods	2006 – 2009	2010 – 2020	Cumulative
Net Revenues from Operations ¹⁴⁵	\$54,641,000	\$157,819,000	\$212,460,000
Debt Service Payments	43,832,000	158,297,000	202,129,000
Projected Cash Surplus	\$10,809,000	(\$478,000)	\$ 10,331,000

However, if completion of the project went beyond January 2006, as in fact happened, Barlow's projections show that the RRF would struggle financially for many years, assuming all other estimates were accurate. Specifically, using all of the assumptions from the Barlow projections, with the exception that the start-up for the RRF is assumed to be delayed one year (i.e., a start-up date of January 2007, not January 2006), over the period 2006 through 2020, the RRF would generate a cumulative cash deficit of approximately \$5.2 million after debt service.¹⁴⁶ Further, with the assumed delay, the RRF would not cover its cumulative debt service until 2027, and then would generate only minimal positive cumulative cash of \$242,000 assuming all other Barlow assumptions were correct, which did not happen.¹⁴⁷

**TABLE 4: BARLOW PROJECTION – ADJUSTED CASH SURPLUS
(NO 2006 OPERATIONS BUT DEBT SERVICE)**

Periods	2006 – 2009	2010 – 2020	Cumulative
Net Revenues from Operations ¹⁴⁸	\$40,546,000	\$156,399,000	\$196,945,000
Debt Service Payments	43,832,000	158,297,000	202,129,000
Projected Cash Deficit	(\$3,286,000)	(\$1,898,000)	(\$5,184,000)

¹⁴⁵ Net Revenues from Operations in the Barlow Projections is equal to total revenues less operating costs.

¹⁴⁶ Interest on the 2003 D Bonds appears to have been capitalized through June 1, 2006. If project completion went beyond that date, there would be no way of paying for debt service on the 1998, 2002 or 2003 Bonds other than by calling on the City Guarantee, the Debt Service Reserve Fund or the County Guarantee. Based on RBC reports contained in Barlow's Self-liquidating Debt Report filed in connection with the 2003 D, E and F proceedings.

¹⁴⁷ Refer to Exhibit C. Moreover, the final debt structure included a significant amount of original issue premium, which generated in excess of \$8 million of additional proceeds for the Barlow Retrofit project, but at a cost of higher interest rates on a large portion of the \$125 million of debt used in the projections.

¹⁴⁸ Net Revenues from Operations in the Barlow Projections is equal to total revenues less operating costs.

We have not identified any information that suggests that Barlow or anyone else assessed the effect of delays on the projections, even though delays and cost overruns in a large project such as this one with a technology that had never been implemented on this scale would be quite possible, if not expected. It also is important to note that, according to information available to us, the Barlow projections were not updated for the millions of dollars of cost increases that occurred during the construction project, which further strained the Authority's cash position.

Further, the projections were highly sensitive to other small changes in key assumptions. For example, a key assumption driving the projected cash surplus was the expectation that certain revenue categories, including commercial tip fees, tip fees from Dauphin, Cumberland and Perry Counties, and specialty spot market fees all would grow at 2.5 percent per year. In contrast, Barlow assumed that expense categories, including key expense categories such as operations and maintenance, utilities and insurance, APC reagent costs, mandated fees, the capital reserve account, and ash disposal, would grow at only 2.0 percent per year. In other words, revenue growth was projected to exceed the growth in expenses. Without changing any other assumptions, a change in the expense growth rate to mirror the projected rate of growth in revenues reduces the overall projected cash surplus by approximately 24 percent, from \$49.6 million to \$37.6 million. Refer to Exhibit D.

The projections also are premised on a 29 year operating period. This operating period, however, is inconsistent with Barlow's own estimates of the projected useful life of the Facility. In the December 4, 2000 letter opining on the technical feasibility of the project, James Barlow indicated that the RRF would have a useful life of 25 years beyond its life span at that time.¹⁴⁹

¹⁴⁹ Letter from James Barlow, P.E. of Barlow to Thomas J. Mealy of the Authority dated December 4, 2000. Given that the RRF was scheduled to close in June 2003 unless it could meet federal air quality standards, it is assumed that the useful life estimate reflected the life after the completion of the retrofit.

A 29 year projection to support the feasibility of the project also is speculative given the inherent unreliability of predicting what will happen so far into the future. The AICPA has recognized this issue, and has provided guidance to accountants with respect to the development of projections. Specifically, the AICPA's Guide for Prospective Financial Information indicates that, ordinarily, to be meaningful to users, the presentation of a financial forecast should include at least one full year of normal operations in addition to any start-up period.¹⁵⁰ However, the degree of uncertainty generally increases with the time span of the forecast and, at some point, the underlying assumptions may become so subjective that a reasonably objective basis may not exist to present a reliable financial forecast.¹⁵¹ The standard indicates that it ordinarily would be difficult to establish a reasonably objective basis for a financial forecast extending beyond three to five years.¹⁵² Given that much of the projected cash surplus was to be accumulated in the latter years of the projections, the cash surplus Barlow projected through the year 2034 is unreliable and speculative.

The operating period also is inconsistent with the terms of the Dauphin County disposal agreement, which had a 20-year term, with a five year renewal option.¹⁵³ The revenue generated from the County waste stream is the single largest revenue line item in the projections, and there is approximately \$46.2 million in revenues attributed to County waste in the years following the end of the contract term.

¹⁵⁰ The Securities and Exchange Commission ("SEC") Regulation S-K, § 229.10(b)(2) states that, for certain companies in certain industries, a forecast covering a two or three year period may be reasonable. Other companies may not have a reasonable basis for forecasts beyond the current year. Accordingly, the responsible party generally should select the period most appropriate in the circumstances. AICPA Audit and Accounting Guides – Guide for Prospective Financial Information – Part 2 Guide for Entities that Issue Prospective Financial Statements - Chapter 8 Presentation Guidelines p. 8.33, footnote 15.

¹⁵¹ AICPA Audit and Accounting Guides – Guide for Prospective Financial Information – Part 2 Guide for Entities that Issue Prospective Financial Statements - Chapter 8 Presentation Guidelines p. 8.33.

¹⁵² Financial forecasts for longer periods may be appropriate, for example, when a long-term lease or other contracts exist that specify the timing and amount of revenues and costs can be controlled within reasonable limits.

¹⁵³ Refer to Article I and Article III(b) for the identification of the waste subject to the Waste Agreement. Refer to Article X for the term. The renewal option could be canceled upon three years' prior written notice from the County.

If the projections are terminated in 2030 (i.e., year 25) and the growth rates of revenues and expenses are equalized, the cumulative cash surplus is reduced to \$15.1 million, representing a reduction of approximately 70 percent compared to Barlow's original projections.

2. *No Meaningful Challenges to the Projections*

The reliance on the assumptions contained in the Barlow projections is difficult to understand given that the projections were presented to a number of professional firms that City Council and the County retained in connection with the 2003 retrofit debt issuance. Only one of these firms provided any sort of detailed review, however, and it is not clear how that review was used and how or if the questions it raised were addressed. In fact, it appears that the Authority, City, County, FSA and other interested parties relied on the County's guarantee of the project as the real means of underwriting the deal, rather than a robust analysis of the project itself.

The Barlow projections are referenced in:

- The September 18, 2003 Report from Buchart Horn to City Council;¹⁵⁴
- The October 21, 2003 Report from the PFM Group to the County;¹⁵⁵ and
- The October 21, 2003 Report from HRG to Mr. Zwally of Mette Evans, counsel to the County.¹⁵⁶

The Barlow projections received the most thorough review from Buchart Horn. In its report, in addition to developing a "base case," Buchart Horn performed analyses of the cash flows from the project for the year 2006¹⁵⁷ that assessed the "down-side," including a reduction in the tipping fees of 10 percent, a reduction in steam revenues of 50 percent,

¹⁵⁴ See page 11, which references the Barlow economic assessment.

¹⁵⁵ See page 2 in the Executive Summary section.

¹⁵⁶ See page 2, which references the September 2003 pro forma.

¹⁵⁷ Buchart Horn's analysis did not extend beyond 2006; we have seen no testing or analysis of the years beyond 2006 to determine if the Barlow projections for those years were reasonable.

a reduction in power production of 30 percent, an increase in maintenance expenses of 50 percent and an increase in ash disposal costs of \$10 per ton.¹⁵⁸ This worst case scenario yielded net income before debt service of \$9.78 million, compared to \$13.57 million under the base case scenario.¹⁵⁹

Ultimately, in evaluating the economics, Buchart Horn estimated that the retrofit project would generate 2006 net income before debt service of \$13 million, which is consistent with the amount Barlow projected for 2006.¹⁶⁰ Buchart Horn projected that net income before debt service of \$13 million was sufficient to service the debt on an assumed \$72 million in capital costs on the project, plus the debt service on the existing debt, which was estimated at \$6 million per year. However, Buchart Horn stated that the income would not be sufficient to cover the costs associated with financing and transition, which were estimated to reach as high as \$53 million.¹⁶¹ As previously noted, the 2003 D, E and F retrofit bond issues totaled \$125 million, equal to the projected capital costs plus the financing and transition costs identified in the Buchart Horn report. As such, Buchart Horn demonstrated in 2003 that the RRF would not be able to generate cash flow sufficient to service all of the debt. Despite this, Buchart Horn's conclusion was that there were no major drawbacks to the project.¹⁶²

In our analysis of the documents and information produced to date, we have seen no indication how, if at all, City Council, or any of the other parties involved in the decision to undertake the Barlow Retrofit, considered Buchart Horn's conclusion with respect to the RRF's inability to service the debt even after the retrofit, or reconciled it with Barlow's more optimistic analysis.

¹⁵⁸ Buchart Horn Final Report Incinerator Study Performed for the City of Harrisburg dated September 18, 2003, pages 12 through 16.

¹⁵⁹ *Ibid.*, Table 2-3.

¹⁶⁰ Exhibit 3 to the November 6, 2003 letter from Ronald Barmore of Barlow to the City and County.

¹⁶¹ Buchart Horn Final Report Incinerator Study Performed for The City of Harrisburg dated September 18, 2003, Table 3-1 and related discussion on page 17.

¹⁶² *Ibid.*, page 2.

PFM and HRG conducted evaluations that were much more limited than that conducted by Buchart Horn. The PFM report is concerned primarily with an analysis of the financial terms and structure of the 2003 D, E and F bonds to provide the County with guidance with respect to a “reasonable” guarantee fee.¹⁶³ With that said, the September 30, 2003 version of the Barlow projections was attached to the PFM report, suggesting that there may have been some level of evaluation. It is not clear whether PFM reached any conclusions with respect to the projections, as the Executive Summary merely states, “While we make no representations as to the reasonableness of the contemplated project, we do find the preliminary debt service schedules and assumptions for the Retrofit Bonds reasonable.”¹⁶⁴

Similarly, HRG’s analysis appears to have been limited. Specifically, HRG stated, “We have reviewed the pro forma for pronounced errors and omissions. We have not examined all assumptions in detail but feel that the values and projections given fall within a reasonable range for this project.”¹⁶⁵

In addition to the professionals retained by the City and the County, it appears that the Authority’s professionals had access to the projections, although we have observed no information that suggests that they provided any meaningful challenge to what Barlow presented. In fact, in at least one instance, we have identified information where one of the professionals involved with the City and the Authority dismissed a financial analysis of the project as a tool for assessing the reasonableness of buying the 2003 bonds. In a December 18, 2003 e-mail message, Mr. Losty of RBC (the underwriter for the deal) communicated with an individual from TRowePrice, stating, “My only word of advice is if you are trying to evaluate this on a revenue generating basis, you are the only one including the bond insurer. Bottom line is that there is an AA County with a full faith and credit general obligation pledge.”¹⁶⁶

¹⁶³ October 21, 2003 report from the PFM Group to the County, pages 2 and 8.

¹⁶⁴ *Ibid*, page 2. As discussed later, the debt structure changed to 77 percent synthetic variable rate debt after issuance of PFM’s report. Refer to the discussion later in this report with respect to the swaps.

¹⁶⁵ October 21 letter from HRG to Charles Zwally of Mette, Evans & Woodside, page 2.

¹⁶⁶ December 18, 2003 e-mail from James Losty to srichter@troweprice.com.

Mr. Losty's position with respect to assessing the financial viability of the project based upon projections appears to be consistent with that taken by underwriters' counsel for the 2003 D, E and F Bonds, Ms. Cocheres of Eckert. In an interview with Ms. Cocheres, she stated that she made it clear in the Official Statement used to offer the bonds that the bondholders should rely on the creditworthiness of the guarantors, not the revenues of the RRF. The views expressed by Mr. Losty and Ms. Cocheres may explain why there was a lack of critical examination of the Barlow projections.

Further, while the Authority's attorneys at Obermayer, and the Underwriters' attorneys at Eckert had access to the projections that were presented in March 2003 and November 2003, we note by way of observation, that it does not appear that the attorneys evaluated the data substantively. Instead, it appears that they largely were concerned with editing the wording of the reports and not in evaluating the substance of the projections. For example, we observed the following:

- An April 11, 2003 fax from Mr. Michael of Eckert to Mr. Barmore of Barlow, Mr. Sutherland of Obermayer, Mr. Losty of RBC Dain Rauscher and Mr. Lispi, who at the time still was employed with the City. Included in the fax was a copy of the March 23, 2003 Barlow Report, with what appear to be Mr. Michael's handwritten comments and changes on formatting and clarifying what is presented.¹⁶⁷
- Various communications in May 2003 related to a supplement to the Barlow self-liquidating debt report. These communications largely concerned clarifying the overall magnitude of the 2003 debt, and the specific existing debt that would be refinanced.¹⁶⁸
- In November 2003, DCED raised questions about the projections that were attached to the Barlow report that accompanied the 2003 D, E and F bond package. Specifically, DCED was concerned about whether the debt would be

¹⁶⁷ April 11, 2003 fax from Richard Michael to Ron Barmore.

¹⁶⁸ For example, refer to the May 13, 2003 e-mail from Andrew Giorgione to Dan Lispi, James Losty and Hugh Sutherland, which contained proposed mark-ups to the supplemental letter.

self-liquidating through 2033, since the attached projections covered only the period through 2010. In e-mails involving attorneys from Obermayer, Eckert, and Rhoads & Sinon, along with Messrs. Barmore, Lispi and Losty, the professionals discussed how to modify the report to meet DCED's concerns. Ultimately, Mr. Giorgione of Obermayer indicated that he and Ms. Cocheres of Eckert spoke with DCED personnel and resolved the issue, although we have seen no evidence of what was discussed or how the issue was resolved.¹⁶⁹

3. *Guarantees and Fees – Added Expense, and Knowledge and Acceptance of Risk*

The City and the County both provided guarantees on the 2003 bonds and notes. Specifically:

- The City guaranteed the payment of the principal and interest on the 2003 A, B and C notes;¹⁷⁰
- The City guaranteed the payment of the principal and interest on the 2003 D, E and F bonds;¹⁷¹ and
- The County provided a secondary guarantee on the 2003 D and E bonds up to an aggregate principal amount of \$113 million, plus interest.¹⁷²

The guarantees provided on the 2003 D, E and F bonds enabled the Authority to issue the debt on a more cost effective basis (see discussion below). The Authority paid guarantee

¹⁶⁹ E-mail string containing messages dated November 18, 2003 and November 19, 2003.

¹⁷⁰ City Guaranty Agreement dated June 4, 2003 contained within Volume I of the 2003 Series A, B and C closing documents.

¹⁷¹ City Guaranty Agreement dated December 1, 2003 contained within Volume II of the 2003 Series D, E and F closing documents.

¹⁷² County Bond Guaranty Agreement dated December 1, 2003 contained within Volume I of the 2003 Series D, E and F closing documents. Also, per County ordinance 04-2003 dated November 6, 2003 contained within Volume I of the 2003 Series D, E and F closing documents.

fees to both the City and the County. In the case of the City, the fee was approximately \$2.8 million, while the County received a fee of \$1.9 million.¹⁷³

In giving their guarantees and receiving these fees, it is clear that both the City and the County were aware of the risks associated with the 2003 debt and their guarantees. For example, in an e-mail dated September 5, 2003, Mr. Giorgione wrote to Mr. Sutherland, Mr. Lispi, Mr. Losty, Mr. Michael and Ms. Cocheres: "I spoke with Chuck Z[wally, counsel to the County]. He indicated that the County was concerned by the size of the City Guaranty Fee. I explained its a matter of risk and not negotiable."¹⁷⁴

Further, in October 2003, PFM analyzed the additional costs that the Authority would incur absent the County guarantee, which appears to have been PFM's primary role for the County relating to the 2003 D, E and F Bonds. Under that analysis, PFM projected higher insurance costs for the bond issue under the assumption that the existing bond insurer, FSA, would not insure the debt without the County guarantee, necessitating the use of another AAA rated insurer that would charge more. Further, PFM projected higher interest costs to market the bonds without the County guarantee, presumably reflecting additional perceived risk.^{175,176}

Moreover, in a letter dated May 2, 2003 from Mr. Losty to Mayor Reed, with copies to Mr. Mealy, Mr. Kroboth, Mr. Lispi, Mr. Sutherland, Mr. Giorgione, Mr. Michael, Ms. Cocheres and Mr. Barnes, Mr. Losty discussed the contemplated 2003 A, B and C bond issuance and stated:

¹⁷³ Costs of Issuance per the Closing Order and Receipt dated December 30, 2003 for the 2003 D, E and F Bonds contained in Volume II of the closing documents.

¹⁷⁴ E-mail from Andrew Giorgione to various individuals dated September 5, 2003.

¹⁷⁵ October 21, 2003 Report from the PFM Group to the County, page 6. The County Guarantee fee paid in connection with this financing is the only guarantee of RRF Debt that took this approach, based upon our review of documents and interviews.

¹⁷⁶ Of note is the fact that the County had not guaranteed any of the stranded debt that related to the Facility, which then was closed down, and would not guarantee any debt related to paying for City staffing of the RRF during the period of construction when the Facility would not be in operation. The County also wanted the 2003 D, E and F Bonds to be issued on a parity basis with the 1998 Bonds. Refer to the September 17, 2003 letter from Andrew Giorgione to Charles Zwally discussing the parity issue.

...the ever-increasing debt load on the resource recovery facility is rapidly exhausting the City's ability to access the bond market for capital requirements. By any measure, the City's overall debt burden when guaranteed debt is included is extremely high in comparison to other municipalities around the United States. This results in higher costs for credit enhancement and eventually higher borrowing costs if a borrowing is feasible at all. We received a formal commitment for bond insurance for this restructuring issue from FSA this week. Despite the fact that FSA was the insurer of record on the bonds being refunded, the cost of the new policy came in at 100 basis points. This represents an increase of 10 basis points from the last insurance quote for the Series 2002 Resource Recovery Bond Issue. Additionally, the insurer stipulated that no new money is added to the financing above the \$2 million approved for working capital. Unfortunately, there are no other options for insurance from the major "AAA" rated insurers.

In that same letter, Mr. Losty also addressed the contemplated debt issuance related to the 2003 D, E and F retrofit bonds. Specifically, Mr. Losty stated:

Without credit enhancement there will be no cost effective borrowing avenue to fund the retrofit bond issue. While preliminary discussions have begun for credit enhancement providers for the retrofit, there are many issues that yet need to be resolved prior to any enhancer reaching a credit decision. Given the size of the projected retrofit bond issue and the City's existing debt, a sub "AAA" guarantor is probably the most likely candidate.¹⁷⁷

In this case, the City's financial well-being was tied to the RRF, and it had guaranteed all of the preceding debt issuances with the exception of relatively small ones in 1996 and 1997. The City guaranteed the 2003 retrofit debt.¹⁷⁸

Similarly, in December 2002, the County had approved a revised Waste Management Plan and in September 2003 awarded its waste disposal contract to the Authority, designating that all regulated waste generated within the County be disposed at the RRF, beginning in May, 2006.¹⁷⁹ By the time of that decision, the County knew the RRF had to

¹⁷⁷ May 2, 2003 letter from James Losty to Mayor Reed.

¹⁷⁸ Closing Memorandum for the 2003 D, E and F debt.

¹⁷⁹ Dauphin County Municipal Waste Management Ordinance 03-2004, page 6.

be retrofit to accommodate the County's requirements. It was important to the County to avoid re-opening and re-permitting the Dauphin Meadows landfill, which was of concern to County municipalities.¹⁸⁰ The County had chosen to rely on the RRF, and needed to support it. FSA required a County guarantee to insure the 2003 D, E and F Bonds.¹⁸¹ The County agreed to provide a guarantee.

It is our experience that municipalities rarely take fees for guaranteeing bond issuances of their local authorities in connection with utility transactions. A guarantee benefits the Authority by lowering borrowing rates, which, in turn, reduces the costs the host municipality's taxpayers and ratepayers have to pay for services the Authority provides.

Those interviewed, however, confirmed that the City made it a practice of collecting these fees for conduit issues for utilities to generate money for the City's general fund. The City Guarantee fees related to the RRF historically appear to be related to the amount needed to fill a City general fund or RRF budget gap. For example, the City guaranteed the 2000 Notes, issued in the aggregate principal amount of approximately \$25.2 million, and received a guarantee fee equal to approximately \$4.2 million. The Official Statement for the 2000 Notes includes a statement that proceeds of the 2000 Notes in the amount of approximately \$4.7 million were needed to pay utility fees of the RRF that could not otherwise be paid from operating revenues, and other City payables.¹⁸²

When asked why the County insisted on a guarantee fee in connection with the 2003 Bonds, Mr. Williard of PFM indicated that Commissioner Haste wanted a guarantee fee.

¹⁸⁰ Dauphin County Resolution 13-2004 dated June 2, 2004.

¹⁸¹ Notes in PFM spreadsheets calculating the possible guaranty fees to be paid to the County state that "The assumed insurance premium of 100 basis points was the premium for the 2003 ABC City Guaranteed Resource Recovery Bonds in June 2003. FSA's response, at this time, due to exposure limits to the City of Harrisburg, is that they would not be able to insure an issue guaranteed by the City but not the County." Further, in his memorandum to Mayor Reed dated August 27, 2003, Mr. Losty stated that "Based on meetings held in New York in the last two weeks with major municipal bond insurers, the absence of the County of Dauphin Guarantee would likely eliminate the possibility of a major insurer approving the transaction."

¹⁸² 2000 Official Statement.

His recollection was that Commissioner Haste believed that if the City was going to take such a fee, the County wanted one, as well.

In addition, when the Authority issued approximately \$30 million in debt in 2007, about \$9.7 million¹⁸³ went to repay the City and County for payments they made on behalf of the Authority, even though the Authority paid substantial fees to the City and County for guarantees that both provided on the 2003 D, E and F debt. It appears that, at a minimum, the payment of the guarantee fees was unwarranted to the extent that, when the guarantees were called, the City and County not only were able to place the payment burden back on the Facility, but to do so in a manner that further increased the debt burden and interest cost on the Authority (see later discussion of 2007 debt).

The guarantee fees added more debt on the RRF and more cost to the financings, but provided little, if any, benefit to the retrofit project.

4. *Relaxed Contract Requirements Allowed Incurrence of Additional Debt*

Normally, the bond insurer, who must pay bondholders if project revenues are not sufficient to pay debt, will impose limitations on the issuer's incurrence of additional debt so that the issuer does not accumulate excessive debt it cannot repay. Sometimes guarantors will impose these conditions, too. These provisions typically are found in the bond indenture in debt service coverage covenants and "additional bonds" tests.

In the case of the RRF, the 1998 Indenture is the senior indenture. It does not place restrictions on incurring additional debt that are typical for a revenue-backed facility, enabling additional debt to be issued more easily than is normally the case. The 1998 Indenture contains the following limitations:

¹⁸³ Closing Order and Receipt dated December 27, 2007.

- Debt Service Coverage Ratio – Net annual revenues were only required to be sufficient to pay one hundred percent of actual debt service (“one times” coverage).
- Additional Bonds Test – the Authority could issue additional debt without FSA’s approval as long as net revenues equaled annual debt service requirements during twelve of the prior eighteen months, and projected net revenues were equal to the annual debt service requirement for a specified period in the future. The bondholders of the additional debt would have a claim to the receipts and revenues of the RRF equal to that of the 1998 bondholders.
- Limitations on Subordinate Indebtedness – even if it did not meet the Additional Bonds Test, the Authority could issue additional debt without FSA’s approval so long as the new debt had a lower priority claim to receipts and revenues from the RRF than do the 1998 bondholders.¹⁸⁴

Typically, in a revenue-backed project financing for a resource recovery facility, the insurer requires a debt service coverage ratio in excess of 1 (i.e., net revenues must exceed debt service requirements). A range of between 1.15 and 1.30 times net revenues (i.e., the amount of net revenues available to pay debt service is 15 percent to 30 percent more than the annual debt service requirements) would not be unusual, to ensure that money is available to pay debt service. This provides a margin for error in case variable interest rates go up, or there are inefficiencies in operating results. Bond rating agencies look favorably on debt service coverage of about 1.50 times annual net revenues.

In a typical project financing, subordinate debt also is subject to greater limitations than the minimal requirements of the 1998 Indenture. Normally, the insurer requires that net annual revenues be greater than the annual debt service of the subordinate debt, although at a somewhat lower ratio than that required for more senior debt. Net revenues in excess of actual debt service of 10 percent to 15 percent would be a reasonable example.

¹⁸⁴ 1998 Indenture.

Here, FSA, and the City and County, could have imposed more stringent contractual limitations in 1998, 2000, 2002, and 2003, but chose not to do so. Instead, it appears that FSA, and later, the County, considered these financings essentially as general obligation bonds of the City, underwriting them on the strength of the City's ability to repay in case of a default (rather than on the strength of the project being funded by a debt issuance). In 2003, when FSA expressed its concerns about more exposure to the City,¹⁸⁵ it decided to insure based on the creditworthiness of the County.¹⁸⁶

However, throughout the relevant time period, the RRF could not satisfy even the lax "one times" coverage test. As a result, the Authority undertook a series of subordinate borrowings in 2000, 2002, 2003 and 2007.

The 2003 A, B and C Bonds were issued under a subordinate indenture and, unlike most of the other bond issuances, were not secured by receipts and revenues of the RRF. The disclosure document for this debt issuance states that the bonds will be subordinate to any RRF bonds issued in the future,¹⁸⁷ which put them at a fourth level of priority.¹⁸⁸ FSA insured these bonds and did not require any tightening of the subordinate debt provisions of the 1998 or 2002 Indentures, but did begin to increase the insurance premium it charged.¹⁸⁹

5. *2003 City Council Fund*

When City Council members stood in the way of the project's advance, they were offered the possibility of a "special projects fund." Negotiations surrounding the establishment

¹⁸⁵ May 2, 2003 letter from James Losty to Mayor Reed. August 27, 2003 memo from James Losty to Mayor Reed. December 18, 2003 e-mail from James Losty to srichter@trowprice.om.

¹⁸⁶ Official Statement for 2003 D, E and F Bonds discloses FSA as insurer of timely payment of principal and interest. See previous footnote. Also refer to May 2, 2003 letter from James Losty to Mayor Reed. August 27, 2003 memo from James Losty to Mayor Reed. December 18, 2003 e-mail from James Losty to srichter@trowprice.om.

¹⁸⁷ 2003 Official Statement dated May 27, 2003.

¹⁸⁸ They are lower in priority than the 1998 Bonds, the 2002 Notes and the 2003 D, E and F Bonds.

¹⁸⁹ May 2, 2003 letter from James Losty to Mayor Reed.

of the fund began in October, 2003. In an e-mail dated October 14, 2003, Mr. Giorgione informed Randy King and Mr. Lispi of the issue, stating:

Boys-

I have heard from Stan Mitchell that the Rick House issues are as follows:

1. Reynolds (and Freddie) are getting paid \$1m and think they can deliver the votes; and
2. Council is getting nothing; and
3. He is holding the vote until he hears from the Mayor.

I have no clue where this \$1m number is coming from. We have not even finalized the deal yet with Reynolds. Also, I understand Council is getting its money. So, the usual crap is flying.

I guess the Mayor has to speak to Richard. We are running out of time. Kroboth says we are going to needs (sic) funds asap.¹⁹⁰

By late October, the parameters surrounding the account appear to have been developed. In an October 27, 2003 e-mail message from Mr. Giorgione to Richard House, then the President of City Council,¹⁹¹ with the subject "City Council Special Projects Account," the account was to be funded with \$500,000 provided through the Authority. The funds then could be used by City Council for any lawful purpose upon requisition of funding from the Authority.¹⁹²

On October 31, 2003, there were further communications regarding the fund, including input from Mayor Reed on the structure of the fund. In response to a memo drafted by Steven Dade, Acting City Solicitor, Mayor Reed stated:

If all of you keep this up, you will permanently kill the prospect of the retrofit bonds being adopted by Council. The draft you provided does (sic) even remotely resemble what was agreed to and, unchanged, what

¹⁹⁰ E-mail from Andrew Giorgione to Randy King and Dan Lispi dated October 14, 2003, with the subject "House."

¹⁹¹ Mr. House was the President of City Council, which approved the Ordinance to authorize the City's guaranty of the 2003 D, E and F debt.

¹⁹² Attachment to the e-mail from Andrew Giorgione to Richard House dated October 27, 2003.

was drafted would almost certainly trigger a negative reaction. With so little time available to this office, I find myself again having to edit and rewrite staff work products. Send the attached as amended.¹⁹³

Following Mayor Reed's changes, the fund was proposed under one of two alternatives.

- The establishment of a special projects fund in the amount of \$500,000 that would be funded from the "settlement and closing cost fee payable to The Harrisburg Authority on the closing of the retrofit bonds," then placed into an Authority special projects account for the exclusive use of designated City Council members. The account could be used for any lawful purpose, subject to requisition to the Authority.
- The \$500,000 would be paid by the Authority to the City, and the City would insert the allocation into the 2004 Budget within the Department of General Expenses with the sub-heading of Council Special Projects Fund. Approval for disbursement would be subject to Council resolution, and the City's payment approval process.¹⁹⁴

Based upon the information produced to date, it is not clear whether this account was established.

6. *Local Government Unit Debt Act Concerns*¹⁹⁵

a. Self-Liquidating Debt

Given the significant debt load being carried by the Authority and City, it was important to the City to qualify the RRF debt as "self-liquidating." The Local Government Unit

¹⁹³ Memo from Steven Dade to Mayor Stephen Reed dated October 31, 2003. Mayor Reed was commenting on a draft of a memo from Mr. Dade to Richard House regarding the City Council Special Projects Funds.

¹⁹⁴ Letter from Steven Richard Dade to Richard K. House dated October 31, 2003.

¹⁹⁵ This report raises concerns about debt incurred by the City and the County. The validity of this debt cannot now be challenged insofar as it relates to bondholders' rights. 53 Pa. C.S.A. § 8209(a).

Debt Act, 53 Pa. C.S.A. §§ 8001 et seq. (the “Debt Act”), provides statutory procedures for the incurrence of debt and imposes debt limits for municipalities, including the City and the County.¹⁹⁶ The borrowing limits of the Debt Act are intended to prevent a municipality from incurring debt it cannot repay given its tax base. Guarantees are considered debt under the Debt Act.

Under the Debt Act, the City and the County each have a limit of debt they may incur (other than debt approved by voters in a general or special election (electoral debt)).¹⁹⁷ If debt is approved as “self-liquidating debt,” pursuant to proceedings submitted to DCED, the debt does not count against the limit of debt that a municipality may incur.¹⁹⁸ To qualify as self-liquidating, debt must be payable solely from rents, rates or other charges to the ultimate users of the project that is financed by the debt, or payable solely from special levies or assessments of benefits lawfully earmarked exclusively for that purpose (i.e., the project must generate revenues sufficient to support the debt service, and such debt service must be payable from project charges).^{198.5}

A municipality must re-examine whether previously certified self-liquidating debt remains so prior to issuing or incurring any additional debt. Included with the proceedings filed with DCED for new debt is a statement showing the gross outstanding indebtedness of the municipality, and a certification that no decrease in any amounts to be excluded as self-liquidating is required by any change of circumstances, other than as a result of debt payments (a “Clean 8110(b) Certification”).¹⁹⁹ If there has been a change in circumstances negatively impacting the previously funded project, such as a decrease in revenues or an increase in debt, then the municipality may not be able to file a Clean 8110(b) Certification, and the amount of gross debt outstanding that is counted against the municipality’s debt limit would have to be increased.²⁰⁰

¹⁹⁶ 53 Pa. C.S.A. § 8001(b) and (d); § 8002. The Municipal Authorities Act, 53 Pa. C.S.A. §§ 5601 et seq., and not the Debt Act, regulates the issuance of debt by the Authority.

¹⁹⁷ 53 Pa. C.S.A. §§ 8021, 8022.

¹⁹⁸ 53 Pa. C.S.A. § 8026.

^{198.5} 53 Pa. C.S.A. §§ 8002(b).

¹⁹⁹ Named for the statutory section requiring the filing of the certification.

²⁰⁰ 53 Pa. C.S.A. §§ 8110(a) and (b).

The RRF experienced significant changes in circumstances from 1998 to 2003. In 2000, the Facility was derated to address EPA Clean Air Act requirements, substantially reducing its throughput and revenue stream. The Authority had to borrow to pay for operations and debt service in 1998, 2000, 2002 and 2003, meaning that the Facility was not paying for its outstanding debt during those years, and had borrowed at more expensive rates to pay off prior debt. The Facility completely closed down its incinerating operations during 2003 through April 2006 to accomplish the Barlow Retrofit,²⁰¹ substantially eliminating its revenue producing capabilities.²⁰²

The projects that had been funded by Authority bond issuances prior to December 2003 no longer were generating revenues sufficient to pay debt service on the outstanding debt of the RRF. The Barlow Retrofit demolished a significant part of the old Facility and replaced it with a substantially new RRF. The original Facility the Authority purchased in 1993 and improved through the 1990s in large part no longer existed. As a result, it is difficult to understand how the existing debt could continue to be considered self-liquidating in 1998, 2000, 2002 and in December 2003, and how a Clean 8110(b) Certification could have been filed. Nonetheless, the City filed a Clean 8110(b) Certification relating to the 1998 Bonds and 2003 A, B and C Notes in connection with its guarantee of the 2003 D, E and F Bonds.²⁰³

Prior to issuance of the 2003 A, B and C Notes, the City's statutory debt limit was approximately \$149.8 million. Of this capacity, according to the proceedings filed by Bond Counsel with DCED, there was approximately \$80.7 million of Combined Net Nonelectoral Debt and Net Lease Rental Debt Outstanding (the types of debt that count

²⁰¹ Second Amended Complaint in the matter The Harrisburg Authority v. Barlow Projects, Inc., et al. paragraph 59.

²⁰² Some revenue stream to the Authority continued through the transfer station, albeit at a substantially reduced level.

²⁰³ Borrowing Base Certificate and Debt Statement (including Clean 8110(b) Certificate) signed by the City and filed with DCED on November 7, 2003 related to the 2003 D, E and F debt. Prior to filing the debt statement relating to the 2003 A, B and C Notes, bond counsel for that issuance (and for the 2003 D, E and F Bonds), alerted those involved with the transaction of a duty to notify DCED in conjunction with a future City debt issuance if some of the debt were not then considered self-liquidating. April 11, 2003 memo prepared by Hugh Sutherland.

against the statutory debt limit).²⁰⁴ Accordingly, the City had a remaining debt limit of approximately \$69 million prior to the issuance of the 2003 A, B and C Notes.²⁰⁵ If the 1998 Bonds no longer were deemed self-liquidating at that time, the City's remaining debt limit would have been approximately \$25.9 million²⁰⁶ and it could not have guaranteed the 2003 A, B and C Notes. Separately, had the 2003 A, B and C Notes not been qualified for self-liquidating status, the Barlow Retrofit project likely would not have been financeable and a self-liquidating debt report probably would not have been capable of being developed that showed revenues sufficient to cover debt service for the first 22 years of operation.²⁰⁷ Accordingly, the 2003 D, E and F Bonds would not have been issued unless the bond insurer and the County agreed to provide a guarantee without the City (e.g., if the County was the sole guarantor).

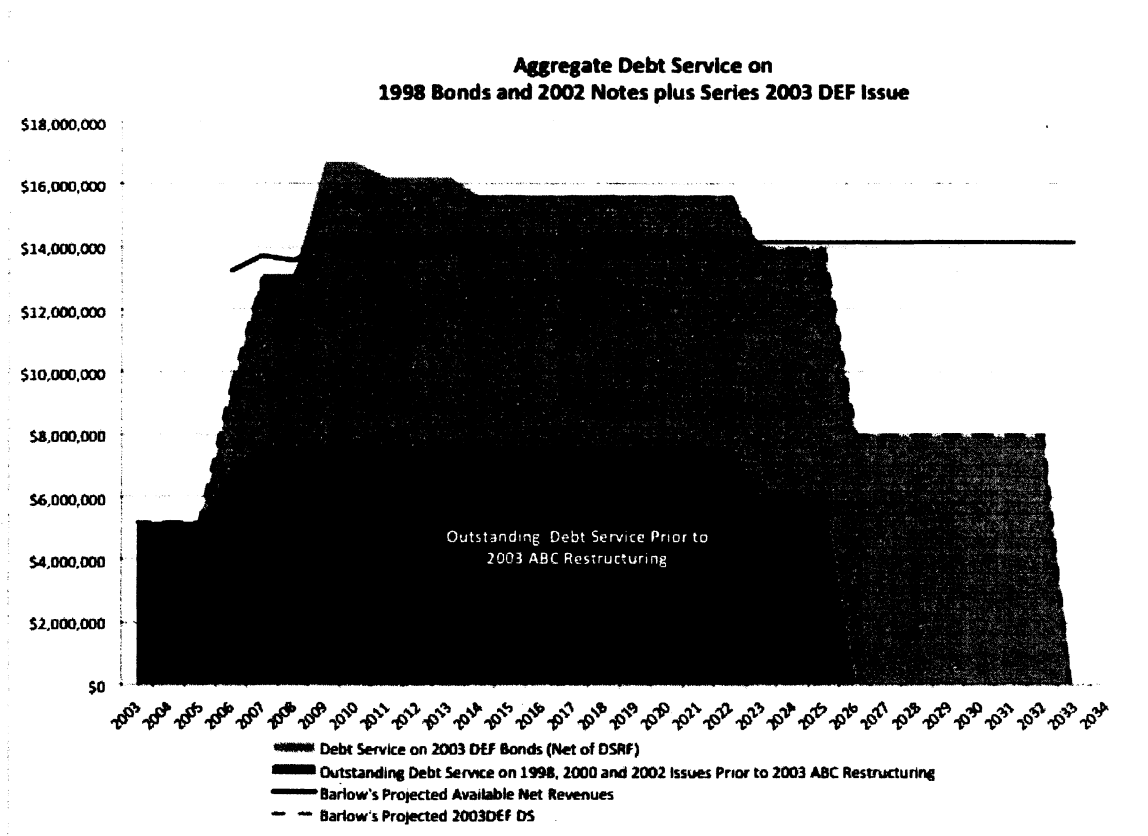
The below illustration shows the debt service payments that the Authority would have had if the 2003 D, E and F Bonds had been issued without the restructuring accomplished by the 2003 A, B and C Notes. It shows that Facility revenues after completion of the retrofit—even as projected by Barlow—would not have been sufficient to pay debt service almost from the beginning of the Facility's operations (even if the Barlow Retrofit been completed on time).

²⁰⁴ Borrowing Base Certificate and Debt Statement filed with DCED signed by the City and filed with DCED on April 16, 2003 related to the 2003 A, B and C debt.

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

²⁰⁷ See chart in body of this report titled "Aggregate Debt Service on 1998 Bonds and 2002 Notes plus Series 2003 DEF Issue."



NOTE: In orange, actual debt service is shown for 2007-2011 with assumptions as to variable rate resets of 4.5% beginning in 2012. The illustration does not reflect net payments under the swaps and caps. Net of DSRF means that the Debt Service Reserve Fund was assumed to be released in the year the 2003 D, E and F Bonds matured, in order to pay for debt service in that year.

We also question how the 2003 A, B and C Notes could themselves be self-liquidating as they related to debt that financed the Facility as it was improved through 1997. That Facility closed in 2003 and had not been able to pay for operations and debt service for at least six years prior to that point in time. Moreover, those bonds were not secured by a pledge of receipts and revenues from the Facility. It appears from reviewing the relevant documents that the proceedings filed with DCED took an aggressive position by dismissing the lack of revenue stream from the then-shuttered RRF, and assuming that the City could take into account future revenues of a retrofit that had been discussed for over a decade and certain individuals hoped would be, but had not yet been, financed with the 2003 D, E and F Bonds. The report assumed that the Authority "will obtain contracts from qualified engineers, contractors and equipment suppliers accompanied by appropriate guarantees of performance for the Retrofit for a total cost including

contingencies that does not exceed \$81 million...²⁰⁸ It also assumed repairs to the steam line, which in fact never occurred.

The RRF continually borrowed working capital and capitalized interest, and undertook more than one expensive restructuring to satisfy debt service obligations. These additional borrowings added debt that did not generate corresponding revenues and added significant expenses, which in and of itself constitutes a change in circumstances that should have been re-examined, resulting in a reduction of the amount of debt that was deemed self-liquidating.

b. Use of Funds for “Costs of a Project”

Under the Debt Act, local government units have the power to issue and guarantee debt to provide funds for the cost of completing a project or combination of projects that the local government unit is authorized to own, acquire, subsidize, operate or lease.²⁰⁹ Among other things, a “project” includes items of construction, acquisition, extraordinary maintenance or repair; preliminary studies, surveying, planning, testing or design work; lands or rights in land to be acquired; furnishings, machinery, apparatus or equipment normally classified as capital items; funding of all or any portion of a reserve relating to self-insurance; and funding or refunding of debt incurred for any or all of the foregoing purposes.²¹⁰

The “cost of a project” includes the amount of all payments to contractors or for the acquisition of a project or for lands, easements, rights and other appurtenances deemed necessary for the project, fees of architects, engineers, appraisers, consultants, financial advisors and attorneys incurred in connection with the project financing costs, costs of

²⁰⁸ November 6, 2003 Barlow Self-Liquidating Debt Report. Taking into account revenues from a potential retrofit project in determining if the 2003 A, B and C Notes could be considered self-liquidating may have been based at least in part on a conversation that underwriter’s counsel reported occurring between his office and DCED. March 24, 2003 e-mail from Richard Michael to Robert Kroboth, copying various people.

²⁰⁹ 53 Pa. C.S.A. § 8005(c).

²¹⁰ 53 Pa. C.S.A. § 8002(c).

necessary printing and advertising, costs of preliminary feasibility studies and tests, cost estimates and interest on money borrowed to finance the project, if capitalized, to the date of completion of construction and, if deemed necessary, for one year thereafter, amounts to be placed in reserve funds, if any, a reasonable initial working capital for operating the project and a proper allowance for contingencies.²¹¹

By 2003, the Authority had issued new debt to pay for old debt (both as working capital and capitalized interest) on a number of occasions. When it issued the 2003 D, E and F Bonds, the Authority was committing to a significant amount of demolition and a new incinerator. Included in the 2003 D, E and F Bonds were funds earmarked for debt service for the pre-Barlow Retrofit bonds and notes. However, in the definition of “costs of a project,” the Debt Act permits funding only for “a reasonable initial working capital for operating the project” and “cost of ... interest on money borrowed to finance the project, if capitalized, to the date of completion of construction and, if deemed necessary, for one year thereafter.”²¹² The projects funded by the pre-Barlow Retrofit bonds and notes were well past the “initial working capital” stage, and were well past one year after completion of construction; indeed the demolition phase of the pre-retrofit project was commencing. As a result, it is questionable whether, under the Debt Act, the City and County could guarantee debt that the Authority issued to pay for interest on money it borrowed to purchase and improve the original RRF Facility it acquired in 1993.

7. *Actual vs. Projected Results*

The financial operating results and supporting information produced to date, including audited financial statements, budgets and projections, demonstrates that actual and budgeted operations of the RRF have fallen significantly below the projections that were used to support the assertion that the 2003 debt would be self-liquidating.

²¹¹ 53 Pa. C.S.A. § 8007. (Emphasis added)

²¹² Ibid. (Emphasis added)

Table 5 presents the actual and budgeted income before debt service²¹³ versus what was projected in Barlow's Self-liquidating Debt Report. Exhibit E presents the information in detail.

Table 5: Actual/Budgeted Income Before Debt Service vs. Projections (in millions)

Year	Actual/Budget	Projection	Variance
2006	(\$2.2)	\$13.2	(\$15.4)
2007	(4.0)	13.7	(17.7)
2008	2.4	13.6	(11.2)
2009	2.1	14.1	(12.0)
2010	.5	14.1	(13.6)
2011	<u>5.6</u>	<u>13.7</u>	<u>(8.1)</u>
Total	\$4.40	\$82.40	(\$78.00)

The following sections address the major variances that have been identified. Where possible, we also discuss the reasons for the observed variances, although in some cases explanations have not been identified in the documents produced to date.

a. RRF Revenues

Over the period 2006 through 2009, the actual/budgeted revenues the RRF generated fell below the Barlow projections, including shortfalls of \$11.3 million and \$10.0 million in 2006 and 2007, respectively. In large part, these revenue shortfalls reflect the delay in the completion of the retrofitted RRF, which did not occur until 2008, versus the projected completion in 2006.

Since 2009, actual/budgeted revenues have approximated or exceeded the projection. However, while the revenue figures are only marginally different, there are significant

²¹³ For purposes of our analyses, we have used the available actual financial data for the years 2006 through 2008. During the course of our investigation, actual financial statements for the period 2009 forward were not yet available, as such, for that period projections have been analyzed against the approved budgets under the assumption that the budgets represent a reasonable proxy for actual results. We note that the Authority recently issued its 2009 audited financial statement while this report was in preparation, but, because of the timing of its issuance, we have not considered the 2009 audited financial statement. Our analyses may be updated if and when we have the opportunity to review actual financial data for the period 2009 forward, if we are requested to do so.

differences between the actual/budgeted revenue mix and what was projected. For example:

- Tipping fees received from the City and County are approximately \$8.8 million higher than what was projected for 2011. This reflects actual tipping fees charged to City residents of \$200 per ton,²¹⁴ versus a projected figure of \$50 per ton.²¹⁵ This further reflects actual tipping fees of between \$72.60 and \$73.95 per ton charged to the County,²¹⁶ versus approximately \$52.50 per ton in the projection.²¹⁷ While the increase in actual revenues versus the projected revenues is generally a positive, in this case, the residents of the City and the County already are paying the price, in part, for the failure of the project via the higher tipping fees.
- Steam sales are \$3.2 million below what was projected for 2011, reflecting the complete failure of the steam line, which has not been repaired, depriving the RRF of the ability to sell steam. The loss of steam sales further highlights the questionable nature of the Barlow projections because it should have been known that the steam line needed significant capital improvements to continue operating.
- Electricity sales are \$2.1 million below what was projected for 2011. In part, this appears to be a function of lower than projected selling prices for electricity. The budgeted average selling price in the 2011 budget was \$.0443/KW.²¹⁸ The 2003 projections assumed a rate of \$.055/KW.²¹⁹ This highlights another incorrect assumption utilized in the Barlow projections to substantiate the self-liquidating nature of the bonds.

²¹⁴ Per footnote 1 to the Amended 2011 THA RRF Operating Budget.

²¹⁵ Calculated from the Key Assumptions associated with the 2003 Projections.

²¹⁶ Per footnote 2 to the Amended 2011 THA RRF Operating Budget.

²¹⁷ Calculated from the Key Assumptions associated with the 2003 Projections.

²¹⁸ Per footnote 8 to the Amended 2011 THA RRF Operating Budget. THA Web site.

²¹⁹ Per item 12 under the Principal Assumptions and Conditions attached to the November 6, 2003 letter from Barlow to the City of Harrisburg and Dauphin County.

b. RRF Expenses

Actual/budgeted expenses have exceeded projected expenses in Barlow's Self-Liquidating Debt Report, often by significant amounts. For example, expenses in 2009 were budgeted at \$21.4 million versus a Barlow projection of \$11.4 million, a difference of \$10 million. The higher than projected expenses can be attributed, in large part, to the following:

- Since 2007, Covanta has been operating the RRF. Over the period 2009 through 2011, Operating and Maintenance Expenses, which include the costs associated with the Management and Professional Services Agreement between the Authority and Covanta (the "Covanta Agreement"), have ranged between \$11.8 million and \$13.5 million. By way of comparison, Barlow's projected expenses for this category ranged between \$6.6 million and \$6.9 million. The difference appears to be a function of the magnitude of the fees paid under the Covanta Agreement, which significantly exceed the projected operating costs. We have been unable to conclude whether the operating costs included in the Barlow projection were reasonable at the time; the Authority had little choice but to enter into the Covanta Agreement at a higher price if it wished to operate the RRF and complete the retrofit because of Barlow's failures.
- Utility and Insurance costs have exceeded projections by between \$1 million and \$2.1 million annually from 2009 through 2011.
- Waste Transfer and Ash Disposal costs have exceeded projections by between \$2.6 million and \$2.7 million annually from 2009 through 2011.
- Professional Fees, including for legal, engineering, facilities management and audit services, have ranged between \$1.4 million and \$1.7 million annually between 2009 and 2011. It does not appear that professional fees were included in the 2003 Barlow projection.
- In 2010, the RRF incurred \$3.8 million to fund the Indenture Reserve. No such expense is reflected in the 2003 Barlow projection.

8. *Conclusions Regarding the 2003 Debt*

The projections developed and certified by Barlow, and the circumstances surrounding their development, demonstrate that the projections were highly dependent on assumptions related to on-time and on-budget delivery of the project. Further, when minor adjustments are made to the projections to account for a potential delay, to equalize the rate of growth in revenues and expenses, and to match the projection period with projected useful life of the RRF and contract terms, the projections demonstrate a project that was not feasible. With the benefit of now being able to compare the projections against actual results, it is clear how devastating Barlow's failure to deliver the contemplated project on-time and on-budget has been to the Authority's ability to service the debt. However, even if Barlow had completed the project on time, the significant deficiencies highlighted in the projections would have provided substantial challenges to the Authority's ability to service the debt.

The stakeholders in the project understood that there was substantial risk in undertaking the retrofit. Both the City and the County took significant guarantee fees to compensate for that risk. Further, prior to providing the guarantees on the debt, both City Council and the County undertook due diligence efforts surrounding the financial and technical feasibility of the project. Even though due diligence was performed, we have found no evidence that the consultants retained by either entity provided any meaningful challenge to the Barlow projections, even though one of those consultants, Buchart Horn, indicated that, in its estimation, the project would not be able to generate cash flow sufficient to service all of the debt.

We also have seen no evidence that City Council or the County raised basic concerns to challenge the process. Specifically, we have seen no evidence that any party raised concerns over the lack of a meaningful bidding process, whether the Barlow technology was the best solution or whether other alternative solutions existed that could provide a lower risk given Barlow's lack of a track record for projects of this size. We also have

not seen documents showing that the option of shutting down the Facility was meaningfully considered.

Ultimately, given all of the above faulty steps and other information, it appears that the Barlow financial projections may have been of less concern than normally would be expected because it was the City and County guarantees, as well as FSA's bond insurance, that seem to have been the means used to procure financing and sell the 2003 D, E and F bonds, not the merits of the project.

C. BARLOW CONTRACT ISSUES AND SECURITY FOR PERFORMANCE

As previously noted, Barlow's inability to complete the project on time and within budget is a significant contributing factor to the current fiscal situation. While our scope of work did not include the evaluation of the technical issues associated with Barlow's performance, we have evaluated several related financial issues, including:

- The overall structure of the contracts with Barlow and its subcontractors;
- The lack of a performance bond to support Barlow's performance under the contracts; and
- Certain problems related to the security for Barlow's performance, including the release of the retention.

The following discusses our findings and observations in these areas.

1. *The Retrofit Contracts*

Barlow's work on the retrofit was split into two separate contracts. The first was the Amended and Restated Agreement for the Sale and Installation of Equipment (the "Sale and Installation Agreement"), which related to the sale, assembly and installation of the

equipment needed to perform the retrofit.²²⁰ While the contract was dated December 31, 2003, the actual closing date of the contract was May 6, 2004, after the 2003 D, E and F Bonds were issued.²²¹ The contract price for this scope of work initially was approximately \$45.8 million,²²² although, subsequent to contract signing, the scope of work ultimately increased the price to approximately \$51.3 million.²²³ The overall contract price increase is in excess of 10 percent from the original price, and it has contributed to the RRF's inability to pay its outstanding debt.

The second Barlow contract was the Amended and Restated Professional Services Agreement (the "Professional Services Agreement") which, among other things, related to the completion of the project design and development, the completion of the project drawings and specifications, the provision of construction management services, and the provision of start-up testing services.²²⁴ The contract price for this scope of work was approximately \$12.8 million.²²⁵ The agreement also provided for a guaranteed maximum construction price of \$14.8 million for the turbine island, electrical, HVAC, plumbing, elevator and miscellaneous construction work.²²⁶ Like the Sale and Installation Agreement, the Professional Services Agreement was dated December 31, 2003, although the actual closing date for the contract was May 6, 2004,²²⁷ again, after the date of the issuance of the 2003 D, E and F bonds.

In addition to the contracts with Barlow, the Authority also entered into separate contracts with other contractors, including Reynolds. On February 16, 2004, the Authority hired Reynolds to provide pre-construction services, including construction

²²⁰ Amended and Restated Agreement for the Sale and Installation of Equipment dated December 31, 2003. Contract preamble.

²²¹ Ibid.

²²² Ibid. Section 3.01.

²²³ Amendment No. 4 to the Amended and Restated Agreement for the Sale and Installation of Equipment and Amendment No. 1 to the Non Exclusive Technology Sub-license Agreement. Section 3.01. There was a proposed agreement to further increase the value to \$91.3 million in connection with the proposed sale of the RRF to Barlow, although it appears that the increase never was implemented.

²²⁴ Amended and Restated Professional Services Agreement dated December 31, 2003, Section VI.B.

²²⁵ Ibid. Section III.A.

²²⁶ Ibid. Section III.B, and the Division of Responsibilities attachment.

²²⁷ Ibid.

management services in connection with the demolition of the existing building/structure/utilities, permitting and design work related to the steam line, coordination with Barlow on the retrofit design, and development and coordination of the bidding process, including the monitoring of minority and women owned businesses participation.²²⁸ The fee for Reynolds' services in these areas was estimated at \$500,000.²²⁹

At the same time that Reynolds was providing services to the Authority, Barlow also retained Reynolds as a subcontractor. On April 1, 2004, Barlow hired Reynolds to provide procurement and construction management services for a fee of \$350,000, plus other fees authorized by work authorization.²³⁰

The Authority contracted with Reynolds again in August 2006 to provide close-out services on the project.²³¹ We have seen no evidence that any of Reynolds' contracts were competitively bid.

Based upon our experience with construction contracting, the roles that Reynolds played in working on behalf of the owner and the general contractor on the same project is highly unusual since Reynolds was in the position of having to serve two masters with potentially competing interests. Based upon our analysis of the documents and other information produced to date, with one exception, there is no indication that anyone raised issues with respect to the multiple, and potentially conflicting, roles performed by Reynolds on the project. The unusual nature of this situation is further heightened by the fact that a Reynolds executive, Mr. Clark, was on the Board of the Authority at the time that Reynolds executed its 2004 contracts with the Authority and Barlow.²³²

²²⁸ Scope of services attached to the February 16, 2004 agreement between the Authority and Reynolds.

²²⁹ *Ibid*, Exhibit B.

²³⁰ Agreement for Professional Consulting Services between Barlow and Reynolds dated April 1, 2004, Articles 1 and 4.

²³¹ August 23, 2006 Agreement between the Authority and Reynolds.

²³² Mr. Clark was listed as in attendance at the March 24, 2004 Regular Monthly Meeting of the Authority.

The contract structure raises the appearance of a possible conflict of interest, i.e., that a decision to hire Barlow might be influenced by an agreement by Barlow to work with and offer subcontract work to Reynolds. We have not seen any evidence that this in fact happened, but the appearance alone is of concern.

In June 2003, in response to Mr. Clark's expression to the Authority of Reynolds' interest in the project,²³³ Rhoads & Sinon, then legal counsel to the Authority, conducted a legal analysis regarding conflicts of interest. They concluded that no member of the Authority could have even an indirect interest in a contract with the Authority, and that doing so would violate the conflict of interest provisions in the Municipal Authorities Act (the "MAA").²³⁴ The Rhoads & Sinon analysis further stated that any contract that was made in violation of the MAA would be void.²³⁵ Given the conclusion reached by Rhoads & Sinon, and our own analysis, Mr. Clark had a conflict of interest and Reynolds should not have been permitted to contract with the Authority. Mr. Clark abstained from certain votes that had an impact on Reynolds; however, abstention does not satisfactorily address the conflict problem under the MAA.²³⁶

2. *Lack of a Performance Bond*

On large construction projects for public entities, the prime contractor typically is required to obtain a performance bond from a recognized and suitable surety in favor of the public entity. A performance bond protects the public entity against the contractor failing to deliver the project as promised. Among other things, a bond protects the public entity in case the contractor is financially unstable and, therefore, unable to complete the project.

²³³ The Authority Board Minutes dated June 25, 2003 discuss Mr. Clark's request for a meeting with the Authority's Solicitor and Executive Director regarding the participation of Mr. Clark in another role regarding the retrofit project.

²³⁴ 53 Pa. C.S.A. §§ 5601 *et seq.* June 26, 2003 letter from J. Bruce Walter, Esquire of Rhoads & Sinon to Thomas Mealy of the Authority.

²³⁵ June 26, 2003 letter from J. Bruce Walter, Esquire of Rhoads & Sinon to Thomas Mealy of the Authority.

²³⁶ 53 Pa. C.S.A. § 5614.

In the case of the RRF retrofit, Barlow was unable to obtain a performance bond, because of its tenuous financial condition. Nonetheless, the retrofit moved forward without a bond, based on an “alternative security package.” When Barlow failed to complete the retrofit, the lack of a performance bond left the Authority with no meaningful protection, resulting in substantial additional costs being incurred to correct and complete the retrofit.

The documents that have been produced to date indicate that the negotiations surrounding the security package were handled primarily by Mr. Lispi and Mr. Giorgione on behalf of the Authority.^{237,238,239} Under the Sale and Installation Agreement, Barlow provided the Authority with a “security package” consisting of the following:

- The Authority’s deferred payment of \$13 million related to certain equipment, including the APC Technology and Combustion Units, which payment would not be required until the equipment was delivered to the site;
- Approximately \$18 million of financial security (payment and performance bonds) posted by Cianbro, a subcontractor, in connection with the delivery and installation of the equipment;
- Approximately \$5 million of financial security (equipment bonds) posted by certain equipment manufacturers, including the solids handling system, the non-catalytic reduction system, the refuse crane and instrumentation;
- 20 percent retainage on the contract price; and
- \$1 million in warranty security in the form of a bond, cash, letter of credit or other acceptable financial instrument.²⁴⁰

²³⁷ November 19, 2003 letter from Ronald Barmore to Daniel Lispi (Barmore identifies proposed structure for security package, which includes mixture of payment and performance bonds on the equipment and Cianbro work, and retention on other components. In the letter, Mr. Lispi is identified as Assistant to the Mayor for Special Projects).

²³⁸ Transcript from the June 21, 2007 Public Works Committee meeting.

²³⁹ Deposition testimony of Mr. Giorgione on December 10, 2008, page 36.

²⁴⁰ Amended and Restated Agreement for the Sale of Equipment dated December 31, 2003, Section 7.01. Based on the documentation provided to date, we are not aware that the final component (\$1 million in warranty security) ever was provided by Barlow.

It appears that the Authority initially sought a performance bond from Barlow for the work under the Sale and Installation Agreement.²⁴¹ In early drafts of the Sale and Installation Agreement, including those prepared between June 2003 and October 2003 (during which time the document was entitled a "Facility Modification Agreement"),²⁴² the requirement for Barlow to provide a performance bond is present as one of the provisions.²⁴³ However, by October 2003, prior to the issue date of the 2003 D, E and F Bonds, Barlow's lawyers had replaced the phrase "performance bond" with "surety bond," and had reduced the bond coverage from 100 percent to \$7 million (less than 10 percent of the total contract price).²⁴⁴

On November 18, 2003, Barlow's law firm provided a memorandum to Barlow explaining why, in its view, no payment and performance bond was required. It is not clear if this memorandum, or its substance, was conveyed to the Authority at or around that time. In addition, the memorandum states that additional research was going to be performed, although it is not clear whether any additional research was performed.²⁴⁵ On November 19, 2003, Mr. Barmore, from Barlow Projects, wrote to Mr. Lispi, copying Messrs. Mealy and Giorgione, among others, and proposed an alternative security package, consisting of payment and performance bonds from subcontractors and suppliers, and retainage of approximately \$9 million, which he said collectively represented security equal to 91 percent of the value of the installed equipment.²⁴⁶

The items identified by Mr. Barmore as security did not provide security that benefited the Authority. Furthermore, retainage is a typical holdback on construction contracts in

²⁴¹ For example, various agendas for meetings held regarding the retrofit and the 2003 bond issues reference discussion surrounding performance bonds.

²⁴² The Facility Modification Agreement covered in one document the work that later was separated into two documents, the Sale and Installation Agreement and the Professional Services Agreement. Dividing the original agreement into two provided an opportunity to claim that no security was needed for the professional services work, and that bidding was not required for either contract. Given our analysis in the text, it appears that bidding may have been required at least for the Sale and Installation Agreement, under the Municipal Authorities Act. 53 Pa. C.S.A. § 5614.

²⁴³ Draft Facility Modification Agreement between the Authority and Barlow dated August 1, 2003. Also refer to draft Facility Modification Agreement between the Authority and Barlow dated August 12, 2003.

²⁴⁴ Draft Facility Modification Agreement between the Authority and Barlow dated October 4, 2003.

²⁴⁵ Memorandum from LeBoeuf, Lamb dated November 18, 2003.

²⁴⁶ November 19, 2003 letter from Ronald Barmore to Daniel Lispi.

addition to proper security and should not be considered as security itself or a replacement for bonding. Subcontractor and supplier payment and performance bonds are commonly obtained by general contractors to protect them (not the project owner) from the performance (or lack thereof) by specific subcontractors and suppliers. Subcontractor and supplier payment and performance bonds should not be considered an alternative security to provide protection to the owner for the general contractor's performance (or lack thereof) on the entire project. Accordingly, Barlow did not offer appropriate security to the Authority in its "alternative security package," which the Authority ultimately accepted and incorporated into the agreement.

In a draft Sale and Installation Agreement with the handwritten date "12/19/03" (still before the 2003 D, E and F Bonds were issued), the relevant contract clause referred to a total of \$27 million in bonds, \$14 million of which was to be a payment and performance bond. The word "performance" was crossed out with respect to \$13 million of bonding and replaced by an "equipment delivery, assembly and installation" bond. The contract amount in the draft contract was approximately \$45 million.²⁴⁷

By December 23, 2003 (again, before the 2003 D, E and F Bonds were issued), there appeared to be a continuing negotiation about the possibility of a \$14 million performance bond, but with the rest of the "security" to be provided by other means.²⁴⁸

It seems clear that, at a minimum, the Authority's negotiators, including Messrs. Giorgione and Lispi, and probably Mr. Mealy, were on notice before the 2003 D, E and F Bonds were issued that Barlow did not want or was unable to provide a performance bond at all, and that even if Barlow ultimately did provide a performance bond, it would be for far less than one hundred percent of the contract price. It appears that the Authority's negotiators conceded this latter point before the 2003 D, E and F Bonds were issued. To date, we have not identified any documents in the Authority's files that

²⁴⁷ Draft Agreement for the Sale and Installation of Equipment between the Authority and Barlow dated December 19, 2003.

²⁴⁸ Draft Agreement for the Sale and Installation of Equipment between the Authority and Barlow dated December 23, 2003.

demonstrate that the lack of a performance bond was brought to the attention of the Authority's Board.

In his deposition in the litigation between the Authority and CIT, as well as at the June 21, 2007 Public Works Committee meeting, Mr. Giorgione testified that Barlow provided the security package in lieu of a performance bond because Barlow was unable to obtain a bond due to its financial condition.²⁴⁹ Mr. Giorgione's testimony at both the City Council Public Works Committee meeting and at his deposition suggests that he believed that the security package ultimately obtained was adequate.

The various financial arrangements did not provide enough security to the Authority because Barlow experienced significant financial difficulties, cost overruns and project completion problems. Cianbro, Barlow's subcontractor that was responsible for equipment installation, posted the only performance bond, in the amount of approximately \$18 million. Unfortunately, this bond was for the benefit of Barlow, not the Authority. As such, when Cianbro left the project due to non-payment, so did the bond that it posted.²⁵⁰ Similarly, when the manufacturers of equipment who had provided bonds completed the delivery of their equipment, their \$5 million in security was no longer available.²⁵¹ By the time it terminated Barlow for performance related issues in late 2006, the Authority had released all of the retainage²⁵² on work performed through that point on the project in an effort to help fund Barlow's attempts, through overtime, extra workers, and replacement materials, to recapture its poor performance and cost overruns experienced on the project. Barlow did not have funding to pay for these added costs itself.

²⁴⁹ Deposition testimony of Mr. Giorgione on December 10, 2008, page 36. See also the transcript from the June 21, 2007 Public Works Committee Meeting, page 5.

²⁵⁰ Transcript from the June 21, 2007 Public Works Committee meeting, page 4.

²⁵¹ This is evidenced by the fact that this security was not available to the Authority when Barlow was terminated. Refer to Section 7.01 (b) (ii) of the Amended and Restated Agreement for the Sale and Installation of Equipment between the Authority and Barlow which identifies the equipment subject to this security.

²⁵² Barlow Monthly Report 26 dated July 20, 2006, page 3.

These facts support our conclusion that the subcontractor/supplier payment and performance bonds obtained by Barlow and the anticipated holdback of 20 percent retainage until completion did not represent adequate security to the Authority. In fact, the 20 percent retainage provision contributed to Barlow's cash flow problems and non-payment to its subcontractors and suppliers during the project.

As a consequence, when it terminated Barlow and hired Covanta to complete the retrofit work, the Authority did not have the protection that is normal for public entities undertaking construction projects. The performance bonding that protects public entities for contractor failures was not in place and, instead, the Authority was forced to borrow additional funds to pay for the remaining construction work. The Authority borrowed up to \$25.5 million²⁵³ from Covanta, the contractor that completed retrofitting the RRF, and an additional \$34.6 million²⁵⁴ in debt to fund debt service and other working capital needs until the work was completed. In addition, the Authority has entered into a long term services contract with Covanta to operate the RRF, which has resulted in a significant increase in the operating costs incurred to operate the RRF compared to the Barlow feasibility projections. Moreover, CIT provided an additional \$25 million²⁵⁵ that was used to fund some of Barlow's work. (CIT funds are addressed further below in the 2005 & 2006 Sale Negotiations section.)

Pennsylvania's Public Works Contractors' Bond Law of 1967 requires financial security for contracts above a certain dollar amount entered into by "contracting bodies," which includes the Authority.²⁵⁶ The statute states:

(a) Before any contract exceeding ten thousand dollars (\$10,000) for the construction, reconstruction, alteration or repair of any public building or other public work or public improvement, including highway work, of any contracting body is awarded to any prime contractor, such contractor shall furnish to the contracting body, the following financial security,

²⁵³ October 12, 2007 Cooperation Agreement between the Authority, the City and the County.

²⁵⁴ Closing Order and Receipt for the 2007 Series C and D debt. The amount cited is the value at maturity.

²⁵⁵ Order dated June 14, 2010 in the matter The Harrisburg Authority et al. v. CIT Capital USA., et al.

²⁵⁶ 8 P.S. § 192(2); 8 P.S. § 193.1(d) and (e).

which shall become binding upon the awarding of said contract to such contractor:

(1) Any financial security, acceptable to and approved by the contracting body, including but not limited to, Federal or Commonwealth chartered lending institution irrevocable letters of credit and restrictive or escrow accounts in such lending institutions, equal to one hundred percent of the contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. Such financial security shall be solely for the protection of the contracting body which awarded the contract.

* * *

(b) Any bond or other financial security under the provisions of this act shall be executed by one or more surety companies or Federal or Commonwealth chartered lending institutions, chosen by the party posting the financial security and acceptable to the contracting body, legally authorized to do business in the Commonwealth of Pennsylvania.²⁵⁷

This statute does not require a “performance bond,” but the prime contractor must provide to the contracting body security for one hundred percent of the contract amount, and the security must be executed by one or more surety companies or federal or Commonwealth chartered lending institutions. (As a practical matter, given the size of the contract, it is unlikely that anything other than a performance bond would have been a commercially reasonable form of financial security for the Barlow Sale and Installation Agreement.) The contracting body has discretion as to the form of the security and the institution executing it. Further, the security must be conditioned upon the faithful performance of the contract, and shall be solely for the protection of the contracting body.

In this case, Barlow’s security does not meet the requirements of the statute for a number of reasons. First, the security was not executed by one or more surety companies or federal or Pennsylvania chartered lending institutions. Second, some of the security was provided by subcontractors to Barlow, but not to the Authority. For example, the performance bond posted by Cianbro and the financial security posted by the equipment suppliers went to the benefit of Barlow, not the Authority. As a result, security for one hundred percent of the contract amount was not provided to the Authority, and the security was not solely for the protection of the Authority. Further, since some of the

²⁵⁷ 8 P.S. § 193.1. (Emphases added).

security related to performance of subcontracts, the security was not conditioned upon the faithful performance of Barlow's contract with the Authority.

In a memo dated November 18, 2003, Barlow's law firm suggested Barlow did not need to provide any security, claiming that no bond was required for services other than "construction, reconstruction, alteration or repair," or for materials and supplies, such as patented products. The firm also questioned if Barlow would be considered the "prime contractor."²⁵⁸ Those assertions are part of an effort to make strained arguments to justify an untenable position.²⁵⁹

The RRF retrofit project involved demolition of a large part of the existing Facility, and replacing it with an entirely new resource recovery system. Among other things, Barlow undertook a substantial amount of installation work, and only a part of the cost of the project involved the APC Technology and Combustion Units that incorporated Barlow's unique methodology. The retrofit was a construction project. To suggest that Barlow was not engaging in construction (or reconstruction, alteration or repair) would not be accurate.

3. *Release of the Retention*

Retention is typically employed on most construction projects, and serves two purposes:

- To provide incentive to the contractor to complete the work in order to be paid the retention upon project completion; and
- To ensure that the work is performed correctly because the retention is not to be released until the final inspections and testing have been completed. In the event

²⁵⁸ Memo from Michael Klein and Johathan Nase to Ron Barmore, dated November 18, 2003.

²⁵⁹ Between October and December, 2003, the title of the contract changed from "Facility Modification Agreement" to "Agreement for the Sale and Installation of Equipment." This change appears designed to set up the argument that the contract was solely to provide equipment, not construction services. This simply is not correct. This was not a situation in which Barlow was only dropping off specialized equipment at the site and leaving. It did much more.

that the work is not performed correctly at first, then the retention is available to pay for any required corrective work.

In this case, the retention initially was 20 percent, or \$9 million, under the provisions of the Equipment Agreement.²⁶⁰ It was not held until the end of the contract. Rather, it was released to Barlow early in an attempt to rehabilitate Barlow's performance on the project. The following provides a timeline of the issues relating to the release of the retention to Barlow.

- As early as March 16, 2005, in a meeting between Barlow and Mr. Lispi, Barlow indicated that it was commercially impractical to continue with the project, and that the release of some of the retention held at that point would assist Barlow in dealing with cash flow issues. It appears that the need was driven, in part, by the collapse of Victory, which was the subcontractor Barlow had hired to fabricate the boilers. Victory's collapse was attributed to increases in the cost of steel.²⁶¹
- In a March 17, 2005 meeting, Mr. Lispi advised Barlow that the Authority would consider assistance, including the release of retention.²⁶²
- On April 20, 2005, the Authority offered to reduce the retainage, along with an increase in the contract price of \$2.5 million for increased steel pricing and an additional \$200,000 for outstanding change orders.²⁶³
- On April 27, 2005, the Authority approved Amendment No. 3 to the Sale and Installation Agreement.²⁶⁴ While we have not received a final copy of the document, we have reviewed a draft, which provided that one-half of the retainage held would be released upon 90 percent completion of major components of the Combustion Units. Thereafter, additional retainage amounts would be released upon the achievement of substantial completion for each of the

²⁶⁰ Amended and Restated Agreement for the Sale and Installation of Equipment between the Authority and Barlow dated December 31, 2003.

²⁶¹ Factual Background outlined in the document entitled "Barlow/City Meeting May 27, 2005 Re: Amendment No. 4 to ESA."

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ Ibid.

Combustion Units, such that by the time Unit 3 was certified as having achieved substantial completion, all of the retainage would be released.²⁶⁵

- Between September 13, 2005 and September 27, 2005, there were a series of meetings involving representatives from the Authority (Mr. Mealy), the City (Ms. Lingle and Mr. Lukens), Barlow (Mr. Barlow and Mr. Barmore), and the Authority's advisors (Mr. Giorgione, Mr. Lispi, and Mr. Foreman). In the handwritten notes memorializing what was discussed, the topic of the release of the retention was identified numerous times.²⁶⁶

By July 20, 2006, all of the retention had been released.²⁶⁷ According to Mr. Giorgione, the Authority made payments from the retention directly to the contractors on the project in an unsuccessful attempt to complete the work.²⁶⁸ Coupled with the lack of a performance bond or other security, the release of the retention held to fund the work was another factor contributing to the need to obtain additional funds from CIT and to borrow an additional \$60 million in 2007 to fund completion of the new resource recovery system.

4. *Conclusions Regarding Barlow's Contracts and Security for Performance*

Barlow's poor financial condition at the time that the contracts were executed precluded the company from obtaining a performance bond for the project. Despite this obvious red flag, no one challenged the decision to move forward with Barlow. The project proceeded with an alternative security package that proved completely ineffective in providing the Authority protection for the completion of the retrofit when Barlow failed and was terminated. As a consequence, the Authority was forced to borrow \$25.5 million from Covanta to fund the project completion and issue \$34.6 million in notes to fund

²⁶⁵ Draft Amendment No. 3 to the Amended and Restated Agreement for Sale and Installation of Equipment. Revisions to section 4.01(g).

²⁶⁶ Handwritten notes related to meetings that occurred on September 13, 19, 20, 26 and 27. The Authority produced this document to us; however, the author of the notes is unknown.

²⁶⁷ Barlow Monthly Report 26, dated July 20, 2006; page 3.

²⁶⁸ Transcript from the June 21, 2007 Public Works Committee meeting, page 5.

operating and debt service costs, plus payments to professionals, due to the delay. This is over and above the \$25 million in funding that Barlow obtained from CIT. In addition, the Authority contracted with Covanta to operate the RRF at a cost much greater than that which Barlow projected in 2003, which also directly impacts the Authority's ability to repay its outstanding debt obligations.

The mistake in failing to obtain the legally required financial security was further compounded by the release of the retention to Barlow in an attempt to assist Barlow in dealing with cost overruns and subcontractor issues. By doing so, an additional source of funds to complete the project was taken away.

D. 2005 & 2006 NEGOTIATIONS TO SELL THE RRF

As early as October 2005, the Authority was engaged in discussions to sell the Facility to Barlow. E-mails and other correspondence suggest that the sale was viewed as having no downside for the Authority,²⁶⁹ and, as Mr. Giorgione said, a mechanism by which to "...clean this mess up...."²⁷⁰ An initial version of the term sheet for the sale was developed as early as November 10, 2005, and was presented to John Keller, then Chairman of the Authority Board.²⁷¹ The terms and conditions set forth in the November 10, 2005 term sheet were further negotiated, culminating in the execution of the Amended and Restated Term Sheet for the Purchase and Sale of the Harrisburg Authority – Waste-to-Energy Facility (the "Restated Term Sheet") dated February 22, 2006. The key provisions of the Restated Term Sheet were as follows:

- The transaction would involve the sale of the RRF, the steam line and other necessary facilities;
- The transaction would involve the sale of all contracts, permits and credits;

²⁶⁹ Letter from Andrew Giorgione to John Keller, Chairman of the Authority dated November 10, 2005.

²⁷⁰ E-mail from Andrew Giorgione to various individuals on January 12, 2006.

²⁷¹ Letter from Andrew Giorgione to John Keller, Chairman of the Authority dated November 10, 2005.

- The transaction would involve the sale of the transfer station if sufficient funds existed to defease (pay off) the debt, otherwise the Authority would retain the transfer station and lease it to Barlow;
- The purchase price was \$258 million, subject to the return of \$40 million to Barlow pursuant to Amendment No. 7 to the Sale and Installation Agreement; and
- In the event that the purchase price did not satisfy the existing debt on the Facility, Barlow would make lease payments to the Authority to cover the remaining debt.²⁷²

During the course of sale negotiations, advisors to the Authority analyzed the defeasance of the existing debt. Between December 2005 and February 2006, Bruce Barnes of Milt Lopus, financial advisor to the Authority, analyzed the total cost of defeasance, assuming that a sale could be consummated at the purchase price set out in the Restated Term Sheet. His analyses demonstrated the following:

- As of December 5, 2005, the estimated total cost to defease the debt was \$223.0 million. The cost of defeasance included \$241.6 million in net payments due on the outstanding bonds and notes, and \$8.2 million in swap termination costs, which were offset by \$26.7 million in the various debt service reserve funds.²⁷³ Based upon the net price of \$218 million in the February 2006 Restated Term Sheet, there was a \$5 million shortfall between the contemplated sale proceeds and the defeasance requirement.
- As of February 14, 2006, the estimated total cost to defease the debt was \$224.6 million. The cost of defeasance included \$243.2 million in net payments due on the outstanding bonds and notes, and \$8.1 million in swap termination costs, which were offset by \$26.7 million in the various debt service reserve funds.²⁷⁴

²⁷² Amended and Restated Term Sheet for the Purchase and Sale of the Harrisburg Authority -- Waste-to-Energy Facility dated February 22, 2006, Sections C. 2 and 3.

²⁷³ The Harrisburg Authority Resource Recovery Facility Defeasance Requirement Summary dated December 5, 2005.

²⁷⁴ The Harrisburg Authority Resource Recovery Facility Defeasance Requirement Summary dated February 14, 2006.

Based upon the net price of \$218 million in the February 2006 Restated Term Sheet, there was a shortfall of \$6.6 million between the contemplated sale proceeds and the defeasance requirement.²⁷⁵

TABLE 6: DEFEASANCE ANALYSES

	12/5/05	2/14/06
Net Payments Due on Bonds/Notes	\$241,597,210	\$243,182,779
Add: Swap Termination Costs	8,150,000	8,137,161
Total Requirements	249,747,210	251,319,940
Less: Available Funds in DSRF	26,739,221	26,739,221
Net Requirement	223,007,989	224,580,719
Less: Projected Sale Price	218,000,000	218,000,000
Total	\$5,007,989	\$6,580,719

By March 3, 2006, Mr. Giorgione and Mr. Lispi were aware that the purchase price set out in the Restated Term Sheet was not achievable, and that the actual purchase price would be lower, if a sale could be consummated. In an e-mail to Ms. Lingle and Mr. Lukens from the City, Mr. Mealy from the Authority, Mr. Barnes from Milt Lopus, Mr. Foreman from Foreman & Foreman, Mr. Lispi, Mr. Losty, Beth Gabler and Steve Dade, Mr. Giorgione indicated the following:

- He and Mr. Lispi spoke with RBC regarding whether or not CIT could raise financing sufficient to fund the purchase price of \$258 million. RBC's opinion was that it would be highly unlikely CIT could do so.
- A potential equity investor into Barlow had surfaced and was willing to offer a guaranteed purchase price for the RRF of \$198 million that would require the Authority to maintain its responsibility for the ash disposal costs. In addition to offering \$198 million, the equity investor, Larimar, indicated that it believed that CIT could not get financing at \$218 million due to ash disposal and energy issues. (It is presumed that the reference to \$218 million reflects the proposed purchase price of \$258 million, less the \$40 million return of funds to Barlow.)²⁷⁶

²⁷⁵ Ibid.

²⁷⁶ March 3, 2006 e-mail from Andrew Giorgione to Linda Lingle, John Lukens, Tom Mealy, Bruce Barnes, Bruce Foreman, Dan Lispi, James Losty, Beth Gabler and Steve Dade.

As noted earlier, at a net sale price of \$218 million, the proceeds from the sale were not sufficient to defease the existing debt. At a price of \$198 million, the shortfall was much greater. In either case, the proposed purchase figures in early 2006 represent (optimistic) indicators of the RRF's perceived value at that time, presumably based upon an assumption of completion. Since the indications of value demonstrated that a sale would not be sufficient to defease the debt that existed, it is questionable whether, by March 2006 at the latest, the claim by the City, the County and their advisors that the RRF debt was fully self-liquidating is justified.²⁷⁷ While we have observed one legal analysis by Kenneth Luttinger of Klett Rooney that suggests that issues related to the various bond indentures would have to be addressed in a situation where the sale proceeds fell below what it would take to defease the debt,²⁷⁸ we did not identify any documents that indicate that the parties considered the impact on the self-liquidating status of the debt.

By May 29, 2006, the proposed sale of the Facility to Barlow had fallen through, with Barlow still struggling to obtain financing to fund the cost overruns associated with the project.²⁷⁹

Barlow's struggle to obtain additional funding to complete the project is a strong indication that a substantial amount of work remained as of May 2006, particularly since Barlow already had obtained an additional \$25 million from CIT in the early part of the year.²⁸⁰ To support the repayment of the loan, Barlow assigned to an entity owned by CIT the right to collect what was referred to as licensing fees allegedly payable from the Authority for the Barlow Combustion Technology that was identified as being subject to the Nonexclusive Technology Sublicensing Agreement dated December 31, 2003, and

²⁷⁷ This is based on a valuation method to determine the Authority's ability to cover the debt service. In addition, it is well known that Barlow was in financial crisis, the project was delayed significantly and the Authority was releasing its security protection to help the project move towards completion.

²⁷⁸ The analysis, which is addressed to Andrew Giorgione, was attached to a February 15, 2006 e-mail from Mr. Giorgione to Kenneth Luttinger, Kenneth Foltz, Bruce Barnes, Beth Gabler, Bruce Foreman, Dan Lispi, James Losty, John Lukens, Linda Lingle, Steve Dade and Tom Mealy.

²⁷⁹ May 29, 2006 Memo from Dan Lispi to Mayor Stephen Reed.

²⁸⁰ Amended Complaint in the matter The Harrisburg Authority, et al. v. CIT Capital USA, Inc., et al. paragraph 46.

later the First Amended and Restated Technology Sublicensing Agreement dated January 11, 2006 (the "Restated Technology Sublicensing Agreement").²⁸¹

The obligations of the Authority under the Restated Technology Sublicensing Agreement are currently the subject of a dispute between the Authority, CIT and Areal Technologies of Harrisburg, LLC ("Areal"), the CIT entity that received assignment of the Restated Technology Sublicensing Agreement. It is our understanding that the Authority is asserting, among other things, that the Restated Technology Sublicensing Agreement is void and unenforceable.²⁸² CIT and Areal have counterclaimed, asserting that the Authority has breached the Restated Technology Sublicense Agreement due to its failure to make payments since March 2007.²⁸³ As of the date of this report, the dispute has not been resolved, but exposes the Authority to further expense and potential liability for the debt issued.

1. Conclusions Regarding Sale Negotiations

By March 2006, it was clear to the City, the Authority and the advisors working on behalf of both that a potential sale of the Facility would not yield proceeds sufficient to defease the existing debt. While there was at least one legal analysis regarding the impact of such a sale on the obligations under the bond indentures, there is no analysis of the impact on the self-liquidating status of the debt. The purchase prices that were discussed in early 2006 provide evidence of the value of the RRF and indicate that a large portion of the debt was not self-liquidating.

E. CITY/AUTHORITY FINANCES DURING 2003-2006

It appears that RBC was the primary architect of the plan of finance for the Barlow Retrofit. The documents we have seen related to the plan of finance for the Barlow

²⁸¹ Order dated June 14, 2010 in the matter The Harrisburg Authority, et al. v. CIT Capital USA, Inc., et al. pages 3 and 4.

²⁸² Ibid., page 4.

²⁸³ Ibid., page 5.

Retrofit project consistently recommended issuance of “multi-modal” bonds,²⁸⁴ not uncommon for projects of this type. Multi-modal bonds can be offered as variable rate bonds, intermediate term bonds or fixed rate bonds. Among other things, this structure enables the borrower to borrow at variable rates (which often are lower than fixed rates) during construction, then readily convert those bonds to bear interest at a fixed rate once the project has been built and is operating efficiently. Upon enactment of Act 23 in September of 2003, which permitted municipalities to engage in “swap” transactions, the plan of finance included an interest rate cap, a type of swap, to protect the Authority, the City and the County against spikes or extended increases in interest rates.²⁸⁵

However, at closing on the 2003 D, E and F Bonds, the parties switched to a structure that included 77 percent synthetic²⁸⁶ variable rate debt for a term longer than the expected construction period, using two swaps and three interest rate caps. (The City and County guaranteed repayment under the two swaps.) The Authority later entered into three more swap transactions in 2004 through 2006, all relating to the 2003 D Bonds. The swaps and caps added complexity, risk and the potential for additional debt service expense.

Based upon document review and interviews, we have found no explanation for several of the subsequent swap transactions that is consistent with customary and prudent interest rate management for municipalities, and traditional financing alternatives did not appear to have been considered or analyzed. It appears that the decision to enter into several of the transactions may have been driven primarily by the immediate need for money, and may not have been permissible under the Debt Act. In addition, to enter into each of the swaps under the Debt Act, the City and County required, and the Authority received, a certificate from an independent financial advisor that the financial terms and conditions

²⁸⁴ Memorandum of James Losty dated August 27, 2003 relating to options and Barlow Self-Liquidating Debt Reports related to the 2003 A, B and C debt and D, E and F debt.

²⁸⁵ Memorandum of James Losty dated August 27, 2003 relating to options, PFM’s report to the County dated October 21, 2003 and Barlow Self-Liquidating Debt Reports related to the D, E and F debt, all of which include this plan of finance.

²⁸⁶ “Synthetic” here refers to a financial instrument that is created by simulating another instrument (here, traditional variable rate debt) with features of other assets.

of the swaps were fair and reasonable.²⁸⁷ It is not clear that the swaps were fair and reasonable within the overall context of the plan of finance for the Retrofit, particularly when one considers all of the transactions during the three year period.

Below is a summary of the swap transactions the Authority entered into, and the City and County guaranteed, related to the 2003 D Bonds and the questions raised by these transactions.

I. SWAPS

a. Brief Explanation of Swaps and Caps

Swaps are contracts under which parties agree to exchange (or swap) cash flows relating to their financial instruments. For example, a party may agree to pay another party an amount based upon a fixed rate of interest multiplied by an amount of outstanding principal (known as the notional amount) in exchange for receiving a payment based on a variable rate index multiplied by the same notional amount, or vice versa.

Interest rate caps are a version of a swap that requires one party to make payments to the other if a variable rate index exceeds an agreed-upon interest rate, in exchange for a fee. Caps are generally used to hedge (or protect) against variable rates rising above the comfort level of a borrower. Swaps can be a useful tool in a prudent financial plan, but can increase risk and costs if used improperly.

²⁸⁷ We have been provided with certificates of financial advisors for swaps entered into in 2003 and 2005 only. PFM provided certifications to the County that, other than pricing, the financial terms and conditions of the swaps were fair and reasonable. IMAGE and Milt Lopus provided certifications to the Authority and City that, other than pricing, the financial terms and conditions of the swaps were fair and reasonable. Separately, IMAGE provided certifications to the Authority, City and County as to the pricing being fair and reasonable. We have not found any signed certifications with respect to the 2004 and 2006 transactions. It may be that certifications were needed for these transactions, although they may not have been required based on the relationship of these transactions to earlier swap transactions. At a minimum, we believe it would have been good practice to obtain such certifications on the basis of a robust review by independent financial advisors, to protect the Authority, City and County from entering into transactions that are not prudent, contain unreasonable terms, or are not consistent with their interest rate management plan.

b. Authorization for City and County to Enter Into Swaps.

In September of 2003, the Pennsylvania Legislature enacted Act 23,²⁸⁸ which amended the Debt Act and, for the first time, expressly authorized local government units like the City and County to directly enter into or guarantee swaps (referred to under the Debt Act as “qualified interest rate management agreements”). After being amended by Act 23, the Debt Act authorized municipalities to enter into swaps for the purpose of managing interest rate risk or interest cost.²⁸⁹ The Debt Act does not authorize municipalities to enter into swaps to speculate on movements of interest rates or the change in yield curves.²⁹⁰

Prior to entering into a qualified interest rate management agreement, a local government unit (here, the City and County) must approve an “interest rate management plan.”²⁹¹ An interest rate management plan serves the function, among other things, of setting forth the material risks involved in the transaction and in the overall debt structure of the local government unit.²⁹² The interest rate management plan entered into in connection with the 2003 swaps and caps stated: “The Authority shall review the long-term implications associated with entering into such Agreements, including costs of borrowing, historic interest rate trends, variable rate capacity, credit enhancement capacity, opportunities to refund related debt obligations and other similar considerations.”²⁹³

c. Plan of Finance for Barlow Retrofit Project

In an August 27, 2003 Memorandum by RBC to Mayor Reed and Mr. Lispi, Mr. Losty set forth three options for the Series 2003 D Bonds:

²⁸⁸ The pertinent substantive provisions of this Act can be found at 53 Pa. C.S.A. §§ 8002 and 8281-8285.

²⁸⁹ 53 Pa. C.S.A. §§ 8281(a)(1); 8002(c) (definition of “qualified interest rate management agreement”).

²⁹⁰ *Ibid.*

²⁹¹ 53 Pa. C.S.A. § 8281(b)(2).

²⁹² 53 Pa. C.S.A. § 8002(c).

²⁹³ The Harrisburg Authority Interest Rate Management Plan, adopted December 15, 2003; supplemented June 28, 2005.

- All conventional fixed rate bonds;
- 70 percent conventional fixed rate bonds and 30 percent variable rate bonds; and
- All conventional variable rate bonds with an interest rate cap.²⁹⁴

In December, 2003, at closing on the 2003 D, E and F Bonds, the Authority issued the 2003 D Bonds under a multi-modal indenture. Pursuant to RBC's recommendation, the Authority offered the D Bonds as intermediate term (fixed rate for a set period) bonds with initial terms of five and 10 years, respectively.²⁹⁵

In particular, the Authority issued \$96.48 million 2003 D Bonds, consisting of \$31.48 million of 2003 D-1 Bonds and \$65 million of 2003 D-2 Bonds. The 2003 D Bonds mature by their terms on December 1, 2033; however, the 2003 D-1 Bonds had a mandatory tender date of December 1, 2008 and the 2003 D-2 Bonds have a mandatory tender date of December 1, 2013.²⁹⁶ "Mandatory tender" means the bondholders must return the bonds on the date specified, and the Authority will decide at that time what the rate structure will be (fixed or floating, and the term for which that rate will apply) after the mandatory tender date. The bondholders and prospective bondholders may purchase the bonds remarketed under their new terms.

However, at closing, the Authority also entered into two swaps and three interest rate caps, thereby switching to a structure comprised of 77 percent synthetic variable rate debt.²⁹⁷ We have found no documents or other information explaining this significant change in the plan of finance from that which was contained in the August 27, 2003 RBC memorandum to Mayor Reed, PFM's October 2003 report to the County, or the Barlow Self-liquidating Debt Reports filed with DCED in November of 2003 in connection with approval of the debt proceedings. It is unclear why this new approach was adopted. As explained below, the change contemplated by these swaps and caps committed the

²⁹⁴ August 27, 2003 Memorandum from James Losty to Mayor Reed.

²⁹⁵ Official Statement for 2003 D, E and F Bonds.

²⁹⁶ *Ibid.*

²⁹⁷ The principal amount of 2003 D, E and F Bonds was \$125 million, of which all of the Series D Bonds (\$96,480,000) were converted to bear interest at a synthetic variable rate.

Authority to variable rate debt not just through the construction period, but for an extended period thereafter. The new structure added complexity, risk and potentially significant additional expense if the Authority wanted to convert to a fixed rate of interest upon completion of construction since terminating a swap can result in a large prepayment known as a settlement or termination amount.

These swaps and interest rate caps are discussed below and a summary is contained in Exhibit I of this report.

d. 2003 "Fixed Receiver" Swaps with Embedded Caps

When it issued the 2003 D Bonds, the Authority also entered into swaps with RBC as its counterparty. In the first swap, the Authority agreed to pay RBC the Bond Market Association Index (or BMA Index, later renamed SIFMA Index), a variable rate, multiplied by the notional amount of the 2003 D-1 Bonds, and receive from RBC a fixed rate of 2.66 percent on that same notional amount. This swap terminated by its terms on December 1, 2008, matching the mandatory tender date for the 2003 D-1 Bonds.²⁹⁸

In the second swap, the Authority agreed to pay RBC the BMA Index multiplied by the notional amount of the 2003 D-2 Bonds, and RBC agreed to pay the Authority a fixed rate of 3.37 percent multiplied by the same notional amount. This swap is scheduled to terminate on December 1, 2013, matching the mandatory tender date for the 2003 D-2 Bonds.²⁹⁹

These two swaps created "synthetic" variable rate obligations for the Authority. In addition, embedded within these swaps were interest rate caps, so that the Authority would not have to make payments to the extent the BMA Index exceeds twelve percent until June 1, 2006 or six percent thereafter.³⁰⁰ Instead, RBC would pay the Authority's

²⁹⁸ See Exhibit I and Swap Confirmations for these transactions dated December 30, 2003.

²⁹⁹ *Ibid.*

³⁰⁰ *Ibid.*

obligated amount above that level, thus capping the Authority's interest rate risk.³⁰¹ The caps cost the Authority a fee of \$2 million, paid to RBC out of bond proceeds at closing. Further, in connection with the 2003 "Fixed Receiver" swaps, the Authority paid RBC additional fees (comprised of transactional fees and profits, as described below).³⁰²

The City and County guaranteed the Fixed Receiver swaps.³⁰³ FSA insured the scheduled payments under these swaps.³⁰⁴

Several concerns are raised by these transactions:

i. Variable Rate Debt Exposure

- To use variable rate debt for an extended period of time (until 2008 and 2013), the plan of finance had insufficient cushion against interest rates rising above the rate Barlow projected in its self-liquidating debt report.³⁰⁵ The plan permitted borrowing against 100 percent of the revenues expected to be available for debt service, rather than against a lower percentage, for example 75 percent of such revenues (a more typical number in this type of situation). Without a cushion, there was a risk that the RRF could not generate revenues sufficient to pay debt service if variable interest rates increased.
- The above concern is more pronounced with a start-up resource recovery facility, because the amount of interest capitalized (set aside from bond proceeds to pay debt service) could prove to be insufficient due to actual rates being higher than

³⁰¹ The caps in each swap would extend until the mandatory tender dates of the underlying bonds (December 1, 2008 for the swap relating to the 2003 D-1 Bonds and December 1, 2013 for the swap relating to the 2003 D-2 Bonds).

³⁰² 2003 D, E, F Official Statement and 2003 Official Statement related to the D, E and F debt.

³⁰³ City and County Swap Guaranty Agreements dated December 1, 2003 related to the 2003 swaps.

³⁰⁴ 2003 Swap Confirmations.

³⁰⁵ The plan of finance assumed interest rates and support costs of a little over 4.0%. The exposure to the Authority was if interest rates rose above the amount contained in the Barlow Self-Liquidating Debt Report to 12% during the first period, or to 6.0% thereafter. 2003 Swap Confirmations with embedded caps dated December 30, 2003 and the November 2003 Barlow Self-Liquidating Debt Reports.

those assumed, a delay in construction or a need for additional time for operations to achieve expected capacity.

- After the Authority issued the 2003 D Bonds, 62 percent of its debt of \$230 million was variable rate debt and 38 percent was fixed rate.³⁰⁶ Once the construction period has ended, a capital structure with no more than 10 percent to 25 percent floating rate debt would be usual and customary. The financial advisors we spoke with were unable to clarify why the Authority, City and County were willing to subject themselves to this much interest rate risk after completion of construction.

ii. Synthetic Rate Exposure—Even More Risk

- We have not seen any rationale for a finance structure based on a synthetic floating rate rather than a conventional floating rate (i.e., the Authority could have agreed to issue traditional variable rate bonds). Undertaking a transaction with swaps and caps was more complicated, may have reduced the Authority's flexibility and introduced counterparty risk (the risk of a default or downgrade of the counterparty, RBC in this case) and termination risk (the risk that the swap will terminate as a result of a credit problem or default by the Authority, or that the Authority will want to convert the variable rate bonds to a fixed rate at a time when it would cost a significant amount to terminate), none of which are involved in a traditional floating rate structure.
- All of the structuring numbers that we reviewed and that were prepared by RBC assumed traditional floating rate debt with an interest rate cap. The structuring numbers we reviewed included Mr. Losty's August 27, 2003 memorandum to the City and the Authority presenting three alternative plans of finance, PFM's October 2003 report to the County and the Barlow self-liquidating debt reports which the City filed with DCED in November 2003 to obtain approval of its

³⁰⁶ Based on calculation prepared by PRAG.

guarantee of the 2003 D Bonds.³⁰⁷ We did not see any analyses of the synthetic structure which ultimately was adopted.

- We have seen no information suggesting that the Authority could not issue traditional floating rate debt for the 2003 D Bonds.³⁰⁸

iii. Embedded Caps

- We have seen no rationale at the time explaining why it would be reasonable for the Authority to spend \$2 million (using debt proceeds) to purchase interest rate caps. In late 2003, the BMA Index was approximately 1.00 percent, and had averaged approximately 3.00 percent over the prior 10 year period.³⁰⁹ Over that period, the BMA Index had only reset at 5.00 percent or higher for eight of the approximately 520 resets and had never gone above 6.00 percent.³¹⁰
- Based on the historical results, it was unlikely the six percent caps would be needed (in fact, they have not been needed), and it was extremely unlikely the 12 percent caps would be needed. These embedded caps added significant additional debt burden and provided questionable benefit to the Authority.

e. 2003 Long-dated Wrap Around Cap

Simultaneously with closing on the 2003 D Bonds and entering into the above swaps and caps, the Authority also entered into a “forward starting” interest rate cap. It is called “forward starting” because it does not take effect until the mandatory tender dates of the 2003 D Bonds (December 1, 2008 for the 2003 D-1 Bonds and December 1, 2013 for the 2003 D-2 Bonds, respectively).

³⁰⁷ Refer to the Losty memorandum dated August 27, 2003, PFM report dated October 21, 2003 and the November 2003 Barlow Self-Liquidating Debt Reports.

³⁰⁸ Traditional floating rate debt likely would have required the Authority to obtain a bank liquidity facility, such as a line of credit (known as a standby bond purchase agreement). We see no discussion of this issue in the information we have reviewed, or more importantly, that any comparison between synthetic variable rate and conventional variable rate was considered.

³⁰⁹ Derived from <http://www.sifma.org/research/item.aspx?id=19762>.

³¹⁰ Ibid.

The cap premium payments were due semi-annually beginning on December 1, 2006. The cost of the Long-dated Wrap Around Cap reduces over time, but at present costs the Authority approximately \$500,000 per year.³¹¹ The “strike rate,” or rate at which RBC would be required to make cap payments to the Authority, is when the SIFMA Index exceeds six percent.³¹² For the Long-dated Wrap Around Cap to be cost-effective, the SIFMA Index would have to exceed approximately 6.97 percent (the cap plus the cost of the cap (estimated to be approximately 97 basis points)), a fairly high rate given market conditions over the prior 10 years.

This was a highly unusual transaction and, within the context of a resource recovery start-up (essentially what the Barlow Retrofit was), almost unheard of. The 2003 Long-dated Wrap Around Cap provided protection (a cap) against an increase in variable rates after the 2003 Embedded Caps expired (i.e., after 2008 and 2013, respectively) and continuing until December 1, 2033.³¹³ However, the 2003 swaps were scheduled to terminate in 2008 and 2013, respectively, and the Authority would be in a position to decide between variable rate and fixed rate debt at those times.

Several questions are raised by this transaction:

- We are not aware of a thirty-year cap in a project such as this; at a minimum, it is extremely unusual. The cap assumes the Authority will have either variable rates in effect for most if not all of the thirty year cap period (there is no need for the cap with fixed rate debt), or that the Authority will be able to terminate the cap at low or no cost. As noted earlier, more typical is a variable rate structure during the construction period, coupled with the ability to easily and inexpensively convert to a fixed rate for the remaining term of the bonds once construction is complete and the facility is operating at capacity.

³¹¹ The annual premium payment initially was 0.59 percent of \$96.48 million, the notional amount of the 2003 D Bonds. The annual premium due begins to decline starting in 2018 as principal on the bonds amortizes. Also see Confirmation for this cap, dated December 30, 2003.

³¹² Confirmation for this cap, dated December 30, 2003.

³¹³ Ibid.

- We have not seen any explanation of the rationale or advantage to entering into the Long-dated Wrap Around Cap.
- It almost certainly would have been more prudent to wait until the mandatory tender dates occurred, and then evaluate whether it made sense to remarket the 2003 D Bonds at a fixed rate.³¹⁴
- These transactions evidence an extremely high level of commitment to variable rate debt. The structure involving the Long-dated Wrap Around Cap incorporates the risk of having to pay a significant cost (estimated in the millions of dollars) to terminate the Long-dated Wrap Around Cap if the Authority wanted to remarket the bonds as traditional fixed rate debt in the future.
- We have not seen evidence that the Authority's or County's financial advisors evaluated the advisability of this cap or why payment for the Long-dated Wrap Around Cap should begin before it became effective.

After the closing on the 2003 D, E and F Bonds and the above-described swaps, the Authority entered into three additional swap transactions, discussed below.

f. Basis Swap on Long-dated Cap

On May 21, 2004, a few months after it entered into the initial swaps and caps, the Authority amended the Long-dated Wrap Around Cap agreement so that the cap would be based upon 68 percent of six month LIBOR (the London Interbank Offering Rate, which is an index of taxable debt instruments), rather than the BMA Index (which is an index of debt instruments that are not taxable), starting on June 1, 2009.³¹⁵ The Authority received an upfront payment of \$1.1 million for this change.³¹⁶

³¹⁴ In fact, when the 2003 D-1 Bonds reached their mandatory tender date in 2008, the bonds were remarketed at a fixed rate.

³¹⁵ The only basis as to the Authority's rationale is contained in a draft memorandum from Bruce Barnes to Tom Mealy, dated June 2, 2004, which suggests that it was based upon IMAGE's advice that the changes in volatility in the market could work to the Authority's advantage. Also refer to the 2004 Confirmation, dated May 21, 2004.

³¹⁶ 2004 Confirmation, dated May 21, 2004.

We note the following:

- The Authority was still obligated to pay RBC based on the BMA Index on the initial 2003 swaps. While 68 percent of six month LIBOR and BMA have been roughly equivalent from time to time, there is no guarantee that would remain the case. The Authority was subject to the risk that taxable and tax-exempt rates would not change in the same way in response to circumstances beyond their control, such as changes in marginal tax rates or a global market crisis such as the one we just experienced.³¹⁷
- Because the Authority's premium on the Long-dated Wrap Around Cap is paid over time, the amount payable twice a year could have been reduced, making these payments less onerous, instead of the Authority receiving a one-time upfront payment.
- The one-time upfront payment could be viewed as the equivalent of a borrowing, without observing any of the requisite procedures for a borrowing.³¹⁸

³¹⁷ Draft Memorandum from Bruce Barnes to Tom Mealy, dated June 2, 2004. Mr. Barnes discusses that i) IMAGE recommended that the Authority revise the cap, and ii) that the only additional risk is if there is a significant difference between BMA and 68% of LIBOR.

³¹⁸ We understand from interviews with Richard Michael on December 1, 2011 and Bruce Barnes on April 7, 2011, that the County was not inclined to loan additional funds to the Authority for the RRF or make new guarantees on its behalf. It is not clear that the City's credit backing would have been sufficient to borrow funds at this time, or that the City had additional borrowing capacity under the Debt Act.

Given the decision to receive an up-front payment, the RRF's financial condition at the time that it entered into this transaction shortly after the initial swaps, one could conclude that this swap was recommended to the Authority primarily to raise money in the short term, irrespective of the additional risks assumed or any longer-term financial plan, including its interest rate management plan.³¹⁹

g. 2005 "Fixed Payer" Swap

On August 31, 2005, the Authority entered into its seventh swap related to the 2003 D Bonds. On this swap, the Authority agreed to pay RBC a fixed rate of 3.35 percent and receive from RBC a variable payment based on (i) the BMA Index through December 1, 2008, and then (ii) 68 percent of the one-month LIBOR Index after December 1, 2008 up until December 1, 2033. This swap had an effective date of June 1, 2006.³²⁰ This 2005 "Fixed Payer" swap was guaranteed by the City and the County.³²¹ FSA insured the scheduled payments under the "Fixed Payer" swap.³²²

This swap did two things. First, it effectively reversed the initial synthetic floating swaps the Authority entered into a year and a half earlier when it issued the 2003 D Bonds. It locked in the Authority's swap payment obligations at a fixed rate through December 1,

³¹⁹ In a memorandum from Bruce Barnes to Mayor Reed dated April 28, 2006, Mr. Barnes refers to a speculative opportunity that appears to be a reference to a Constant Maturity Swap. This swap was not entered into.

"As a heads up...we are also working with Jim Losty and Dave Eckhart [of IMAGE] on another idea which replaces 1 month LIBOR swaps with a longer term LIBOR swap. When the yield curve returns to a normal (less flat) condition, the City will pick up as much as 50 or 60 basis points. It is an unusual opportunity in the current market and we hope to have some additional information to you next week."

In addition, in his May 29, 2007 "RRF Recovery Plan," Mr. Barnes discusses the use of an off market swap as a means of funding the working capital needs of the RRF. He states, "It is imperative that most of the other financing options in this plan be developed and refined before determining the final structure of either an off market swap or some other method of financing for short term capital needs of the RRF." Bruce Barnes, in his interview, said that he had raised questions about doing an off-market swap in 2007 to generate the needed working capital (\$12 million to \$15 million) and he indicated that he voiced strong opposition.

³²⁰ Swap Confirmation dated August 31, 2005.

³²¹ City and County Swap Guaranty Agreements dated September 1, 2005.

³²² Swap Confirmation dated August 31, 2005.

2008 for the \$31.48 million swap and through December 1, 2013 for the \$65 million swap. On the 2003 D-1 Bonds, the fixed payment was 69 basis points (3.35 percent versus 2.66 percent) of \$31.4 million.³²³ On the 2003 D-2 Bonds, the Authority would receive from RBC a payment of 2 basis points (3.35 percent versus 3.37 percent) of \$65 million.³²⁴

Second, this transaction obligated the Authority to a synthetic fixed rate after the expiration of the synthetic floating rate swaps (on December 1, 2008 and December 1, 2013, respectively). To have value to the Authority, this structure assumes that the Authority would re-issue the bonds on the mandatory tender dates at variable rates to maturity in 2033 (unless the Authority could terminate the swaps at a time when, under then-prevailing market conditions, RBC would be required to make a payment to the Authority, or the payment to be made by the Authority to RBC was affordable within the overall plan of finance).

This transaction raises the following questions:

³²³ The Authority would pay RBC 3.35% under the Fixed Payer Swap, and receive 2.66% under the Fixed Receiver Swap. See Swap Confirmations for the 2003 Fixed Receiver Swaps and the 2005 Fixed Payer Swaps. See also Exhibit I.

³²⁴ The Authority would pay RBC 3.35% under the Fixed Payer Swap, and receive 3.37% under the Fixed Receiver Swap. See Swap Confirmations for the 2003 Fixed Receiver Swaps and the 2005 Fixed Payer Swaps. See also Exhibit I.

- While this swap could be viewed as a hedge against possible increases in future long-term rates, and the Authority would be required to make a termination payment only if interest rates declined, a plan to enter into this swap still should have considered the cost of terminating the Long-dated Wrap Around Cap and the Embedded Caps.³²⁵
- If the Authority wanted to convert to a fixed rate obligation, it could have done so without entering into a new swap by terminating the Fixed Receiver swaps and the caps. Presumably, the Authority would have been entitled to a refund of a portion of the amount it paid for the Embedded Caps (\$2 million,³²⁶ some of which would have been returned in the form of a termination payment). We have seen no evidence that this option was evaluated.
- It does not appear that entering into the Fixed Payer Swap without addressing the caps is consistent with the Authority's Interest Rate Management Plan which states with respect to entering into such agreements:

The Authority shall review the long-term implications associated with entering into such Agreements, including costs of borrowing, historic interest rate trends, variable rate capacity, credit enhancement capacity, opportunities to refund related debt obligations and other similar considerations.³²⁷

- It does not make sense that this swap was entered into to create a fixed rate obligation and all of the cap agreements were left in place. There is no need for caps on fixed rate debt (because caps protect against variable interest rate risk).

³²⁵ Indeed, the 2003 D-1 Bonds were not remarketed at a variable rate maturing on 2033, and the cost to terminate the Long-dated Wrap Around Cap was viewed as being too expensive. According to the Authority's Interest Rate Management Plan dated December 15, 2003 and supplemented June 28, 2005 for the 2005 swap:

"In addition, as a result of the Authority effectively fixing the interest rate on their obligations through the use of the 2005 Swap, the Authority will no longer require the Cap originally entered into in December 2003. However, at the present time terminating the Cap would be prohibitively expensive, as such the Authority will need to monitor the termination price of the Cap with the intent to terminate it in the most cost effective manner."

³²⁶ 2003 Swap Confirmations and Official Statement for 2003 D, E and F Bonds.

³²⁷ See Interest Rate Management Plan dated December 15, 2003 and supplemented June 28, 2005 for 2005 swap transaction.

- It is not clear why RBC recommended this swap be effective through 2033, instead of through the mandatory tender dates. This issue is brought to the forefront by the fact that RBC later recommended terminating the Fixed Payer swaps less than a year after recommending the Authority enter into them (see discussion below).
- It appears the Authority chose not to terminate the Long-dated Wrap Around Cap at this time due to the cost,³²⁸ but it does not appear there was any evaluation of the overall expected interest cost associated with both entering into the Fixed Payer swaps and terminating all of the caps (the Embedded Caps and the Long-dated Wrap Around Cap) as a way of determining whether this transaction made sense or fit into the Authority's Interest Rate Management Plan.³²⁹

h. Termination of Fixed Payer Swaps

Less than a year after it entered into the 2005 Fixed Payer swaps, the Authority switched direction again. In April, 2006, the Authority terminated a portion of the 2005 swap (the portion effective from June 1, 2011 through 2033).³³⁰ The Authority was advised that it would be able to receive a payment of approximately \$4 million by terminating all or a portion of the Fixed Payer Swap, based on interest rate changes. The termination option was viewed favorably given the "cash flow and construction issues at the resource recovery facility...to provide a source of funds to meet certain costs or expenses or to keep in reserve."³³¹

The April, 2006 discussions about terminating the 2005 Swap included Mr. Losty, Mr. Lispi (consultant to the Authority), Mr. Giorgione (Klett Rooney, identified as bond counsel), Bruce Foreman (Solicitor to the Authority), Mr. Mealy (Executive Director of

³²⁸ The Harrisburg Interest Rate Management Plan Adopted December 15, 2003 and Supplemented June 28, 2005.

³²⁹ Interest Rate Management Plan amended and restated in 2005.

³³⁰ 2006 Swap Termination Confirmation and April 28, 2006 memo from Bruce Barnes to Mayor Reed.

³³¹ April 19, 2006 James Losty memo to Mr. Mealy, (the Authority), copies to Mr. Lispi, Mr. Giorgione (Klett Rooney), Mr. Barnes (Milt Lopus), Bruce Foreman and David Eckhart (IMAGE), page 4 and related e-mails.

the Authority), Mr. Barnes (Milt Lopus, financial advisor to the Authority), David Eckhart (IMAGE, swap advisor to the Authority) and Mayor Reed, via conversations with Mr. Lispi and Mr. Giorgione.³³² One topic of concern was whether the Authority could “terminate the existing SWAP ...without notice to the City (City Council) and the County.”³³³ A memo was prepared by Klett Rooney outlining that the “Authority is expressly empowered to terminate existing swaps ... if it is determined to be financially advantageous.”³³⁴ However, the Authority was precluded from terminating the provisions of a swap if it “would in any way increase obligations of the City or County under their respective guarantees” without their prior written consent.³³⁵ As a result, the memorandum recommended that the Authority obtain certificates from the Plan Advisors, IMAGE and Milt Lopus, “demonstrating and concluding that the proposed terminations would in no way increase the obligations of the City or the County under their respective guarantees.”³³⁶

There were subsequent discussions about the provisions of the certification, and if IMAGE and Milt Lopus could make the statements needed in such a certification.³³⁷ On April 20, 2006, Mr. Losty sent an email to Messrs. Giorgione, Foreman, Mealy, Lispi and Barnes in response to Mr. Giorgione’s discussion of the risk of future rate increases. Mr. Losty wrote:

With regard to Andy’s reply, I agree with everything he said with the exception of ‘the risk of future rate increses (sic) does not exist’. I think he didn’t mean to say that and I would not be party to this transaction if that statement is a requirement. No one under any circumstances could reasonably make such a certification...

* * *

...Bottom line is a balance between how important it is to raise funds

³³² Ibid.

³³³ April 20, 2006 Bruce Foreman memo to Messrs. Mealy, Giorgione and Lispi.

³³⁴ April 18, 2006 Kenneth Luttinger memo to Mr. Giorgione.

³³⁵ April 18, 2006 Kenneth Luttinger memo to Mr. Giorgione, page 4.

³³⁶ Ibid.

³³⁷ See e-mail string from April 20-24, 2006, involving Mr. Mealy, Mr. Giorgione, Mr. Lispi, Mr. Foreman, Mr. Barnes and Mr. Losty. Also refer to e-mail string from April 20-26 involving the same individuals.

today for a myriad of uses versus how much interest rate security is sought.^{337.5}

In a subsequent email, Mr. Barnes states that he wants to make sure the Board is protected, and that “we should have a certificate.”³³⁸ In the afternoon before the Board meeting at which the proposal was to be considered, Mr. Losty replied:

...there is no ‘right’ answer nor is there any way to evaluate how ‘prudent’ this is. It comes down to the need for the termination value today—it is as simple as that.

Additionally, the Mayor has given his direction which is generally how these decisions have been made on similar matters.³³⁹

We have found unsigned drafts, but have not found a signed certification stating that the terminations would not in any way increase the City’s or the County’s obligations under their respective guarantees. We have not found any indication that such a certification was signed.

That evening, on April 26, 2006, the Authority issued a resolution approving partial termination of the 2005 Swap, and the termination occurred shortly thereafter.³⁴⁰ We have no information suggesting that City Council or the County agreed to the termination.

Although the Authority received a payment in excess of \$4 million³⁴¹ upon termination of the Fixed Payer Swap, it paid substantially more than this amount to RBC during the five years that this swap was in effect because interest rates declined substantially after the

^{337.5} April 20, 2006 James Losty e-mail to Mr. Mealy, Mr. Giorgione, Mr. Foreman, Mr. Lispi, copy to Mr. Barnes

³³⁸ April 26, 2006 Bruce Foreman e-mail to Mr. Giorgione, Mr. Mealy, Mr. Lispi, Mr. Losty, copy to Mr. Barnes.

³³⁹ April 26, 2006 James Losty e-mail to Mr. Giorgione, Mr. Foreman, Mr. Mealy and Mr. Lispi, copy to Mr. Barnes.

³⁴⁰ The Harrisburg Authority Resolution No. 2006-008, dated April 26, 2008; April 28, 2006 Bruce Barnes memo to Mayor Stephen Reed.

³⁴¹ 2006 Swap Termination Confirmation.

termination was signed.³⁴² More importantly, the Authority's purpose in entering into the Fixed Payer Swap presumably was to protect itself from the risk that fixed interest rates would rise. By terminating the swap less than one year later, the Authority no longer had such protection.

i. Swap Pricing

The Authority's payments to RBC to enter into the swaps appear to have been well above market in several instances.³⁴³

- 2003 Fixed Receiver swap for 2003 D-1 – 18.6 basis points over mid-market.
- 2003 Fixed Receiver swap for 2003 D-2 – 20.2 basis points over mid-market.
- 2004 Basis Trade – 23 basis points over mid-market.

In light of the County Guaranty and FSA insurance, the expected payments from the Authority for these transactions, usually in the form of a percentage of a periodic payment due for a swap or cap, normally would be in the range of three to eight basis points over mid-market, depending on the volatility of the market at the time and whether the swaps were obtained through a competitive or negotiated process.

³⁴² This result is typical in a fixed payer swap that is used as a hedge against rising variable interest rates.

³⁴³ While we present specific numbers for pricing, they should be understood as reasonable approximations based on certain assumptions, but sufficient to show the magnitude of difference between RBC's pricing and market pricing. In determining the pricing information, we examined the Master ISDA Agreement, the ISDA Schedule and the Confirmation with respect to the Swap Agreements and other such documents that we have deemed necessary to enable us to make the calculations. We have assumed, without having undertaken any independent investigation, that the Swap Agreement and other agreements and documents provided to us are complete and true and correct copies in all respects. We have no reason to believe this is an unfair assumption based on the documents we have reviewed. PRAG used its proprietary model which incorporates a market accepted method described in Governmental Accounting Standards Board Technical Bulletin No. 2003-1 to value the swaps.

It is also important to note that our spreads include not just profit but also hedging and other transactional costs. Therefore, the charge for hedging and other transactional costs would reduce the amount "received" by RBC as compensation.

j. Involvement of Professional Advisors Regarding Swaps

The Authority entered into eight swap transactions over a short period of time all relating to its 2003 Series D Bonds. Taken individually, many of the swaps do not make sense as a means of managing interest costs and/or protecting against rising interest rates. Collectively, the number of swap transactions alone raises questions regarding their relationship to a plan to manage interest rate risk or costs. Further, some of the swaps were inconsistent with each other and with principles of interest rate management. One swap reversed another that had just been entered into a short time earlier. In several instances, it appears the professional advisors were encouraging the Authority to take actions aimed primarily at raising short-term funds irrespective of whether the transaction was prudent or risk was being increased.

From the documents reviewed, it does not appear that the financial advisors for the Authority or the County (Milt Lopus, the Authority's financial advisor; PFM, the County's financial advisor for part of the 2003 bond issuances and all of the swap transactions; and IMAGE, the Authority's independent swap advisor), provided significant guidance to the Authority, the City or the County consistent with managing interest rate risk or interest cost with respect to the use of all of these swaps and caps. Further, the documents reviewed do not show that advisors to the Authority or County challenged RBC or IMAGE to demonstrate how the multiple swaps satisfied the Interest Rate Management Plans (as supplemented) of the Authority, City and County, or were designed to manage interest rate risk or cost. In several instances, it seemed that these advisors allowed transactions to occur with very little analysis of the risk or potential cost. We saw no evidence that FSA questioned any of these transactions.

Based on interviews with Milt Lopus and PFM, we believe that RBC and IMAGE were in charge of recommending the swaps, and that RBC worked directly with Mayor Reed, Mr. Lispi and Mr. Giorgione in determining which swaps to enter into and whether to terminate them. Milt Lopus and PFM personnel said that they did not have meaningful

input, if any, into the overall plan of finance, including the swaps. The documents we reviewed are consistent with their statements.

To enable the City and County to enter into all of the swaps under the Debt Act,³⁴⁴ PFM, Milt Lopus and IMAGE provided certifications stating that the financial terms and conditions of the 2003 and 2005 swaps were “fair and reasonable.”³⁴⁵ PFM’s certificates state that the swaps contained financial terms and conditions which, in its opinion, were fair and reasonable to the County. Milt Lopus and IMAGE issued a similar certificate to the Authority and the City.³⁴⁶ IMAGE also certified to the Authority and City stating that the pricing of the swaps was fair and reasonable.³⁴⁷

While such certifications were issued, we have not seen analyses supporting the conclusion that the financial terms and conditions were fair and reasonable within the context of an overall plan of finance for the retrofit, were consistent with the pertinent Interest Rate Management Plan, or that the pricing of the swaps was fair and reasonable. The basis for the certifications given by PFM, Milt Lopus and IMAGE, and relied on by the Authority, City and County does not appear in any of the documents we were provided, nor was it apparent from any of the interviews conducted.

F. COMPLETING THE FACILITY AND THE 2007 DEBT

1. *Terminating Barlow and Financial Difficulties*

By the end of 2006, Barlow had failed to deliver the completed retrofit and was in financial distress. On December 31, 2006, the Authority terminated Barlow’s

³⁴⁴ 53 Pa. C.S.A. § 8281(e)(5).

³⁴⁵ December 12, 2003 PFM Certificate. December 30, 2003 IMAGE and Milt Lopus Reaffirmation Certificate. December 30, 2003 PFM Reaffirmation Certificate. August 31, 2005 PFM Certificate. September 23, 2005 IMAGE and Milt Lopus Certificate. September 23, IMAGE and Milt Lopus Reaffirmation Certificate.

³⁴⁶ *Ibid.*

³⁴⁷ December 30, 2003 IMAGE Certificate. August 31, 2005 IMAGE Certificate.

contracts.³⁴⁸ Subsequently, on January 2, 2007, the Authority hired Covanta on an interim basis to operate and maintain the RRF, and to design an upgrade to complete the Facility.^{349,350}

When the Authority terminated Barlow, the Authority was faced with significant issues regarding the RRF. Those issues included:

- The Barlow Retrofit plan originally contemplated that the RRF would be fully functional by the beginning of 2006. Even as late as January 2008, only two of the three burners were operating,³⁵¹ and significant work remained to enable the RRF to operate with three burners at the expected capacity and efficiency.³⁵² Covanta ultimately estimated the cost of such a project to be as much as approximately \$25.5 million.³⁵³
- There was no money available for the required additional work. The funds provided from the 2003 D, E and F Bonds for construction, working capital and capitalized interest were exhausted. Funds generated through a series of other transactions (i.e., CIT, swaps) also had been spent. Barlow had been paid for its scope of work, even though the firm was unable to deliver a completed and fully functioning RRF. Further, because of the decisions surrounding the performance bond and retainage, there were no funds to call upon to fund the completion and no bonding company to pay for completing the project.
- Debt service and swap payments totaling \$13.4 million were due in 2007.³⁵⁴

³⁴⁸ City of Harrisburg Ordinance dated November 28, 2007 per The Harrisburg Authority Series C and D note issuances "Transcript of Proceedings" dated December 26, 2007.

³⁴⁹ *Ibid.*

³⁵⁰ Administrative Services and Interim Operation and Maintenance Agreement dated January 2, 2007.

³⁵¹ January 2008 Monthly Operating Report prepared by Covanta Harrisburg, Inc.

³⁵² A number of documents refer to this work as "completing the retrofit." This nomenclature is questionable as Covanta was required to provide a design for this work, Mr. Ambrose drafted a memo dated May 25, 2007 stating that the Authority would be "undertaking a major construction program to make improvements to all the incinerator units" and we understand that little of the Barlow technology remains in the RRF.

³⁵³ Exhibit B to the Covanta Management and Professional Services Agreement dated May 29, 2007.

³⁵⁴ 2007 Audited Financial Statements for the Harrisburg Authority.

- The indicators of value the Authority received regarding the RRF as part of the Barlow sale negotiations evidenced that the potential selling price would be insufficient to defease the existing debt.
- Under the Covanta operations and maintenance contract, the Authority was required to pay Covanta approximately \$875,000 per month,³⁵⁵ much more than the City had charged and Barlow had projected. The Authority had little leverage to get a lower rate.

Given the state of the Facility in early 2007, the Mayor undertook efforts to develop a plan that included a number of components, including increasing tipping fees, issuing new debt to complete plant construction and fund working capital needs, refinancing existing debt, and selling the RRF to Covanta at completion of the construction.³⁵⁶ In support of the plan, the City, the Authority and their advisors began preparing financial projections that modeled the expected operations of the RRF upon completion of construction, and the capacity of the Facility to pay both the existing and planned new debt. As early as May 9, 2007, the Authority prepared projections for the period 2007 through 2011. These projections demonstrated an inability to service existing debt, let alone pay any potential new debt.³⁵⁷

In May, the Authority signed a Management and Professional Services Agreement with Covanta, which obligated Covanta not only to manage the RRF, but also to complete Facility construction. Covanta essentially agreed to loan money to the Authority for this construction, doing the work first and then being paid back at a later date. As part of the deal, the Authority gave Covanta a right of first refusal for any transaction to sell, lease, or otherwise dispose of the RRF.³⁵⁸

³⁵⁵ Exhibit G to the May 29, 2007 Management and Professional Services Agreement Between The Harrisburg Authority and Covanta Harrisburg, Inc.

³⁵⁶ July 25, 2007 memo from Mayor Stephen Reed.

³⁵⁷ May 9, 2007 Projections.

³⁵⁸ Management and Professional Services Agreement between the Harrisburg Authority and Covanta Harrisburg, Inc. dated May 29, 2007, pages 28 and 29.

2. *Resistance to Request for Additional Funding, and Response*

On June 1, 2007, the Authority failed to make a required debt payment, which resulted in a draw on the City's bond guaranty. As a result, the Authority prepared a notice to, among others, FSA, the bond insurer on about \$230 million of the RRF's pre-2007 debt.³⁵⁹ Under the insurance policies it issued, FSA was required to make timely payments of principal and interest to bondholders if the Authority and its guarantors did not.

At this time, the Mayor was discussing his financing plan with key stakeholders. The plan included, among other things, a City guarantee for the Covanta loan, as well as for working capital financing of about \$15 million to address the projected deficits in 2007 and 2008.³⁶⁰ The City guarantee was necessary to enable the Authority to borrow money from Covanta, and the County required a City guarantee as a condition of providing its own guarantee of the working capital loan. City Council expressed significant concern, and identified numerous conditions before it would agree to the guarantee. The conditions included, among other things, reducing the working capital amount, repaying from the working capital loan the June 1 guarantee payment the City had made, terminating all individuals connected with the failed Barlow Retrofit, replacing the Authority Board, and the Authority's agreement to issue a request for proposal for the sale of the Facility on or before July 1, 2009, and to perform an independent forensic audit to provide an analysis of what had gone wrong with the project.³⁶¹

Councilman Dan Miller went further, issuing a press release decrying the City's extreme financial distress and gross debt, which he listed as \$441 million and the highest per

³⁵⁹ E-mail from Carol Cocheres to Howard Spumberg of FSA dated June 8, 2007. Also refer to Table 2 in this report which presents the calculation of \$230 million.

³⁶⁰ July 25, 2007 memorandum from Mayor Stephen Reed. The memorandum does not identify its recipient, although it is cc'd to Linda Lingle, Robert Kroboth, John Lukens and Bruce Barnes. Also refer to memorandum from Carol Cocheres to Stephen Reed dated August 22, 2007 which states that the working capital financing was \$15 million.

³⁶¹ Memorandum from Linda Thompson, Chair of the City Council Public Works Committee to Carol Cocheres dated July 11, 2007. Also refer to memorandum from Carol Cocheres to Linda Thompson dated August 2, 2007.

capita in Pennsylvania, more than three times that of Philadelphia. He said he would vote against any increase in tipping fees, the working capital loan and the guarantee of the Covanta loan.³⁶²

Correspondence indicates that Ms. Cocheres from Eckert became the intermediary between the Mayor and the Authority on the one hand, and City Council on the other, to address the conditions that City Council wanted to impose in connection with approval of the City's guarantee.³⁶³ She also became the point person for other interactions. In early July, Ms. Cocheres had a number of phone conversations with Howard Spumberg from FSA to set up meetings to discuss plans for completing the retrofit and the City's and the County's approach and position on payment under their respective guarantees.³⁶⁴

In a July 10, 2007 letter, days after the call with Ms. Cocheres, FSA wrote a strongly-worded letter to City Council and the Mayor. FSA started by noting that it has more exposure to the City than any other lender or credit enhancer "in the country." FSA wrote that the RRF has "failed to generate net revenues sufficient to provide adequate debt service coverage for the Bonds." FSA acknowledged that the City currently has its own fiscal concerns. FSA closed by stating it:

...respectfully urges the City Council to reconsider its rejection of a Facility workout plan proposed by the Authority and its financial advisors. If the City fails to take measures now to provide the necessary support to the Authority and its Bonds, there may be far-reaching repercussions that will affect the City in the future.³⁶⁵

Representatives from FSA came to Harrisburg near the end of July for a meeting with representatives of City Council, the City administration, the Authority, Covanta and the

³⁶² Press Release from Harrisburg City Councilman Dan Miller dated July 3, 2007.

³⁶³ Memo from Carol Cocheres to Linda Thompson dated August 2, 2007.

³⁶⁴ July 6, 2007 e-mail from Ms. Cocheres to numerous individuals at the City and the Authority, as well as outside professionals.

³⁶⁵ Letter from Elizabeth Hill, Managing Director of FSA to Mayor Stephen Reed and The Honorable Members of City Council dated July 10, 2007.

County to discuss the debt situation.³⁶⁶ Before FSA arrived, the Mayor emphasized that FSA should be advised that the steps to solve the current issue are clearly laid out but are being blocked by City Council. He wrote that “FSA needs to lean on City Council in clear terms so that City Council understands, from FSA, that their refusal to act has extremely adverse effects and that the above steps must be allowed to proceed.”³⁶⁷

Ultimately, the Mayor, the Authority and the County agreed to a number of the requests put forward by City Council.³⁶⁸ To date, however, we have not observed any documents that could be considered a request for proposal for the sale of the RRF, nor was a forensic investigation conducted, both of which were City Council conditions to which the parties agreed.

The County also sought to impose conditions in connection with its guarantee of proposed new financing. The County, through its counsel, demanded that it receive all amounts past due to it and its professionals from the working capital loan.³⁶⁹ Similar to the City and FSA (discussed below), the County was exposed to having to make payments on its existing guarantees if the Authority continued to be unable to make debt payments when due, and if the City did not satisfy its existing guarantee obligations. As set forth in a November 14, 2007 letter from Mr. Zwally to Ms. Cocheres, Mr. Zwally stated that the County Commissioners would “look favorably” on a working capital loan that did not exceed \$30 million and included reimbursement to the City for the June 2007 and September 2007 debt service payments made by the City on behalf of the Authority.³⁷⁰ Additionally, the County sought a restructuring of the Covanta loan and the working capital loan before June 30, 2009.³⁷¹ To date, the Covanta loan restructuring has not occurred and the County decided in late 2010 to pay off the working capital loan through a general obligation borrowing.

³⁶⁶ List of attendees for meeting with FSA.

³⁶⁷ July 25, 2007 memorandum from Mayor Stephen Reed.

³⁶⁸ Memorandum from Carol Cocheres to Linda Thompson dated August 2, 2007.

³⁶⁹ Memorandum from Carol Cocheres to Stephen Reed dated August 22, 2007. Also see November 14, 2007 letter from Charles Zwally of Mette, Evans to Carol Cocheres of Eckert.

³⁷⁰ November 14, 2007 letter from Charles Zwally to Carol Cocheres.

³⁷¹ Ibid.

3. *Change in Authority Board*

At the same time that the City and the Authority were working to obtain additional debt financing, the composition of the Authority Board was in flux. In January 2007, City Council passed Bill Number 36 of 2006 ("Bill Number 36"), which amended the Harrisburg City Code to provide City Council with the authority to appoint members of boards, commissions and authorities.³⁷² On February 20, 2007, following an override of Mayor Reed's veto, City Council appointed three individuals, Erica Bryce, James Ellison and Eric Papenfuse, to fill vacancies on the Authority Board.³⁷³ On February 22, 2007, Mayor Reed filed a complaint seeking, among other things, preliminary and permanent injunctions against the enforcement of Bill Number 36, prohibiting Council's appointees from serving as members of the Authority's Board.³⁷⁴ On February 27, 2007, the injunction requested was granted.³⁷⁵

Between March and August of 2007, numerous hearings were held with respect to the grant of the preliminary injunction. Further, as noted above, as a condition of the City guarantee on the 2007 debt, City Council sought the resignations of sitting Board members Fredrick Clark, Leonard House and John Keller and the Mayor's consent to the appointment of Ms. Bryce, Mr. Ellison and Mr. Papenfuse to the Authority Board.³⁷⁶ Ultimately, the Commonwealth Court reversed the preliminary injunction, and that decision was affirmed by the Supreme Court.³⁷⁷

³⁷² Order dated January 10, 2008 in the matter Reed v. The Harrisburg City Council, et al.

³⁷³ Ibid.

³⁷⁴ Ibid.

³⁷⁵ Ibid.

³⁷⁶ Memo from Carol Cocheres to Councilwoman Linda Thompson dated August 2, 2007.

³⁷⁷ Order dated January 10, 2008 in the matter Reed v. The Harrisburg City Council, et al.

On August 29, 2007, the new members of the Authority Board participated in their first board meeting.³⁷⁸ The new board, which also included existing board members John Keller and Leonard House,³⁷⁹ met throughout the fall of 2007.³⁸⁰

Almost immediately, Mr. Ellison and Ms. Bryce adopted the view that the Covanta work to complete construction and the “working capital” loan had to occur.³⁸¹ Mr. Papenfuse was a notable holdout, opposing any additional funding for the RRF.³⁸²

With the new Board came a change in some of the Authority’s professional advisors. PFM replaced Milt Lopus as the Authority’s primary financial advisor. Eckert, which had just started its work for the Authority on the new finance plan a few months earlier, continued its position as bond counsel for the Authority, while Mr. Giorgione became less active. In addition, Mr. Lispi’s consulting services had previously been terminated.³⁸³

³⁷⁸ Minutes from the August 29, 2007 meeting of the Board of the Authority.

³⁷⁹ Minutes from the September 26, 2007 meeting of the Board of the Authority.

³⁸⁰ Litigation surrounding the granting of a permanent injunction continued in Common Pleas Court. On January 10, 2008, Bill Number 36 was declared void, and it was ruled that Mr. Ellison, Ms. Bryce and Mr. Papenfuse could no longer serve on the Board. (Order dated January 10, 2008 in Reed v. The Harrisburg City Council, et al.) By March 2008, a new Board was seated that included Mr. Ellison and Ms. Bryce, along with new members Cathy Hall and Marc Kurowski. (Minutes from the March 5, 2008 meeting of the Board of the Authority). On May 26, 2010, the Supreme Court affirmed the Common Pleas Court opinion with respect to the invalidity of Bill Number 36, and the ineligibility of the members of the Board appointed by City Council. (Supreme Court of Pennsylvania opinion dated May 26, 2010 in the matter The Honorable Stephen R. Reed, et al. v. The Harrisburg City Council, et al.) See also, Minutes from the September 26, 2007 meeting of the Board of the Authority.

³⁸¹ Based on documents reviewed in this matter.

³⁸² Transcript of Public Works meeting dated November 8, 2007.

³⁸³ Correspondence from the Authority to Milt Lopus dated November 16, 2007 notified Milt Lopus that it was terminated at a November 14, 2007 Special Meeting of the Authority’s Board. As indicated in correspondence dated January 8, 2007 from the Authority to Mr. Lispi, DRL’s contract with the Authority related to the RRF was not renewed when it expired in February 2007. Notably, Mr. Clark, then Chairman of the Authority Board, objected to the decision.

4. *Financial Analyses Prepared in 2007 Evidence an Inability to Service Debt*

In the documents that have been produced to date, we have identified 17 sets of financial projections that were prepared in 2007, for the period 2007 through 2011. Under all 17 sets of projections, the RRF would not generate income sufficient to service the existing debt and the new debt that was contemplated. The projections we reviewed were prepared by Robert Ambrose (Executive Director of the Authority at the time), Milt Lopus, HDR and PFM.

Further, 14 of the 17 sets of projections indicate that the Facility would not be able to generate income sufficient to service the existing debt, let alone the new debt that was contemplated. Based upon interviews, the professionals engaged on the 2007 C and D Notes and the Covanta loan began substantial work on the matters after Labor Day in 2007. The projections prepared in September through November, the months leading to the issuance of the 2007 debt, reflected analysis and input from the advisors working on behalf of the Authority, including HDR and PFM.³⁸⁴ The Authority retained HDR on October 10, 2007 to, among other things, review key data issues and identify budget gaps.³⁸⁵ Under the engagement agreements dated September 18, 2007 and November 14, 2007, PFM was retained to provide, among other things, independent verification and financial consulting services related to third party information provided for the RRF,³⁸⁶ and to provide financial planning and policy development services, including in connection with projections.³⁸⁷ We understand that HDR was analyzing operating revenue and operating expense numbers, presumably in consultation with the Authority and Covanta, and PFM was taking these assumptions and adding to them the debt service schedules for the bonds and notes.

³⁸⁴ For example, there is a November 2, 2007 e-mail exchange involving, among others, Dave Traeger of HDR and Glen Williard of PFM related to a revised budget model.

³⁸⁵ Agreement Between the Harrisburg Authority and HDR Engineering, Inc. for Professional Services dated October 10, 2007.

³⁸⁶ Letter from Glen Williard of PFM to James Ellison of the Authority dated September 18, 2007.

³⁸⁷ Exhibit A to the Public Financial Management, Inc. Agreement for Financial Advisory Services dated November 14, 2007.

The only scenarios that projected available cash after the servicing of the existing debt were prepared in August 2007 by Authority staff, prior to the retention of HDR and PFM. Even these scenarios evidenced the ability of the RRF to service the existing debt only for two years (2010 and 2011). Further, the projected expense levels are \$3 million to \$6 million lower than the Authority, HDR and Covanta determined a short while later to be the reasonable expense levels for major expense items such as, among other things, utilities and bypass waste disposal. Exhibit F provides a summary of the 2007 projections.

From the correspondence that accompanied the circulation of the projections, it appears that they were shared with multiple parties involved with the Facility and the 2007 financing including:³⁸⁸

- Mr. Giorgione;
- Michele Torres (Acting Executive Director of the Authority upon Robert Ambrose's departure);
- Authority Board members (thaboard@aol.com);
- City employees;
- Susquehanna Group Advisors (susgrp.com), which served as the County's financial advisor on the 2007 C and D Notes;³⁸⁹
- Ms. Cocheres;
- PFM;
- Mr. Barnes;
- Covanta;
- Mr. Ellison; and
- HDR.

³⁸⁸ Refer to various e-mail correspondence over the period August through November 2007.

³⁸⁹ Closing Memorandum for the 2007 C and D debt.

Thus, based on the documents available, it appears that it should have been clear to the Authority, the City, the County and the respective advisors who worked on their behalf that:

- Net revenues would not be sufficient to pay the existing debt on the Facility (i.e., the 1998, 2002 and 2003 issues), and, at best, only a portion of the 1998 and 2003 issues should continue to be characterized as self-liquidating;³⁹⁰ and
- The RRF had no prospect of generating income from operations sufficient to service the additional \$60 million in debt that ultimately was taken on in 2007.

Despite these indications, the Authority issued the 2007 debt, and the City and the County provided guarantees of repayment. The documentation accompanying the issuance of the 2007 C and D Notes acknowledges what was demonstrated in the projections -- repayment was unlikely to come from income generated from the RRF. The 2007 C and D Notes were issued under yet another subordinate financing instrument. Receipts and Revenues from the RRF were not pledged in repayment, but the Notes were expected to be paid solely from proceeds of refinancing bonds or payments under the guarantees.³⁹¹

The documents reviewed indicate that the County should have known at the time that the City would have limited ability to repay the 2007 debt. The City's limited ability to repay the 2007 debt was confirmed in 2010 when the notes matured and the County had to satisfy them. As related to us, the thinking seemed to be that failing to complete construction of the Facility would result in having to sell the RRF at an unacceptably low

³⁹⁰ We have not assessed in any detail how much, if any, of the 2007 debt the City could have issued had prior debt no longer been considered self-liquidating. However, for a full year of operations in 2011, the Authority budgeted approximately \$5.6 million in income available to pay debt service. Using the budgeted results as a proxy, only a little over 40 percent of the debt previously approved as self-liquidating may still have been self-liquidating. Refer to Resolution 2010-018 approving the 2011 budget. See footnote 424.

³⁹¹ Term sheet included in the 2007 C and D Note closing documents.

“fire sale” price, but that completing construction would increase its value by more than the cost of the additional debt.³⁹²

5. *Transactions to Keep Covanta on the Job*

By October of 2007, the Authority was approximately \$4.2 million in arrears on its payments to Covanta, and Covanta was threatening to terminate its services.³⁹³ To keep Covanta on the job, on October 5, 2007, the City, the County and the Authority entered into a Tri-Party Interim Funding Agreement that provided, among other things, that the Authority would make a payment of \$800,000 to Covanta, the City would make a payment of \$225,000 to Covanta and the County would make a payment of \$2.25 million to Covanta.³⁹⁴ The Tri-Party Interim Funding Agreement identified the County’s payment as an advance under its guaranty, and that the City and County funds were to be repaid under the 2003 Reimbursement Agreement between the Authority, City and County.³⁹⁵ The parties intended that the Authority would repay the City and County out of the working capital loan that was part of the financing plan.

It appears that the City and County recognized that at least some of these reimbursement payments from proceeds of the working capital loan were questionable under the existing bond documents, as both requested that FSA consent to the agreement and the related Cooperation Agreement.³⁹⁶ When FSA initially stated that it did not believe its consent was required for the execution of either agreement,³⁹⁷ the County noted that “...in light of the planned reimbursement of the County and/or City’s advancement of funds from a working capital loan, at the very least we are looking for FSA’s acknowledgment or

³⁹² Interview of Glen Williard, November 18, 2011.

³⁹³ The Harrisburg Authority Resolution 2007-023.

³⁹⁴ Tri-Party Interim Funding Agreement between The Harrisburg Authority, the City of Harrisburg and Dauphin County dated October 5, 2007, page 4.

³⁹⁵ *Ibid.*, sections 1 and 3. The 2003 Reimbursement Agreement provides the terms under which the Authority shall repay the City and County for any payments they make under the 2003 Guarantees (related to the 2003 D, E and F Bonds).

³⁹⁶ Various e-mail correspondence over the period October 1, 2007 to October 3, 2007 involving, among others, Tom Smida, Carol Cocheres, Karen Hoffstein (FSA), and Beth Gabler (City).

³⁹⁷ October 3, 2007 K. Hofstein e-mail to T. Smida, copies to C. Cocheres, E. Hill.

concurrence that those reimbursements are permissible....[A]ll parties are hesitant to move forward without FSA's sign-off."³⁹⁸ Indeed, FSA's acknowledgment of the use of funds was a condition precedent to the City's and County's obligations under the Tri-Party Interim Funding Agreement.³⁹⁹

FSA provided its written acknowledgement of the use of most of the proceeds from the working capital loan,⁴⁰⁰ about two-thirds of which went to pay existing Authority debts, and about one-third of which went to fund debt service to be paid in 2008, all at a greater cost than the existing debt. FSA continued to discuss the transaction with other participants into December, to follow the details of the transaction and confirm it was going to occur. The working capital loan and these payments deferred to another day the requirement that the City, County and FSA make any additional payments under their guarantees.

The Authority's debt problem was raising several novel concerns for the professionals. Glen Williard, a Managing Director at PFM, financial advisor for the Authority, left a voice mail message for Ms. Cocheres about the uncharted waters:

I've never been through it before where an issuer hit the Reserve Fund.... Strikes me there are two possibilities. One is to hit the Reserve Fund and I just don't know—don't understand where all the bells and whistles go off just because I've never done that before. And then a kind of variant of that plan would be this business of getting everyone to sign up to just release the Debt Service Reserve Fund. I just throw that out and maybe we can discuss it.⁴⁰¹

³⁹⁸ October 3, 2007 T. Smida e-mail to K. Hofstein, copies to C. Cocheres, E. Hill.

³⁹⁹ Tri-Party Interim Funding Agreement, page 6, section 4(i).

⁴⁰⁰ A small amount of the loan went to fund project construction, and FSA did not address, and to our knowledge was not asked to address, this use of funds in its letter. FSA letter from Elizabeth Hill to the Authority, City and County.

⁴⁰¹ Transcribed voicemail message from Glen Williard to Carol Cocheres on October 22, 2007.

During the Fall, the size of the working capital loan under discussion increased, at one point exceeding \$50 million.⁴⁰² Ultimately, the County said it would guarantee \$30 million, nothing more. The County insisted that the money it advanced for Covanta, its expenses and its advances for a December 1 debt payment it expected to make, be reimbursed immediately from proceeds of the working capital loan.⁴⁰³

By December, the City and the Authority were able to implement elements of the plan, including increasing tipping fees and issuing an additional \$60 million in debt, consisting of a \$25.5 million loan from Covanta to complete construction and improvement to the Facility,⁴⁰⁴ and \$34.6 million, representing the maturity cost (the amount borrowed plus accreted or accrued interest) of the 2007 C and D Notes.⁴⁰⁵ Most of the so-called “working capital” loan went to pay prior operating expenses paid for by the City and County and existing debt they had guaranteed (and which FSA insured), at higher rates than the existing debt⁴⁰⁶ and with additional transaction costs. There is no indication that any other alternatives to this approach were evaluated, such as a workout with the existing bondholders. Instead, it appears that the strategy was to push the issue into the future, primarily focusing on the hope that the RRF could be sold or the debt could be refinanced once the Facility was complete.⁴⁰⁷

In following this course of action, the parties:

⁴⁰² A figure of \$50 million is mentioned in a November 13, 2007 e-mail from Michele Torres to Carol Cocheres.

⁴⁰³ In his letter to the Authority’s Solicitor on August 16, 2007, on behalf of the County, Mr. Zwally states that, notwithstanding what might be contained in the Reimbursement Agreement with respect to repayment of amounts to the County, the County was not willing to wait for revenues of operations and wanted to be paid from proceeds of the notes. At the time of the letter, the thought was that the working capital loan would close prior to a required payment on December 1, 2007. As it turned out, the loan did not close as expected and, as discussed later, the County advanced amounts required for debt service on that date and asked for this guaranty advance to be paid from the proceeds of the notes that closed shortly thereafter as well.

⁴⁰⁴ Proceedings submitted by the Authority to DCED regarding the Covanta loan.

⁴⁰⁵ The proceeds from the loan were \$30 million. The Harrisburg Authority Series C and D note issuances “Transcript of Proceedings” dated December 26, 2007, schedule entitled Accreted Value at Maturity.

⁴⁰⁶ Ibid. The interest rate on the Series C Notes was 4.5% and the interest rate on the Series D Notes was 6%.

⁴⁰⁷ Memo from Mayor Stephen Reed dated July 25, 2007.

- Did so knowing that the financial analyses and projections prepared in 2007 consistently indicated an inability of the RRF to generate income from operations sufficient to fund a significant portion of the existing debt, let alone the new debt;
- Ensured that the City and the County were repaid for significant amounts they had paid on behalf of the Authority, despite the fact that both had provided guarantees on the pertinent debt, and that agreements between the parties provided that reimbursement payments were subordinate to the existing debt;
- Enabled the City, the County and FSA to defer having to make further payments on their guarantees or the bond insurance policy until after 2008;
- Ensured that the professionals who advised the Authority, the City and the County were paid; and
- Knew that it was likely that payment on the 2007 debt would have to come from the County under its guarantee, given the Authority's and City's financial conditions.

6. *Concerns With 2007 Debt Issuances*

As the Authority's financial situation deteriorated, the Authority and the City took actions that made the financial situation worse. At the beginning of 2007, the Authority had signed an operations and maintenance contract with Covanta, the cost of which significantly exceeded the costs previously projected by Barlow. The RRF was unable to pay these fees from the day Covanta's work started. To pay off amounts the Authority owed Covanta, the City and the County advanced funds to the Authority. The Authority agreed to repay these amounts and the debt service payments the City and the County had advanced under their guarantees, within a few months. The Authority agreed to do so using the proceeds of a borrowing with relatively high interest rates and significant other costs due to the Authority's continually worsening fiscal condition.

The 2007 debt issuances are problematic for a number of reasons, each of which is discussed in greater detail below. First, as noted above, the parties no longer should have

considered at least a portion of the existing 1998 and 2003 debt to be self-liquidating. This raises a concern regarding the City's ability to incur the debt evidenced by its Guaranty of the 2007 C and D Notes and Clean 8110(b) Certifications filed by the City and the County relating to 1998 and 2003 debt.⁴⁰⁸

Second, there are questions about the statutory authorization for the City and the County to incur some of the debt evidenced by the 2007 C and D Notes because of the way the proceeds actually were used. Much of the proceeds of the notes were used to pay for expenses that may not qualify as "costs of the project," which we believe was the Covanta construction work that the 2007 C and D Notes were issued to support.

Third, of the approximately \$30 million in proceeds from the 2007 C and D Notes, more than \$9.6 million⁴⁰⁹ went to repay the City and County for payments they made on behalf of the Authority, notwithstanding that the Authority had paid substantial fees to the City and the County for guarantees for just this purpose. The guarantees provided that the City and the County would budget, appropriate and pay amounts required under the guarantees from taxes or revenues of the City and the County, respectively, not from proceeds of another working capital borrowing by the Authority.⁴¹⁰ Reimbursement of

⁴⁰⁸ A Clean 8110(b) Certification certifies that no decrease in any amounts to be excluded as self-liquidating is required by any change of circumstances, other than debt payments.

⁴⁰⁹ Closing Order and Receipt for the 2007 Series C and D debt.

⁴¹⁰ Pursuant to section 8104 of the Debt Act, the City and the County covenanted in their respective debt ordinances to budget, appropriate and pay, or cause to be paid, debt service on all of the RRF bonds and notes they guaranteed. By June 2006, it was abundantly clear that the RRF would not be completed on time or on budget, and we would have expected the City and the County to include debt service on the RRF bonds and notes they had guaranteed in their 2007 budgets. Issuing a tax and revenue anticipation note ("TRAN") would have been an alternative. We have not found evidence that this topic was discussed, nor are we aware of the basis upon which it was determined not to include debt service on these bonds and notes in the 2007 budgets. Had such amounts been in the City and County budgets, general fund or other revenues of the City and the County would have been used to make the advances to the Trustees under the guarantees for the RRF bonds and notes. The City and the County would not have been permitted to issue debt to make these payments (other than a TRAN) without complying with other specific provisions of the Debt Act.

Instead, the City and the County made advances and had the Authority borrow to replenish their respective general funds. In light of the fact that the City and the County could not borrow directly for these amounts without following specific Debt Act requirements, and the Authority issuance was not secured by a pledge of receipts and revenues of the RRF, the City and the County may have done indirectly what they could not do directly. Moreover, the City sought to characterize its advance as a "loan" to the Authority, but neither the Authority nor the County approved this "loan."

the amounts the City and the County paid under the guarantees was contractually subordinate to payments to bondholders, but the City and the County were promptly reimbursed, without following the procedures in the bond documents, and with at least the tacit approval of FSA.

a. Self-Liquidating Debt

As noted earlier, the Debt Act provides statutory procedures for the incurrence of debt by municipalities, including guarantees by the City and the County.⁴¹¹ Under the Debt Act, the City and the County each have a limit to the amount of debt it may incur,⁴¹² but debt approved as “self-liquidating” does not count against this limit. Debt that is fully payable from user fees or charges does not affect the financial wherewithal of the guarantor. As discussed earlier, a municipality must re-examine whether previously certified self-liquidating debt continues to be self-liquidating prior to issuing or incurring any additional debt.

The City filed three separate proceedings with DCED near the end of 2007. The City’s 2007 A proceedings, filed on November 6, 2007, were to obtain DCED approval of the City’s guarantee of the Authority’s Note to Covanta for up to \$6.5 million of Covanta’s fees as operator of the Facility (this Note was incorporated into the 2007 C and D Notes).⁴¹³ The City’s Covanta Loan proceedings, filed on October 17, 2007, were to obtain DCED approval of the City’s guarantee of the Authority’s repayment of a \$25.5 million construction advance by Covanta to complete the Facility.⁴¹⁴ The City filed its 2007 C and D Note proceedings on November 29, 2007, to obtain DCED approval of the City’s guarantee of the Authority’s repayment of what was described as the “Working

⁴¹¹ 53 Pa. C.S.A. §§ 8001(b) and (d), 8002.

⁴¹² 53 Pa. C.S.A. §§ 8021, 8022.

⁴¹³ City DCED application dated October 31, 2007.

⁴¹⁴ City DCED application dated October 17, 2007.

Capital Facility,” totaling \$30 million of additional Authority debt.⁴¹⁵ The County also filed DCED proceedings relating to its guarantee of the 2007 C and D Note issuances.⁴¹⁶

We have noted above that, when the Authority issued the 2003 D, E and F Bonds in December 2003, the RRF had experienced significant changes in circumstances since 1998 that should have precluded the City from filing a Clean 8110(b) Certification with respect to the 1998 Bonds and the 2003 A, B and C Bonds.⁴¹⁷ Given the additional problems since December, 2003, there were compelling reasons for the City and the County to identify changed circumstances with respect to the 2003 D, E and F Bonds in connection with the 2007 guarantee proceedings filed with DCED as well.

There were additional significant and materially adverse changes after the Authority issued the 2003 D, E, and F Bonds that the City and the County should have recognized in their 2007 DCED filings, but did not. There were substantial problems with Barlow’s performance on the project. The Facility was to be completed and fully operational by the beginning of 2006. Instead, at the beginning of 2007, Barlow had been terminated, only two of the three burners were operating, and significant work remained to achieve full capacity.⁴¹⁸ The Authority arguably had incurred significant additional obligations (through the CIT arrangement). The Authority was generating “revenues” to pay for operating costs and construction cost overruns by entering into and terminating swaps. Covanta estimated the cost of the work to complete construction of the Facility at as much as \$25.5 million. The Facility was unable to pay for its operations and debt service in 2007 and had to rely on advances by the City and the County, deferral of payments to Covanta, as well as still more working capital borrowing and capitalized interest.

⁴¹⁵ City DCED application dated November 29, 2007.

⁴¹⁶ County DCED application dated November 21, 2007. The County did not guarantee the 2007 A Note or the Covanta loan.

⁴¹⁷ As noted earlier, the City also should have identified these changed circumstances to DCED in proceedings prior to the 2003 D, E and F Bond guarantee proceedings.

⁴¹⁸ January 2008 Monthly Operating Report prepared by Covanta Harrisburg, Inc.

In sum, since at least 1997, ten years earlier, the RRF had been unable to pay for operations and debt service consistently, the Authority had pursued a series of costly restructurings and working capital financings, current principal and interest repayments were made using proceeds of long-term bonds, and revenues were considerably below the projections contained in the 1998 and 2003 self-liquidating debt reports, attributable to delays and cost overruns in construction and completion of the retrofit, and operating costs that exceeded estimations. Yet, despite clearly changed circumstances, counsel prepared and the City and the County included Clean 8110(b) Certifications in the DCED proceedings they filed to guarantee the 2007 C and 2007 D Notes, and the City also did so with respect to the Covanta Loan and the 2007 A Note.

Based on interviews with attorneys at Eckert who had been involved with the RRF since 1993 and who worked on the 2007 DCED proceedings, they took the view that the “project” in 2007 was a continuation of the not-yet-complete Barlow project. Their view was that it is difficult to develop reliable estimates of revenues for a project that was still being constructed. They believed there were many possibilities to assume increased revenues, such as an increase in tipping fees or steam generation fees. They believed that the law provided that they did not need to re-evaluate the self-liquidating debt issue until the Facility was complete and operating fully so that all involved had a better sense of how much revenue the Facility potentially could generate. They added that at least certain projections that they had reviewed supported the assertion that the RRF would be able to generate sufficient revenues to pay for all of the self-liquidating debt. On this basis, the City (and perhaps the County, as well) submitted a Clean 8110(b) Certification.⁴¹⁹

We have not seen any set of projections, including projections provided by Eckert, that demonstrates that, even with assumed increases in tipping fees, the RRF could generate

⁴¹⁹ Interview with Carol Cocheres, November 10, 2011; interview with Richard Michael, December 1, 2011.

net revenues sufficient for the 1998 Bonds and 2003 Bonds to be considered completely self-liquidating.^{420,421}

In addition, in other debt proceedings unrelated to the RRF,⁴²² based on information provided to us, our understanding is that the County filed several more Clean 8110(b) Certifications with respect to the County-guaranteed RRF bonds; it was not until the end of August, 2011 that it filed debt proceedings that counted the RRF bonds towards the County's gross outstanding debt.⁴²³

We question how much of the 2007 debt the City could have issued had prior debt no longer been considered self-liquidating, consistent with the above discussion.⁴²⁴

⁴²⁰ Fixes to the steam line, included as a revenue source in certain projections, were abandoned prior to incurrence of the 2007 debt.

⁴²¹ Our review included documents provided to us by Eckert in response to our request that it give us revenue projections that supported the claim that the RRF would be able to generate revenues sufficient to pay for all of the debt that continued to be deemed self-liquidating.

⁴²² A municipality is required to file an "8110(b) certification" each time it issues debt with respect to any self-liquidating debt then outstanding.

⁴²³ In its DCED filing prepared as of August 31, 2011, the County did not de-certify the debt, but stated that it had elected not to use the exclusion in connection with that proceeding.

⁴²⁴ We have not assessed in any detail how much, if any, of the 2007 debt the City could have issued had prior debt no longer been considered self-liquidating. However, for a full year of operations in 2011, the Authority budgeted approximately \$5.6 million in income available to pay debt service. Using the budgeted results as a proxy, only a little more than 40% of the self-liquidating debt may still have been self-liquidating, even taking into account projected rate increases. See Resolution 2010-018.

We are using budgeted results as an indicator only, since the question is what should have been included in a 2007 assessment as part of the DCED proceedings. If the proxy based on 2011 budgeted results is a fair indicator of what reasonably could have been expected in 2007, the City would not have had sufficient capacity to issue the 2007 debt. If the City did not have the power to issue a guarantee on these terms, it is not clear whether the County would have been willing to guarantee the 2007 debt. The County guarantee was very important in order to sell these Notes as described in the disclosure document used by the Placement Agent. See undated Term Sheet, undated, page 4, Transcript of Proceedings for the 2007 C and D Notes.

b. Funding for a “Project” and Use of Funds for “Costs of a Project”

As noted earlier, under the Debt Act, local government units are authorized to issue and guarantee debt, but only for the “cost of or cost of completing” a project.⁴²⁵ The “cost of a project” includes, among other things, “interest on money borrowed to finance the project, if capitalized, to the date of completion of construction and, if deemed necessary, for one year thereafter,” as well as “a reasonable initial working capital for operating the project.”⁴²⁶

The DCED proceedings for the guarantees of the 2007 C and D Notes provide that the debt will be used only for working capital relating to “the Authority’s Resource Recovery Facility . . . pending completion of the retrofit of the Facility.”⁴²⁷ It appears that the “project” was portrayed as the continuing Barlow Retrofit, which started in 2003.⁴²⁸ We think this characterization may not be appropriate, as there were many fundamental problems since 2003 that changed the nature of the project, including termination of the original contractor (Barlow), a substantial new construction contract with Covanta and significant financial problems. We also understand that much of the system that had been identified as Barlow’s proprietary technology did not remain after Covanta’s construction work was performed.⁴²⁹

More fundamentally, we believe that, under the statute, the “project” should be viewed as the work specifically under consideration by DCED in a given filing, which, in late 2007, was the Covanta completion work. Accordingly, interest on money borrowed to finance the Covanta work, and reasonable working capital related to the Covanta work, would be

⁴²⁵ 53 Pa. C.S.A. § 8005(c).

⁴²⁶ 53 Pa. C.S.A. § 8007.

⁴²⁷ City of Harrisburg Ordinance 24-2007 included in the 2007 Series C and D Notes application for approval filed with the DCED proceedings.

⁴²⁸ This is consistent with our interviews of Carol Cocheres, November 10, 2001 and Richard Michael, December 1, 2011.

⁴²⁹ It seems that “completing construction of the Facility” may be a better description of the “project” in 2007, since that was the submission then under consideration by DCED.

justified.⁴³⁰ However, we question the ability to borrow for interest payments on the 1998, 2002 and 2003 debt as a cost of the 2007 project under the Debt Act.⁴³¹

Further, legal authorization for a number of the uses of proceeds of the 2007 C and D Notes is questionable based on the provisions of the Debt Act. The various uses, shown on Exhibit G, are discussed below.

i. Payment of County System Fees

The Authority paid the County \$1.068 million out of the bond proceeds for previously unpaid county system fees for 2006 and 2007.⁴³² The Authority collected during those two years, but did not remit to the County as required, fees paid by disposers to fund the costs of administering the County waste system. We do not believe these past due sums are properly viewed as “initial working capital” for the 2007 project when they were incurred prior to, and are unrelated to, the Covanta work to complete construction of the Facility (which was the “project” contemplated by the 2007 C and D Notes). Therefore, we question whether they can be considered “costs of a project.”⁴³³

⁴³⁰ Note, however, that the Covanta loan was structured such that there was no interest during the expected construction period. Refer to Table of Maximum Annual Payments included in the City’s DCED application dated October 17, 2007.

⁴³¹ If the project is defined as the Barlow Retrofit, we do not see how it is possible to consider working capital issued at the end of 2007 as “initial working capital,” or to capitalize interest on the Series 2003 D, E and F Bonds, or on the 1998 Bonds, 2002 Notes, and 2003 A, B and C Bonds yet again for a project that began in 2003, was terminated in 2006, and for which construction was supposed to be complete almost two years before the 2007 C and D Notes that provided the relevant funding.

In a November 14, 2007 e-mail from Mary Tomich, Esquire, counsel to the Placement Agent for the 2007 C and D Notes, to Carol Cocheres, Ms. Tomich expresses her view that some of the uses for this financing are unconventional stating, “...the use of proceeds of this financing has less connection to traditional debt act uses than any of us are accustomed to.”

⁴³² Closing Order and Receipt for the 2007 C and D debt.

⁴³³ This and other usage of proceeds discussed in this “costs of a project” section also raised the question of whether the borrowings indirectly violated the proscription against the City borrowing working capital to pay unfunded debt.

ii. Reimbursements to County and City

The Authority reimbursed the County (a) \$2.25 million for a County payment to Covanta on the Authority's behalf in October, 2007 for fees arising under the Interim Operating Agreement and (b) \$3.1 million for the County's payment on the Authority's behalf of debt service and swap and cap payments due on or around December 1, 2007 under the 2003 D and E Bonds and the related swaps and caps.⁴³⁴ Both amounts were advances on behalf of the Authority under the County's guaranty to bondholders, reimbursable to the County under the 2003 Reimbursement Agreement between the Authority, the City and the County.⁴³⁵

These reimbursements do not appear to be "project" costs, but rather repayments to the County of amounts it advanced under its Guaranty. The original payments relate to (a) Covanta's past incinerator operating costs and (b) past debt service and swap payments.

Similarly, the Authority reimbursed the City (a) \$250,000 for a City payment, on the Authority's behalf, to Covanta for costs arising under the Interim Operating Agreement; (b) \$600,000 for a debt service payment due November 1, 2007 that the City made under the Guaranty Agreement; and (c) approximately \$3.5 million for June 1, 2007 and September 1, 2007 debt service and swap payments⁴³⁶ as a guarantor of debt service on the bonds and scheduled payments under the pertinent swaps and caps.⁴³⁷ As with the payments to reimburse the County, we question whether the foregoing payments qualify as "costs of a project."

⁴³⁴ First Addendum and Supplement to the Tri-Party Interim Funding Agreement dated November 27, 2007. Also refer to Closing Order and Receipt for the 2007 C and D debt.

⁴³⁵ The payment of \$2.25 million was so characterized in the Tri-Party Interim Funding Agreement dated October 5, 2007. Paragraph 1.

⁴³⁶ Closing Order and Receipt for the 2007 C and D debt.

⁴³⁷ Various e-mail correspondence references these payments as payments under the City's guarantee. This includes an October 24, 2007 e-mail from Robert Kroboth to the Authority, a June 8, 2007 e-mail from Carol Cocheres referencing the June 2007 Material Event Disclosure, and a similar e-mail from Ms. Cocheres dated September 6, 2007.

iii. Payments to Commerce Bank, NA, Bank of New York and
Manufacturers and Traders Trust Company

The 2007 C and D Notes included a total of approximately \$10.5 million to be paid to Commerce Bank, NA (“Commerce Bank”), Bank of New York (“BONY”) and Manufacturers and Traders Trust Company (“M&T”) for upcoming debt service payments on outstanding debt under prior bond issuances.⁴³⁸ A plain understanding of the application of these proceeds was that the Authority was capitalizing interest on, among other things, the 1998 Bonds, 2002 Notes, and 2003 Bonds. Interest may be capitalized only for up to one year after the project has been placed in service, and with respect to the 1998 Bonds, 2002 Notes and 2003 Bonds and Notes, this period had long ago expired.

Another characterization of these expenditures would be as a refunding under the Debt Act, 53 Pa. C.S.A. § 8241. If proceeds of a debt issuance are to be used for a refunding, the ordinance authorizing the borrowing, which is submitted to DCED for approval, must expressly identify the project as a refunding and specify the purpose of the refunding under section 8241(b) of the Debt Act. The DCED proceedings for the City and County guarantees did neither.⁴³⁹

iv. Payments to Professionals

While professional fees are generally permissible in connection with project financing costs,⁴⁴⁰ it appears to some extent that the fees paid from proceeds of the 2007 C and D Notes related to past work for the Authority, the City and/or the County in the prior two to three years, rather than the professional fees incurred related to this debt issuance. To

⁴³⁸ Closing Order and Receipt for the 2007 C and D debt.

⁴³⁹ However, the federal tax certificate relating to this transaction identifies the use of funds as a “refunding” for federal tax purposes, and it appears that a significant amount of analysis was undertaken with respect to whether tax-exempt or taxable bond proceeds could be used for certain of the refundings under federal tax law and whether the proceeds were being used for working capital or refunding purposes.

⁴⁴⁰ 53 Pa. C.S.A. § 8007.

this extent, there are significant questions about whether such fees are justified as part of the approved debt issuance.

Exhibit G presents the payments by the Authority to various professionals out of the 2007 Note issue. Exhibit H presents the overall payments to selected parties for the period 2003 through 2011.

c. Failure to Comply with Bond Document Requirements

As noted above, the Authority reimbursed the City and the County for operating expenses they paid on behalf of the Authority that were due to Covanta. In addition, the City and the County wanted repayment of their advances on behalf of the Authority for debt service and scheduled payments under the swaps and caps. The City advanced funds for payment due on: the 2003 D Bonds on June 1, 2007; the 1998 A Notes and 2003 C Bonds on September 1, 2007; and the 2002 Notes on November 1, 2007. The County advanced funds for payment on the 2003 D, E and F Bonds related swaps and caps due on December 1, 2007.⁴⁴¹

After making a payment on behalf of the Authority for debt service due on June 1, 2007, Mr. Kroboth of the City stated that the "City expects to record the \$1.6 million draw on the Guaranty Agreement as a short-term loan/advance to THA, as the City anticipates that THA will be reimbursing the City pursuant to terms of the Reimbursement Agreement before the end of the year."⁴⁴² In treating the payment under the Guaranty Agreement in this manner, the City appears to have been seeking to recharacterize the nature of the Authority's obligation, moving it from a long-term obligation payable by the Authority on a subordinate basis to the bondholders of all RRF-related bonds and notes, to a short-term obligation payable to the City from proceeds of the 2007 borrowing. We understand

⁴⁴¹ Richard Michael email with attachment sent to John Frey, J. Brockman and Glen Williard, with copy to Carol Cocheres dated December 19, 2007. Also refer to the Authority's Non-Arbitrage Certification dated December 27, 2007, page 2.

⁴⁴² June 29, 2007 e-mail from R. Kroboth to B. Gabler, copying L. Lingle, S. Dade, R. Ambrose, B. Foreman, A. Giorgione, C. Cocheres, and B. Barnes.

that the City and perhaps the County applied this rationale to other payments they made on behalf of the Authority.

We understand the theory of such payments is that they were made “voluntarily” as a “loan” to the Authority shortly before a notice would have come from the Trustee calling for payment under a City or County guaranty.⁴⁴³ The Authority, however, does not appear to have authorized these advances as a loan, nor does it appear that the County approved any such loans under the Reimbursement Agreement. It appears more plausible to us that the payments were made under the applicable guarantees, which would subject them to repayment under the applicable Reimbursement Agreements.

i. Priority of Bonds

The pertinent Trust Indentures, along with the relevant Guaranty and Reimbursement Agreements, provide for the priority of repayment. The City and the County could not amend the requirements of the bond documents without the express written consent of the Trustee and FSA. Under the 2003 Reimbursement Agreement, the parties acknowledged that reimbursement payments by the Authority to the City and the County were subordinate to the Authority’s priority payment obligations on all outstanding debt, including bonds issued under the 1998 Indenture.⁴⁴⁴

The 1998 Indenture has priority over all subsequent indentures as to the flow of funds received by the Authority.⁴⁴⁵ After debt service payments on the 1998 Bonds, next in priority are payments of debt service on the 2003 D, E and F Bonds.⁴⁴⁶ Debt service payments on the 2002 Notes are subordinate to debt service payments on the 2003 D, E

⁴⁴³ Interview of Carol Cocheres, November 10, 2011.

⁴⁴⁴ Reimbursement Agreement dated December 1, 2003, Paragraph 2(d). Trust Indenture Dated as of December 1, 2003, Section 6.01(b).

⁴⁴⁵ The 2003 D, E and F Indenture expressly recognizes the priority of the 1998 Indenture, and that the 1998 Indenture controls the flow of funds. Trust Indenture Dated as of December 1, 2003, p. 8 and Section 6.01. The 2003 D, E and F Indenture does not permit creation of a Surplus Fund until the 1998 Bonds are paid in full (defeased), at which time the 1998 Indenture terminates. Trust Indenture Dated as of December 1, 2003, section 6.07B.

⁴⁴⁶ Trust Indenture dated as of December 1, 2003, Section 6.01.

and F Bonds, and debt service on the 2003 A, B and C Bonds are subordinate to payment of debt service on the 2002 Notes.⁴⁴⁷

ii. Flow of Funds

The 1998 Indenture grants to the Trustee a security interest in, and pledges unto the Trustee "...the Receipts and Revenues, after payment of the Operating Expenses, together with all cash and investments from time to time held in any fund."⁴⁴⁸ The 1998 Indenture defines "Receipts and Revenues" broadly to include, in addition to rates, rents, fees and charges, "all other payments, receipts and revenues of whatever kind or character arising from, the operation or ownership of the Facility by the Authority or any part thereof."⁴⁴⁹ The 1998 Indenture creates a Revenue Fund maintained by the Authority into which will flow "all Receipts and Revenues and all other amounts received by the Authority from any source in respect of the Facility."⁴⁵⁰

Under the 1998 Indenture, all monies in the Revenue Fund are first used for Operating Expenses, and then are transferred to the Trustee for disposition under the 1998 Indenture's flow of funds. Unless the funds transferred to the Trustee are used for one of the funds or other purposes specified in the Indenture, the balance of Receipts and Revenues and all other amounts received by the Authority from any source in respect of the Facility, if any, are transferred to the Surplus Fund under the 1998 Indenture.⁴⁵¹

⁴⁴⁷ *Ibid*, Section 6.01(b).

⁴⁴⁸ Cash and investments, if any, in the 1998 Rebate Fund, the 1993 Series A Rebate Fund and the 1998 Tax-Exempt Series Rebate Account were carved out of this security interest and pledge. Trust Indenture dated as of August 1, 1998, p.4.

⁴⁴⁹ Trust Indenture dated as of August 1, 1998, Article I. We note that this is a very broad definition and not limited to revenues from operations.

⁴⁵⁰ Trust Indenture Dated as of August 1, 1998, § 6.01. In response to our question about this phrase, Ms. Cocheres said that nobody reads it to mean anything more than Receipts and Revenues from operations. If, however, it meant nothing more than Receipts and Revenues, there would be no reason to use the additional words, which must have meaning. Mr. Michael stated that proceeds of the 2007 C and D Notes were not subject to the 1998 Indenture's waterfall because the 2007 C and D Notes were not secured by Receipts and Revenues of the RRF. While the 2007 C and D Notes were not secured by Receipts and Revenues of the Facility, it appears to us that proceeds from the 2007 C and D Notes were subject to the 1998 Indenture's flow of funds.

⁴⁵¹ Trust Indenture Dated as of August 1, 1998, Section 6.07.

Any reimbursements to the City and the County would come from the Surplus Fund associated with the bonds or notes paid by the money they advanced. For example, money to repay the City for its advance to make the September 1 debt payment on the 1998 A Bonds would come from the Surplus Fund created by the 1998 Indenture. Money to repay the City for its advance to make the June 1, 2007 debt payment on the 2003 D Bonds would come from the Surplus Fund created by the 2003 D, E and F Indenture. In each case, money could be released from the applicable Surplus Fund to make repayment if authorized by action of the applicable Trustee after it receives written direction from the Authority as designated by resolution of the Authority.⁴⁵²

Under the 2003 Indenture, the 2003 Surplus Fund may not be created until the 1998 Indenture is discharged, which occurs when the 1998 Bonds and all other obligations secured under the 1998 Indenture are paid in full. Reimbursement payments relating to the 2002 Notes and the 2003 A, B and C, Notes could not be made if reimbursement payments relating to the 2003 D, E and F Bonds could not be made. This priority of Surplus Funds protects senior bondholders so that moneys that secure payment to them are not used first to pay others who have a less senior position.

The 2003 D, E and F Reimbursement Agreement governs the Authority's repayment to the City and the County for funds they advance on behalf of the Authority for debt service payments for the 2003 D, E and F Bonds.⁴⁵³ The agreement states that reimbursement is to be on demand by the City and the County, from moneys generated in connection with the Facility, but that reimbursement is subordinate to all priority obligations under the 1998, 2002 and 2003 bond documents.^{454,455}

We believe it would be difficult to argue that the 2007 C and D Note proceeds should not be considered "payments, receipts and revenues of whatever kind or character arising

⁴⁵² Ibid.

⁴⁵³ Trust Indenture Dated as of December 1, 2003, §§ 6.09(d) and 6.10, pp. 97-98.

⁴⁵⁴ 2003 DEF Reimbursement Agreement, §§ 2(a), (b) and (d).

⁴⁵⁵ The Reimbursement Agreements related to the 1998, 2002 and 2003 A, B and C debt are the same in all material respects.

from the operation or ownership of the Facility by the Authority or any part thereof” or as “other amounts received by the Authority from any source in respect of the Facility” and therefore not subject to the 1998 Indenture. It appears that funds did not flow through the 1998 Indenture waterfall as required. To reimburse the City and County from the 2007 C and D proceeds, if money had flowed as we understand it should have under the 1998 Indenture, we would have expected the 1998 Bonds to have been repaid, the 1998 Indenture to have been discharged, and any excess remaining in the 1998 Surplus Fund to be transferred to the Trustee for the 2003 D, E, and F Bonds, along with a legal opinion authorizing such transfer. We did not find evidence that any of the foregoing occurred.

In addition, to make any reimbursement payments from any of the applicable Surplus Funds, we would have expected to find an Authority resolution authorizing reimbursement payments to the City and/or County in accordance with the applicable Reimbursement Agreement; a letter from the Authority to the applicable Bond Trustee directing payments from the applicable Surplus Funds to the City and/or County; a legal opinion from bond counsel to the applicable Trustee stating that such payments were permitted under the bond documents;⁴⁵⁶ an express written consent by the bond insurer (FSA) to release monies to reimburse the City and/or County; and an acknowledgment by the applicable Trustee that it was authorized to make such payments to the City and/or County, based upon its receipt of the foregoing documents. However, we have not seen such documents in the closing binder for the 2007 C and D Notes or elsewhere. Our understanding, based on the above and other documents we have seen, is that money was sent directly to the City and the County without involving any of the Trustees.⁴⁵⁷

Under the 1998 Indenture and the 2003 Indenture, no party may modify either indenture or enter into a contract that could materially adversely impair or prejudice FSA’s rights, or the security for or sources of payment for the bonds, without FSA’s prior written

⁴⁵⁶ Given the state of the Facility’s finances, we would have expected the 1998 Trustee to have required a legal opinion of bond counsel confirming its reading of the documents.

⁴⁵⁷ Closing Order and Receipt dated December 27, 2007 related to the 2007 C and D debt.

consent.⁴⁵⁸ In addition, FSA has the right to direct the exercise of remedies if the Authority fails to make debt service payments when due or to follow any covenant, condition or agreement in the indentures.⁴⁵⁹ FSA also has this right if there is any default under any Guaranty Agreement.⁴⁶⁰

The City and the County recognized that funding the reimbursement payments in the manner they planned raised concerns. All parties were hesitant to move forward without FSA's agreement,⁴⁶¹ and the City and the County specified that FSA's acknowledgment of the use of funds was a condition precedent to their obligations under the Tri-Party Interim Funding Agreement.⁴⁶²

The City and the County requested and received from FSA a letter acknowledging that the proceeds from the 2007 notes would be used to reimburse the City and the County for certain advances made by each.⁴⁶³ FSA allowed the transaction to proceed. To our knowledge, it did not provide its written consent to the transaction.

We are not aware that the 1998, 2002, 2003 A, B and C or 2003 D, E and F Trustees received any written notice of the issuance or use of proceeds from the 2007 C and D Notes before they were issued. Indeed, we found no evidence that the Trustees were contacted or informed of this transaction until such time as the capitalized interest was deposited into the debt service funds under the various indentures.

⁴⁵⁸ Trust Indenture Dated as of August 1, 1998, §§ 13.04 and 13.05; Trust Indenture Dated as of December 1, 2003, § 13.04.

⁴⁵⁹ Trust Indenture Dated as of August 1, 1998, §§ 8.01 (a) and (h), and 8.14; Trust Indenture Dated as of December 1, 2003, §§ 8.01 (a) and (h), and 8.14.

⁴⁶⁰ Trust Indenture Dated as of August 1, 1998, §§ 8.01 (a) and (h), and 8.14; Trust Indenture Dated as of December 1, 2003, §§ 8.01 (a) and (h), and 8.14. We note that, in bond counsel's view, the arrangement under the Tri-Party Funding Agreement did not conflict with the Indenture. See Eckert Opinion dated November 26, 2007.

⁴⁶¹ October 3, 2007 T. Smida e-mail to K. Hofstein, copies to C. Cocheres and E. Hill.

⁴⁶² Tri-Party Interim Funding Agreement between the Harrisburg Authority, the City of Harrisburg and Dauphin County dated October 5, 2007, page 6, section 4(i).

⁴⁶³ November 21, 2007 letter from FSA to the Authority, the City and the County Commissioners. THA-ES005186-87.

The net result was that the County and the City advanced funds on the Authority's behalf to pay debt service and other obligations, then obtained repayment from the Authority within months, saddling the Facility with additional debt. The debt was at higher rates than the prior debt due to worsening market access for the Facility, and for a longer term, resulting in compounding of the additional costs. Based on our understanding of the relevant documents and facts, the proceeds from the 2007 C and D Notes should have been used to discharge the 1998 Bonds, then placed in the Surplus Fund of the 2003 Indenture (after any other uses required by the Indentures had been addressed), rather than used to reimburse the City and County for the funds they advanced. FSA acknowledged the flow of funds from this transaction and allowed the transaction to proceed. It did not sign a written consent to the transaction,⁴⁶⁴ and did not consent in writing to the Tri-Party Interim Funding Agreement, which appears to conflict with the provisions of the bond documents.

Issuing the debt and using the proceeds to reimburse the City and the County avoided shutdown of the Facility and allowed it to keep operating.⁴⁶⁵ By obtaining immediate repayment, the City and the County were able to avoid significant loss at that time (other than loss of interest on the money they paid for the short period of time before they were repaid), and FSA was able to defer exposure on its insurance policies. All three were guaranteed not to suffer any losses until at least 2009, since the 2007 C and D Notes provided funds to pay all debt service for 2008, and the Notes themselves were not payable as to interest until their maturity date.

The participants in the 2007 financing justified the decision to issue the debt and keep the Facility operating on the basis that finishing the Facility would improve its value by more than the cost of the new work and the working capital financing. Even if this were true,

⁴⁶⁴E-mail from FSA to Tom Smida dated October 3, 2007. THA-ES000746.

⁴⁶⁵ If the 2007 C and D Notes had not been issued, the debt paid by the proceeds from that borrowing would have been paid, at least in part, from the general funds of the City and/or the County. Therefore, the 2007 borrowing, which was not secured by receipts and revenues of the RRF, looks very much like an unfunded debt issuance, which is a financing of current or past operating expenses of a municipality. It is questionable whether it was permissible to issue the 2007 C and D Notes, because unfunded debt issuance cannot occur without prior court approval under the Debt Act, 53 Pa. C.S.A. § 8130.

which is not clear, relevant laws and contract documents (the Indentures, Guarantees and Reimbursement Agreements) had to be complied with. Based on the information available to us, we question whether there was compliance with applicable requirements.

d. Maturity of the Notes in December 2010

The projections that were prepared in 2007 indicated that the RRF was not able to service existing debt, let alone the \$34.6 million payment that was required in December 2010 with the maturity of the 2007 C and D notes. Yet, despite these indications, the City and the County both provided guarantees on the 2007 C and D Notes. As was projected, when the 2007 notes matured, the Authority could not make the payment required. The City also could not make the payment under its Guaranty, resulting in payment by the County.

With the County payment, the 2007 noteholders received payment in advance of the bond/noteholders on the 1998, 2002 and 2003 debt. Such payments and the manner in which they were obtained may be inconsistent with the applicable bond documents and the payment priority they establish.⁴⁶⁶

e. Conclusions – 2007 Debt

The parties interested in the RRF were faced with a difficult situation in 2007. The Barlow Retrofit project was delayed and incomplete, the contractor hired to perform the work had been terminated, and the portion of the RRF that was operating was not generating income sufficient to fund operations and debt service. While there are indications that analyses addressing the situation were conducted, it appears that the analyses were focused solely on taking on additional debt to complete construction, to provide working capital during the completion period, to reimburse the City and the

⁴⁶⁶ Reimbursement Agreement dated November 27, 2007.

County, and to pay professionals, rather than on whether the projections supported the RRF's ability to satisfy the debt.

The documents we have reviewed and interviews we conducted indicate to us that, in making the decision to take on the 2007 debt, the parties should have known that the RRF could not generate income from operations sufficient to service the existing debt, let alone the new debt that was to be incurred. It certainly is clear now, and should have been in 2007, that repayment of the 2007 debt could come only through either a refinancing using the credit of the County, or a call on the guarantees. It was clear that the City would not have the financial ability to pay on its guarantee, and that the County would have to provide credit backing, which essentially is what occurred.

We appreciate the opportunity to submit this report setting forth our findings, observations and conclusions based upon the documentation and information received to date. We welcome the opportunity to discuss the report with the Board.



12:30-

Department of Community and Economic Development

Bernadette Barratini, Esq.; Tim Anstine, Esq.; and Fred Reddig



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Legal Framework for Local Government Debt

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PENNSYLVANIA CONSTITUTION

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**Pennsylvania Constitution
Article IX, Section 10 states:**

Subject only to the restrictions imposed by this section, the General Assembly shall prescribe the debt limits of all units of local government including municipalities and school districts.

For such purposes, the debt limit base shall be a percentage of the total revenue, as defined by the General Assembly, of the unit of local government computed over a specific period immediately preceding the year of borrowing.

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The debt limit to be prescribed in every such case shall exclude all indebtedness (1) for any project to the extent that it is self-liquidating or self-supporting or which has heretofore been defined as self- liquidating or self-supporting, or (2) which has been approved by referendum held in such manner as shall be provided by law. The provisions of this paragraph shall not apply to the City or County of Philadelphia.

Pa. Const. Art. IX, § 10

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The City of Philadelphia is treated separately:

The debt of the City of Philadelphia may be increased in such amount that the total debt of said city shall not exceed 13 ½ % of the average of the annual assessed valuations of the taxable realty therein, during the ten years immediately preceding the year in which such increase is made, but said city shall not increase its indebtedness to an amount exceeding 3% upon such average assessed valuation of realty, without the consent of the electors thereof at a public election held in such manner as shall be provided by law.

Pa. Const. Art. IX, § 12

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**THE LOCAL GOVERNMENT UNIT
DEBT ACT (LGUDA)**

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- The Local Government Unit Debt Act, 53 Pa. C.S. §8001 et seq., contains the debt limits required by the Pennsylvania Constitution.
- Enacted in 1972, reenacted in 1996.

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- The main types of local government units (LGUs) are counties, cities, townships, boroughs, school districts.
- LGUs which obtained a home rule charter after July 12, 1972 are subject to the substantive provisions of LGUDA.
- Municipal authorities, industrial development authorities, and other authorities are not LGUs.

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TYPES OF DEBT

- Debt may only be incurred for a “project” as defined in LGUDA.
- The most common types of projects are:
 - Construction and acquisition of buildings and other facilities, infrastructure, and equipment.
 - Refundings of prior debt.

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- Project costs that may be paid with incurred debt are broadly defined to include all payments necessary for acquisition or construction, professional fees incurred in connection with the financing, costs of feasibility studies, capitalized interest to up to one year following completion of construction, "reasonable" initial working capital for operating the project, and a "proper" allowance for contingencies.

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Debt is classified under LGUDA as either

- Electoral debt,
- Non-electoral debt, or
- Lease rental debt

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- **Electoral debt** is debt that has been incurred with the approval of a majority of the voters in a referendum. It also includes debt which is approved by the voters subsequent to its incurrence.
- The Pennsylvania Constitution exempts electoral debt from the statutory debt limits contained in LGUDA.

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Non-electoral debt is bonds or notes the LGU issues directly, without voter approval.

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- **Lease rental debt** is the backing by the LGU of debt of an authority or another LGU through guarantees, leases, or subsidy agreements.
- An authority (or other LGU) acquires or constructs a facility for the purpose of leasing it to a LGU.
- The authority arranges the financing and issues debt. It may arrange for the construction or acquisition of the facility, or it may pass this task to the leasing LGU.

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- Although the debt so incurred is owed by the authority, the debt service is paid by LGU through lease payments as it uses the facility.
- The lease payments secure the debt issued by the authority. By signing the lease, the leasing LGU pledges its general revenues to pay the debt incurred by the authority for the leased facility. This guarantee makes the debt of authorities more attractive to the debt market and lowers borrowing costs.

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- LGUs may also incur lease rental debt by guaranteeing or agreeing to subsidize the debt issued by an authority or another local government unit in the event of insufficient revenues.
- A leaseback arrangement need not exist for a LGU to guarantee the debt of another entity.

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Debt is further classified by the form of debt instrument being issued by the LGU:

- General obligation bonds and notes - *most common*
- Revenue bonds and notes - *pledge of revenues*
- Guaranteed revenue bonds and notes
- Guarantee, subsidy or lease agreement

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General obligation bonds and notes are backed by the LGU's full faith, credit and taxing powers. No specific revenues are pledged; instead, the debt is repaid from general revenues.

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Example:

In 2011 Bedford County issued \$ 4,685,000.00 in general obligation bonds to finance an emergency management system project including the purchase of related equipment (GOB-17762).

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- **Revenue bonds and notes** are secured by pledges of specific revenues, usually those generated by the facility purchased or constructed by the debt.
- The debt is repaid from user fees and charges, and not from general tax revenues.
- Although LGUs may issue revenue bonds and notes, in practice most revenue bonds and notes are issued by municipal authorities.

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Example:

In 2012 Intermediate Unit No. 1 in Fayette, Greene and Washington Counties issued \$ 3,280,000.00 in revenue bonds to finance renovations to the Central Offices and Colonial Campus (RB-28).

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Guaranteed revenue bonds and notes are secured by pledges of specific revenues, but also carry the LGU's full faith, credit and taxing power. This means that if pledged revenues from the facility are insufficient to pay the debt service, the remainder must be paid from the LGU's general revenues.

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Example:

In 2011, Aleppo Township in Allegheny County issued \$8,040,000.00 in guaranteed revenue bonds to finance sewer system construction (GRB-23).

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Guarantees, leases, and subsidy agreements are the forms of lease rental debt. This is where the LGU agrees to pay the debt of an authority or another LGU with its tax and other general revenues.

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Example:

In 2011 Blair County guaranteed bonds issued by the Blair County Airport Authority to finance capital improvements to the Blair County Airport (LRA-5113)

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Debt can be further classified by the time period to which the debt relates.

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- Generally, electoral, non-electoral and lease-rental debt is incurred for long-term projects; the maturity cannot exceed the lesser of 40 years or the useful life of the project being financed. The authorizing ordinance must state a realistic estimated useful life for all capital projects.
- Unfunded debt (discussed later) are obligations for current expenses incurred in the current or prior fiscal years, where the taxes and other revenues of the current fiscal year are not sufficient to pay those obligations; when the debt is "funded" with approval of the Court of Common Pleas the maturity may not exceed 10 years.
- TANs and TRANS (discussed later) are issued to pay expenses of the current fiscal year, and must be stated to mature no later than the last day of the fiscal year in which they are issued.

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DEBT LIMITS

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- As required by the Pennsylvania Constitution, debt limits are expressed as percentages of the “borrowing base” of the LGU.
- The **borrowing base** for any LGU is the average of total revenues for the 3 fiscal years immediately preceding the year of borrowing.

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In general, "total revenues" include all money received by a LGU from any source which is unrestricted as to its use.

Excluded are:

- subsidies received for a particular project financed by debt;
- interest earned on sinking funds;
- reserves or other restricted funds;
- revenues, user fees and other receipts pledge for self-liquidating debt or lease rental debt; and
- money from sale of capital assets and other nonrecurring income.

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Local government officials have the responsibility to calculate and certify the borrowing base to the Department of Community and Economic Development (DCED).

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Example: Aleppo Township, Allegheny County

BORROWING BASE CERTIFICATE

The TOTAL REVENUES of the Local Government Unit for the three full fiscal years ended next preceeding the date of incurrence of debt have been calculated as follows:

Fiscal Year (ending December 31)	2008	2009	2010
ALL MONEY RECEIVED	\$ 1,187,780.00	\$ 1,171,659.00	\$ 1,334,577.00
DEDUCTIONS LGUDA Sec. 8002			
(i) Subsidies	\$ -	\$ -	\$ -
(ii) Proj. Receipts	\$ -	\$ -	\$ -
(iii) Sinking Fund Int.	\$ -	\$ -	\$ -
(iv) Grants	\$ -	\$ -	\$ -
(v) Nonrecurring	\$ 15,111.00	\$ -	\$ 100,000.00
Total Deductions	\$ 15,111.00	\$ -	\$ 100,000.00
TOTAL REVENUES	\$ 1,172,669.00	\$ 1,171,659.00	\$ 1,234,577.00

The average of Total Revenues,
(e.g. the BORROWING BASE) is: \$ 1,192,968.33

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The debt limits for non-electoral debt only are as follows:

1. 100% of the borrowing base for the Philadelphia School District
2. 300% of the borrowing base for any country.
3. 225% of the borrowing base for a school district (other than Philadelphia).
4. 250% of the borrowing base for any other LGU.

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The debt limits for non-electoral plus lease rental debt are as follows:

1. 200% of the borrowing base for the Philadelphia School District
2. 400% of the borrowing base for any country.
3. 225% of the borrowing base for a school district (other than Philadelphia).
4. 350% of the borrowing base for any other LGU.

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Debt capacity for City of Scranton

LGU: SCRANTON CITY

Application	Purpose	Special Codes	Comments	Legal Firm	Legal POC	LGU POC	Debt Calculation
Debt Calc As of: 06/11/2012 Emergency Date: Assignment of Debt Date:							
Year: 2009		Year: 2010		Year: 2011			
Revenues: \$56,522,553.00		Revenues: \$55,204,951.00		Revenues: \$55,179,458.00		Borrowing Base: \$55,525,553.00	
Total Electoral Debt:	\$0.00	Total NonElectoral:	\$89,545,009.00	Total Lease Rental:	\$70,112,595.46		
Adjustment Plus (+):	\$0.00	Adjustment Plus (+):	\$0.00	Adjustment Plus (+):	\$0.00		
Adjustment Minus (-):	\$0.00	Adjustment Minus (-):	\$13,251,411.24	Adjustment Minus (-):	\$0.00		
Exclusion Credits (-):	\$0.00	Exclusion Credits (-):	\$0.00	Exclusion Credits (-):	\$60,131,640.64		
Current Exclusion Credits (-):	\$0.00	Current Exclusion Credits (-):	\$0.00	Current Exclusion Credits (-):	\$0.00		
Refund Minus (-):	\$0.00	Refund Minus (-):	\$4,670,000.00	Refund Minus (-):	\$0.00		
Adjusted Total:	\$0.00	Adjusted Total:	\$70,623,598.76	Adjusted Total:	\$17,980,954.82		
Percentage	Maximum Available	Amount Used	Amount Available				
NonElectoral: 250	\$139,065,140.00	\$70,623,598.76	\$68,441,541.24				
NonElectoral Lease Rental: 350	\$154,724,756.00	\$80,504,543.53	\$106,120,212.47				
Assignment of Debt: 100	\$0.00	\$0.00	\$0.00				
Small Borrowings: 30	\$125,000.00	\$0.00	\$125,000.00				
Emergency: 50	\$0.00	\$0.00	\$0.00				

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Debt capacity for City of Pittsburgh

LGU: PITTSBURGH CITY

Application	Purpose	Special Code	Comments	Legal Firm	Legal POC	LGU POC	Debt Calculation
Debt Calc As of: 02/08/2012 Emergency Date: Assignment of Debt Date:							
Year: 2009		Year: 2010		Year: 2011		Borrowing Base: \$435,122,531.30	
Revenues: \$419,924,360.00		Revenues: \$431,787,384.00		Revenues: \$453,656,279.00			
Total Electoral Debt:	\$0.00	Total NonElectoral:	\$693,830,000.00	Total Lease Rental:	\$1,392,500.00		
Adjustment Plus (+):	\$0.00	Adjustment Plus (+):	\$0.00	Adjustment Plus (+):	\$0.00		
Adjustment Minus (-):	\$0.00	Adjustment Minus (-):	\$231,005,000.00	Adjustment Minus (-):	\$0.00		
Exclusion Credits (-):	\$0.00	Exclusion Credits (-):	\$0.00	Exclusion Credits (-):	\$0.00		
Current Exclusion Credits (-):	\$0.00	Current Exclusion Credits (-):	\$0.00	Current Exclusion Credits (-):	\$0.00		
Refund Minus (-):	\$0.00	Refund Minus (-):	\$46,455,000.00	Refund Minus (-):	\$0.00		
Adjusted Total:	\$0.00	Adjusted Total:	\$415,270,000.00	Adjusted Total:	\$1,392,500.00		
Percentage	Maximum Available	Amount Used	Amount Available				
NonElectoral: 250	\$1,097,336,702.50	\$415,270,000.00	\$671,336,702.50				
NonElectoral Lease Rental: 350	\$1,622,363,383.50	\$417,762,500.00	\$1,105,166,883.50				
Assignment of Debt: 100	\$0.00	\$0.00	\$0.00				
Small Borrowing: 30	\$125,200.00	\$0.00	\$125,200.00				
Emergency: 50	\$0.00	\$0.00	\$0.00				

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EXCLUSIONS FROM THE DEBT LIMITS

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Self-Liquidating and Subsidized Debt

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- **Self-liquidating** debt is any debt which is payable solely from rents, rates or charges on users of facilities financed by such debt, or from special levies or assessments of benefits earmarked exclusively for the purpose of repaying the debt.
- Revenues generated by the facility or the levies must be sufficient to pay both the operating expenses of the facility and the debt service as it comes due.

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Example:

The guaranteed revenue bonds issued by Aleppo Township were excluded as self-liquidating because the user fees paid by the Township residents will be sufficient to pay the operating expenses of the facility as well as the debt service on the bonds.

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- **Subsidized debt** is debt payable from the Commonwealth, Federal Government or subsidy contract with another local government or authority.
- Subsidies to be received must be sufficient to cover the debt service payments.

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Example:

In 2011 South Fayette Township School District in Allegheny County issued \$12,569,000.00 in general obligation debt to construct a new elementary school. A portion of the debt was excluded because of subsidies to be received from the Pennsylvania Department of Education.

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EXCEEDING THE DEBT LIMITS

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The Legislature has built into the Act a mechanism to increase the debt limits in certain circumstances.

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Countywide Programs

For any county assuming countywide responsibility for specified programs, the law allows additional debt in the amount of 100% of its borrowing base.

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The programs specified in the law include the following:

- Hospitals and other public health services
- Air and water pollution control
- Flood control
- Environmental protection
- Water distribution and supply systems
- Sewage and refuse collection and disposal systems
- Education at any level
- Highways
- Public transportation or port operations

The additional debt may only be incurred to finance capital facilities for use in any of the above programs.

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Emergency Debt

With approval of the County Court of Common Pleas, an LGU may exceed its statutory limit when faced with an emergency.

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The court must find that the debt incurrence is necessary for one of the following reasons:

1. To replace assets lost as a result of fire, flood, storm, war, riot, civil commotion or other catastrophe.
2. To replace or improve facilities to protect the public health or safety.
3. To pay a tort liability settlement not covered by insurance.
4. To meet costs of complying with federal or state mandates, such as those for health, safety pollution control or environmental protection facilities.

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UNFUNDED DEBT

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- **Unfunded debt** are current obligations of the LGU for expenses incurred in the same or prior years, or for court judgments against the LGU, which the LGU's revenues are insufficient to pay without drastically curtailing services.
- In addition, the LGU must be unable to raise sufficient tax revenue to pay these obligations because of tax limits, timing in the fiscal year, or because it would not be in the public interest to do so.

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Unfunded debt can be funded through a borrowing approved by the County Court of Common Pleas. The court has the power to exclude all or a portion of the debt from the LGUs non-electoral debt limit.

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- If the court approves the LGU paying the unfunded debt through borrowing, it will determine a debt repayment schedule that does not jeopardize the LGU's ability to provide services or require the levy of excessive taxes.
- The life of the debt may not exceed 10 years.

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Example:

In 2011 the court in Lackawanna County approved the County borrowing of \$21,000,000.00 to fund unfunded debt to pay current operating expenses and outstanding indebtedness because tax revenues would not be sufficient.

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PROCEDURAL REQUIREMENTS FOR BORROWING

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- Electoral, Non-electoral and lease rental debt require the enactment of an ordinance or resolution
- In the case of electoral debt, the LGU must first adopt a resolution signifying its determination to incur electoral debt and calling for a referendum on the debt incurrence. A majority of voters must approve the debt before the LGU may proceed.

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- The ordinance is both an information tool for the LGU's citizens and a means to officially begin the process of incurring debt.
- Notice of the ordinance must be published both before and after its enactment.

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DCED Filings

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Prior to issuing most types of debt, LGUDA requires LGUs to make filings with the DCED.

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The application filed with DCED must include the following:

- The return of the election (if electoral debt).
- The ordinance or resolution with proofs of publication of the notice.
- The accepted proposal for the purchase of the bonds or notes.
- The debt statement and certificate of borrowing base.
- Certification and proof of any amount that could be excluded from the debt limits as self-liquidating or subsidized debt.

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- DCED reviews the filings to ensure the LGU does not exceed its debt limits and that it has complied with all the procedures stipulated by LGUDA.
- DCED is given 20 days from receipt of filing to conduct its review and to notify the LGU of its approval or disapproval.

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DCED will issue either a certificate of approval or a certificate of disapproval to the LGU. If DCED cannot approve the application, it must notify the LGU of its reasons.

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- DCED may extend the review period by a maximum of 20 days.
- During the DCED review period, the validity of the proceedings may be challenged.
- In the event of a challenge, DCED has jurisdiction to review the regularity of the proceedings and the *legality* of the purpose for which the debt is incurred, not the wisdom of incurring the debt.

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DEBT STATEMENT

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2007 LGUDA Approvals

Electoral	13 issues	\$51,397,000
Nonelectoral	701 issues	\$4,296,390,840
Lease Rental	125 issues	\$667,787,957
Total	839 issues	\$5,015,575,797

Of this total, the following exclusions were claimed

147 issues	\$850,777,665
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2008 LGUDA Approvals

Electoral	8 issues	\$71,200,000
Nonelectoral	748 issues	\$5,713,400,684
Lease Rental	138 issues	\$469,237,805
Total	894 issues	\$6,253,838,489

Of this total, the following exclusions were claimed

138 issues	\$557,387,797
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2009 LGUDA Approvals

Electoral	12 issues	\$76,480,000
Nonelectoral	929 issues	\$7,494,933,808
Lease Rental	166 issues	\$888,349,495
Total	1107 issues	\$6,253,838,489

Of this total, the following exclusions were claimed

185 issues \$848,571,498

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2010 LGUDA Approvals

Electoral	24 issues	\$120,165,000
Nonelectoral	981 issues	\$7,250,274,894
Lease Rental	138 issues	\$697,392,601
Total	1143 issues	\$8,067,832,496

Of this total, the following exclusions were claimed

132 issues \$772,873,215

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2011 LGUDA Approvals

Electoral	10 issues	\$33,760,000.00
Nonelectoral	838 issues	\$5,861,602,868
Lease Rental	167 issues	\$620,409,934
Total	1015 issues	\$6,515,772,802

Of this total, the following exclusions were claimed

136 issues	\$729,441,582
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SMALL BORROWING FOR CAPITAL PURPOSES

LGUDA permits LGUs to issue small amounts of nonelectoral debt, up to a certain threshold, without the need to receive the approval of the Department of Community and Economic Development.

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- The total amount of debt issued in this fashion is limited, in the aggregate, to the lesser of \$125,000 or 30 percent of the LGU's non-electoral debt limit.
- The maturity may not exceed five years, and it may not cause the total debt outstanding to exceed the statutory debt limits.
- This particular borrowing technique may be used only for capital projects; it cannot be used for refunding or funding unfunded debt, or for lease rental debt.

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Example:

In 2012 Dravosburg Borough in Allegheny County borrowed \$50,000.00 to purchase a dump truck.

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TAX AND REVENUE ANTICIPATION NOTES

- Short-term tax or revenue anticipation notes (TANs or TRANs) may be issued to alleviate a cash flow problem arising because budgeted taxes or revenues have not yet been received, but will be by the end of the fiscal year.
- The notes are not "debt" obligations and do not count against the statutory debt limits.
- The maximum amount of which can be borrowed on tax or revenue anticipation notes is 85 percent of the estimated taxes (revenues) which remain to be collected in the current fiscal year or during the period in which the note will be outstanding, whichever is less.
- The TAN/TRAN must be stated to mature no later than the last day of the fiscal year in which it is issued.

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Before the TAN/TRANs become legal and valid, they must be filed with the DCED. This filing must contain the following items:

- A written certification of the estimate of expected taxes (revenues), signed by municipal officials, and dated no more than 30 days prior to the date of the notes are authorized.
- Certified copies of the authorizing and warding resolution.
- A true copy of the accepted proposal for the purchase of the notes.

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The filing with DCED is for information purposes only; DCED's approval is not necessary for the issuance of TAN/TRANS.

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Example:

In June of 2012, Elizabeth Forward School District in Allegheny County borrowed \$3,400,000.00 in order to meet current expenses. This TAN will be repaid with taxes and revenues during the fiscal year ending June 30, 2013.

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QUALIFIED INTEREST RATE MANAGEMENT AGREEMENTS

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- 2003 amendments to LGUDA authorized LGUs to negotiate and enter into “qualified interest rate management agreements” to manage interest-rate risk.
- Examples of QUIRMAs include swaps, interest rate caps, collars, corridors, ceiling and floor agreements, forward agreements and float agreements.

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- The LGU must retain an "independent financial advisor" to advise the LGU.
- The independent financial adviser must be experienced in the financial aspects and risks of interest rate management agreements.
- Before the LGU may enter into a QUIRMA, the independent financial advisor must give an opinion that the QUIRMA contains financial terms and conditions are "fair and reasonable" to the LGU.

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Distressed LGUs may not enter into QUIRMAs.

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- DCED approval is not required for the QUIRMA.
- The LGU is required to file a copy of the authorizing resolution with DCED, and DCED is required to keep copies of the filed documents as long as the QUIRMA is in effect.
- Since 2003 DCED has received SWAP filings relating to over 700 different debt issues.

Ayres, Warren

From: rdm@escm.com
Sent: Monday, March 24, 2003 8:20 AM
To: Kroboth, Robert
Cc: Giorgione, Andrew; Carol P. Cocheres (E-mail); Best, Carol; Lispi, Dan; Dwight L. White (E-mail); Sutherland, Hugh; James B. Konieczny (E-mail); James F. Losty (E-mail); Schimmel, Judith; Thomas J. Mealy (E-mail); Ayres, Warren
Subject: RE: City of Harrisburg Distribution Memo_v1.DOC

Bob, after the conference call on Thursday and various calls on Friday, Carol and I have the following to report, in response to your questions:

1. After discussion with Jim Losty and Jim Konieczny of RBC Dain Rauscher, the not-to-exceed figure for the 2003 Notes has been reduced from \$95 million to \$82 million, as reflected in the latest draft of the Guaranty Ordinance circulated by Hugh Sutherland.

2. Jim Losty's best guess is that the 2003 Notes will be sized at approximately \$76 or \$77 million. Assuming that the Retrofit goes forward, the latest projections indicate that this debt could be excluded as self-liquidating. Carol has been in contact with counsel at the Pennsylvania Department of Community and Economic Development, who has indicated that the self-liquidating report being prepared by Barlow Engineering, in connection with the issuance of the 2003 Notes, could assume that the Retrofit will take place. By permitting this assumption,

* - DCED will allow submission of a report that excludes the \$76 or \$77 million as self-liquidating.

3. Once the final size of the 2003 Note issue has been determined (and for purposes of this response, let's assume the final size is \$76 million), we could go back to DCED and file a non-completion of sale for the \$6 million excess of the approved amount (\$82 million) over the actual amount (\$76 million), thereby removing the \$6 million from the City's Debt Statement.

4. To summarize:

(1) The City would authorize a guaranty in the amount of \$82 million (representing a not to exceed number).

(2) Barlow would prepare a report concluding that the anticipated size of the 2003 Note issue (\$76 million) is self-liquidating.

(3) DCED approves the guaranty (\$82 million) and the exclusion of self-liquidating debt (\$76 million), increasing the City's net lease rental debt by \$6 million, but decreasing it by the amount of the 2000 Notes being refunded by the 2003 Notes - remember, the 2000 Notes indebtedness was not excluded as self-liquidating.

(4) When RBC Dain Rauscher sizes the 2003 Notes, the difference between the approved amount (\$82 million) and the actual amount (\$76 million) would be removed by DCED from the City's Debt Statement pursuant to a non-completion of sale notification.

5. With respect to the amount to be budgeted by the City, that

question
is more properly addressed to Hugh Sutherland, and I imagine his
response
will depend on the requirements of a commitment letter for bond
insurance,
to be delivered by FSA. I do not believe that the commitment letter has
been issued yet.

I hope this begins to answer your questions.

"Kroboth,

Robert"
<Carol.Best@obermayer.com>,
<RobertK@cityo
<JudithS@cityofhbg.com>,
fhbg.com>
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03/21/2003
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Harrisburg Distribution

To: "Best, Carol"

"Schimmel, Judith"

"Lispi, Dan"

Mealy (E-mail)"

Losty (E-mail)"

B. Konieczny (E-mail)"

<james.konieczny@rbcdain.com>,

(E-mail)" <dwmesiro@aol.com>,

Michael/ESCM@ESCM, Carol

"Ayres, Warren"

"Sutherland, Hugh"

cc:

Subject: RE: City of

Memo_v1.DOC

Hello All,

Sorry I missed the conference call at 4:30 yesterday. I had a Board meeting that ran later than expected and got back late. I have three questions for Carol Cocheres and Dick Michael related to increasing the Guarantee Ordinance to a maximum \$95,000,000. First, does this changed maximum level impact the City's borrowing capacity? Second, if so, has Bruce determined that sufficient borrowing capacity exists based on the borrowing base data I supplied to the team previously? Finally, is the City (General Fund) going to have to budget for the maximum annual debt service as guarantor in addition to that amount which would normally be budgeted by THA (Incinerator's annual budget) for each years debt service

O'Hara, Jack

From: Giorgione, Andrew
Sent: Wednesday, November 19, 2003 11:40 AM
To: Giorgione, Andrew; 'Losty, James'; 'ron.barmore@barlowprojects.com'; 'Carol Porell Cocheres'; 'Daniel R. Lispi'; Sutherland, Hugh; 'J. Bruce Walter'; O'Hara, Jack
Subject: RE: Possible Supplement to the SLDR

This issue is resolved. Carol and I spoke with Bernadette and she has all the info. she needs in the existing SLDR.

-----Original Message-----

From: Giorgione, Andrew
Sent: Wednesday, November 19, 2003 8:28 AM
To: 'Losty, James'; ron.barmore@barlowprojects.com; Carol Porell Cocheres; Daniel R. Lispi; Sutherland, Hugh; J. Bruce Walter
Subject: RE: Possible Supplement to the SLDR

There is a need to two increases. I believe in 2016 and 2021. Is this something that should be specifically identified in the Supplement?

-----Original Message-----

From: Losty, James [mailto:James.Losty@Rbcdain.com]
Sent: Wednesday, November 19, 2003 7:58 AM
To: Giorgione, Andrew; ron.barmore@barlowprojects.com; Carol Porell Cocheres; Daniel R. Lispi; Sutherland, Hugh; J. Bruce Walter
Subject: RE: Possible Supplement to the SLDR

I don't have any great revelations here but I do think Ron's report indicates that eh Bonds will be covered throughout the life of the issue even if in some years cash balances are drawn down or a increase in a fee is necessary (I thought we still have the need for a city increase out 12-15 years?). Additionally, if the debt on the 2002 bonds were to be taken out of the "other debt" since we are not seeking self liquidating status on it, the remaining debt would look even better.

-----Original Message-----

From: Giorgione, Andrew [mailto:andrew.giorgione@obermayer.com]
Sent: Wednesday, November 19, 2003 6:34 AM
To: ron.barmore@barlowprojects.com; Losty, James; Carol Porell Cocheres; Daniel R. Lispi; Sutherland, Hugh; J. Bruce Walter
Subject: RE: Possible Supplement to the SLDR

To put this in context, DCED has requested clarity on the issue of whether the debt will be self-liquidating through 2033. DCED was concerned that the proforma attached only shows through 2010. As you recall, we can point specifically to the report where Barlow addresses this issue, but we are considering Ron's comments below as a supplement to the Report.

The issue is whether we should just direct DCED to the language in the Report that says the debt is self-liquidating or should we file the supplement. One concern raised by Dan is that the full proforma shows shortfalls in 2011 and 2016-2019 as noted below. If we highlight this in the supplement, Dan is concerned we may be undermining our SLDR for the 2003 bonds, which show them to be self-liquidating.

We need to get back to DCED today on this issue. I would ask that you provide any

11/19/03

comments this morning on this issue.

Andrew

-----Original Message-----

From: Ron Barmore [mailto:ron.barmore@barlowprojects.com]

Sent: Tuesday, November 18, 2003 6:36 PM

To: James Losty; Giorgione, Andrew; Carol Porell Cocheres; Daniel R. Lispi; Sutherland, Hugh; J. Bruce Walter

Subject: Possible Supplement to the SLDR

In the event that a supplement is required to address the self liquidating nature of the debt for the full term of the bonds the following statement can be made:

As indicated in the **Report on Exclusion of Self-Liquidating Debt** dated 11/13/2003,

"Based on the assumptions for the implementation of the developed strategies, the Authority Retrofit budget, the Authority operating plan and budget, and resultant projections of revenues and expenses set forth in Exhibit 3, the estimated gross revenues computed should be adequate to pay the operating and maintenance expenses of the System, pay the annual debt service on the Retrofit Bonds and related periodic payments on the related swap and cap transactions, meet the annual debt service payments of the 1998A Bonds and meet the annual debt service payments on the other outstanding notes and bonds of the System."

To further clarify the statement referenced above, the annual net revenues from the project are projected to meet all debt service payments for the Retrofit Bonds and related periodic payments on the related swap and cap transactions and meet the annual debt service payments of the 1998A Bonds in each year through the maturity of the respective issues.

In several years during the term of the project a minor contribution from the Cash Surplus accumulated from prior year net revenues will be required to fully meet the annual debt service payments on the other outstanding notes and bonds of the System. The table below illustrates the years and the amounts that will be required:

Year	
2011	\$ 7,000
2016	\$659,000
2017	\$577,000
2018	\$564,000
2019	\$536,000

The project is projected to build a Cash Surplus of over \$10 million by 2008 and at the end of each of the years mentioned above the Cumulative Cash Surplus is projected to remain in excess of \$10 million.

Ron Barmore
Barlow Projects, Inc.
878-228-8557
WWW.BarlowProjects.com

11/19/03

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11/19/03

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**SUITE 400
200 LOCUST STREET
HARRISBURG, PA 17101**

**(717) 234-9730
FAX (717) 234-9734
www.obermayer.com**

FILE NO. 57285-027

**ANDREW J. GIORGIONE
EXTENSION: 1315
E-MAIL: Andrew.Giorgione@Obermayer.com**

November 19, 2003

VIA HAND DELIVERY

**Bernadette Barattini, Esquire
Assistant Counsel
Department of Community and Economic Development
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120-0225**

**Re: The Harrisburg Authority
Guaranteed Resource Recovery Refunding Bonds, Series D-F of 2003**

Dear Ms. Barattini:

Pursuant to your electronic mail of November 14, 2003, enclosed please find amended pages 1-3 of the Debt Statement related to the Application for Approval with attachments of the City of Harrisburg Lease Rental Debt in the Maximum Aggregate Principal Amount of \$125,000,000 relating to The Harrisburg Authority Guaranteed Resource Recovery Facility Revenue Bonds, Series D of 2003, Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series E of 2003 and Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series F of 2003.

In the revised pages to the Debt Statement, we added to the City's lease rental debt the Harrisburg Parking Authority Guaranteed Parking Revenue Refunding Bonds, Series O of 2003 (the "Series O Bonds") (approved October 31, 2003) and removed from the City's lease rental debt the two series of Bonds to be refunded with the proceeds of the Series O Bonds (and other available moneys), i.e., (i) the Harrisburg Parking Authority Federally Taxable Guaranteed Parking Revenue Refunding Bonds, Series G of 1994 and (ii) the Harrisburg Parking Authority Tax-Exempt Guaranteed Parking Revenue Refunding Bonds, Series H of 1994. This correction resulted in changes on pages 1-3 of the Debt Statement filed with you on November 14, 2003. Accordingly, pages 1-3 from the attached Debt Statement should be substituted for pages 1-3 in the previously filed copy.

**PHILADELPHIA
PENNSYLVANIA
497320**

**HARRISBURG
PENNSYLVANIA**

**PITTSBURGH
PENNSYLVANIA**

**CHERRY HILL
NEW JERSEY**

**VINELAND
NEW JERSEY**

**WILMINGTON
DELAWARE**

BIRHBG025262

Bernadette Barattini, Esquire
Assistant Counsel
Department of Community and Economic Development
November 19, 2003
Page 2

In addition, the following is in response to the your other questions of November 14th regarding the Schedules:

1. All of the schedules submitted were exhibits to the Ordinance when it was enacted.
2. The City is seeking approval for the not to exceed amount of \$125,000,000.
3. The not to exceed amount is the aggregate amount of the 3 separate series of Bonds to be issued by the Authority: Series 2003D, Series 2003E and Series 2003F.

The Series 2003D Bonds in the maximum principal amount of \$96,480,000 will be issued as variable rate bonds. Accordingly, we submitted a schedule showing annual debt service at the maximum interest rate on the Bonds (i.e., 12%) and a separate schedule showing annual debt service on the Series 2003D Bonds bearing interest at an assumed Bank Bond Rate (i.e., 25%), during an assumed 5-year term-out period to address circumstances in which the Series 2003D Bonds are not remarketed and are purchased and held by a Liquidity Provider. There are no debt service totals at the bottom of this schedule because it is unknown when the Series 2003D Bonds may become Bank Bonds subject to the Bank Bond Rate and the 5-year term-out provision; accordingly, the maximum annual debt service is shown for each year of the term of the Series 2003D Bonds. This second schedule addresses a possible future event; the Series 2003D Bonds are expected to be initially marketed at a "Long Term Rate" which will be a fixed rate for an initial multi-year term, during which no Liquidity Facility will be employed.

The Series 2003E Bonds in the maximum principal amount of \$14,500,000 will be issued bearing interest at a fixed rate. Accordingly, we submitted a schedule showing debt service at a not to exceed maximum rate of 7%.

The Series 2003F Bonds in the maximum principal amount of \$14,020,000 will be issued bearing interest at a fixed rate. Accordingly, we submitted a schedule showing debt service at a not to exceed maximum rate of 7%.

Paragraph 7 of the Ordinance, submitted along with the Application package on November 14th, identifies the purpose of each of the schedules.

I trust this responds to your inquires. Please contact me if you have any further questions.

Sincerely,


Andrew J. Giorgione

Enclosures

c: Hugh Sutherland, Esq. (w/out enclosures)

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC
DEVELOPMENT**

**Certificate of Approval
Local Government Unit Debt Act**

Date:

Approval No.:

Amount:

For Secretary of Community and Economic Development

**CITY OF HARRISBURG
DAUPHIN COUNTY, PENNSYLVANIA**

APPLICATION FOR APPROVAL

**In the Matter of the Proposed
Incurrence of, and Exclusion of, Indebtedness in
Accordance with the Provisions of the
Local Government Unit Debt Act**

**PAID
NOV 14 2003**

**DCED
LGUDA**

**To: THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
HARRISBURG, PENNSYLVANIA**

**City of Harrisburg
Lease Rental Debt in the
Maximum Aggregate Principal Amount
of \$125,000,000 relating to**

The Harrisburg Authority

**Guaranteed Resource Recovery Facility Revenue Bonds,
Series D of 2003**

**Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds,
Series E of 2003**

**Guaranteed Federally Taxable Resource Recovery Facility
Revenue Bonds, Series F of 2003**

The undersigned duly authorized officer of the City of Harrisburg, Dauphin County, Pennsylvania (the "City"), herewith makes application pursuant to Section 8111 of the Local Government Unit Debt Act for approval of the incurring of the above-mentioned debt and for the exclusion of such debt pursuant to Section 8026 of the Local Government Unit Debt Act.

The complete transcript of the proceedings which are herewith submitted in support of the "Application for Approval" consists of the following:

1. Certified copy of the Ordinance authorizing, among other things, the incurrence of lease rental debt in connection with a Guaranty Agreement in the aggregate principal amount not to exceed \$125,000,000 relating to The Harrisburg Authority's Guaranteed Resource Recovery Facility Revenue Bonds, Series D of 2003, Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series E of 2003 and Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series F of 2003 (collectively, the "Retrofit Bonds").
2. Proofs of Publication of said "Debt Authorizing Ordinance":
 - (a) Notice of Proposed Enactment; and
 - (b) Notice of Final Enactment.
3. Debt Statement.
4. Borrowing Base Certificate.
5. Section 8110(b) Certificate.
6. Self-Liquidating Debt Report, in support of the City's application to exclude from the calculation of the City's lease rental debt the entire principal amount of the Retrofit Bonds.
7. Filing Fee.

IN WITNESS WHEREOF, I, the City Clerk of the City of Harrisburg,
Dauphin County, Pennsylvania, have hereunto set my hand and affixed the seal of
the City this 7th of November, 2003.

CITY OF HARRISBURG
DAUPHIN COUNTY, PENNSYLVANIA

By: Vicki J. Williams
City Clerk

(SEAL)

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OBERMAYER REBMANN MAXWELL & HIPPEL LLP

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HARRISBURG, PA 17101

(717) 234-9730
FAX (717) 234-9734
www.obermayer.com

FILE NO. 57285-027

ANDREW J. GIORGIONE
EXTENSION: 1315
E-MAIL: Andrew.Giorgione@Obermayer.com

November 14, 2003

VIA HAND DELIVERY

Bernadette Barattini, Esquire
Assistant Counsel
Department of Community and Economic Development
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120-0225

**Re: The Harrisburg Authority
Guaranteed Resource Recovery Refunding Bonds, Series D-F of 2003**

Dear Ms. Barattini:

Enclosed please find the filing fee and the original and one (1) copy of the Application for Approval with attachments of the City of Harrisburg Lease Rental Debt in the Maximum Aggregate Principal Amount of \$125,000,000 relating to The Harrisburg Authority Guaranteed Resource Recovery Facility Revenue Bonds, Series D of 2003, Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series E of 2003 and Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series F of 2003.

Please contact me if you have any questions concerning this Application.

Sincerely,

Andrew Giorgione / wvl

Andrew J. Giorgione

Enclosures

c: Hugh Sutherland, Esq. (w/out enclosures)

PHILADELPHIA
PENNSYLVANIA
495746

HARRISBURG
PENNSYLVANIA

PITTSBURGH
PENNSYLVANIA

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002235 COMMONWEALTH OF PENNSYLVANIA

10/27/03

COMPUTER
CHECK NO.

105482

YOUR INVOICE NO.	INVOICE DATE	AMOUNT	DISCOUNT	NET AMOUNT	VOUCHER NO.
57285-27/JVO-	10/27/03			3,956.25	73522
				3,956.25	

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OBERMAYER REBMANN MAXWELL & HIPPEL LLP

FIRST UNION

CHECK NO. 105482

ATTORNEYS AT LAW

One Penn Center • 19th Floor

1617 John F. Kennedy Blvd. • Philadelphia, PA 19103-1896

3-50/310

THREE THOUSAND NINE HUNDRED FIFTY-SIX DOLLARS & TWENTY-FIVE
CENTS

DATE 10/27/03

AMOUNT OF CHECK

\$3,956.25

PAY TO THE ORDER OF

COMMONWEALTH OF PENNSYLVANIA

VOID AFTER 90 DAYS

AUTHORIZED SIGNATURE

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

⑈ 105482 ⑈ ⑆ 031000503 ⑆ 2100007691174 ⑈

BIRHBG025155

Giorgione, Andrew

From: Barattini, Bernadette [bbarattini@state.pa.us]
Sent: Monday, November 17, 2003 1:04 PM
To: Giorgione, Andrew
Subject: RE: Harrisburg City filing

I continued with my review of these proceedings and I could not locate in the exclusion report a reference which indicates that covers the full life of the issues being excluded. The revenue/expense projections go out to only 2010.

-----Original Message-----

From: Giorgione, Andrew [mailto:andrew.giorgione@obermayer.com]
Sent: Monday, November 17, 2003 7:11 AM
To: Barattini, Bernadette
Subject: RE: Harrisburg City filing

Bernadette -

I will confer with some of the members of the finance team and will be back to you shortly with a response.

As per my prior email, you will be receiving the County of Dauphin's debt proceedings on its guaranty of this issue shortly. I believe the County is waiting for the second proof.

Went to see our beloved Eagles yesterday. Stopped at Pat's Steaks before the game. Nothing like a steak with Wiz at 10 am on a Sunday. The new Stadiums are very impressive.

A

-----Original Message-----

From: Barattini, Bernadette [mailto:bbarattini@state.pa.us]
Sent: Friday, November 14, 2003 4:39 PM
To: Giorgione, Andrew
Subject: Harrisburg City filing

To: Attorney Giorgione:

I have begun a review of these debt proceedings. Please advise as to the different schedules filed –which ones are we to use in our system; which one represent the “correct” schedule? The ordinance referred to a ‘not to exceed’ amount – we have a schedule totaling \$96,480,000, at 12%, another schedule with no total at 25%, a third schedule for \$14,500,000 at 7% and a fourth schedule for \$14,020,000 at 7%. We need to know: 1) which schedule(s) were in place at the time of enactment of the ordinance; and 2) which is the correct schedule reflecting what will actually be issued. What amount is the City seeking approval for – the ‘not to exceed’ of some lesser amount? If I add up the three schedules with totals at the bottom (first, third and fourth) it totals \$125,000 – are these the correct schedules and are these being issued as separate series? Please clarify before we can continue.

I will also note, in glancing at the debt statement, that the amount of debt shown in footnote 2 – the \$18,000,000 approved, should be shown as outstanding debt rather than the debt which it refunds (shown as outstanding in the amount of \$17,350,000).

Thank you.

11/17/03

BIRHBG025153

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HARRISBURG, PA 17101

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FILE NO. 57285-027

ANDREW J. GIORGIONE
EXTENSION: 1315
E-MAIL: Andrew.Giorgione@Obermayer.com

November 20, 2003

VIA HAND DELIVERY

Bernadette Barattini, Esquire
Assistant Counsel
Department of Community and Economic Development
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120-0225

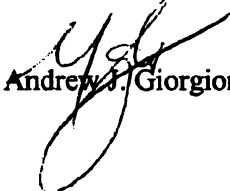
**Re: The Harrisburg Authority
Guaranteed Resource Recovery Refunding Bonds, Series D-F of 2003**

Dear Ms. Barattini:

Please substitute the attached schedule as Exhibit C-2 to the City of Harrisburg Guaranty Resolution. You will note that the principal amount is corrected to \$19,296,000 per year. The Underwriter had previously rounded up that amount to \$19,300,000 on the assumption that the amount needed to be rounded to the next highest \$5,000 bond principal amount.

Please contact me if you have any questions concerning this letter or the attached.

Sincerely,


Andrew J. Giorgione

Enclosures

c: Hugh Sutherland, Esq. (w/out enclosure)

PHILADELPHIA
PENNSYLVANIA
497589

HARRISBURG
PENNSYLVANIA

PITTSBURGH
PENNSYLVANIA

CHERRY HILL
NEW JERSEY

VINELAND
NEW JERSEY

WILMINGTON
DELAWARE

BIRHBG025146

Giorgione, Andrew

From: Barattini, Bernadette [bbarattini@state.pa.us]
Sent: Friday, November 14, 2003 4:39 PM
To: Giorgione, Andrew
Subject: Harrisburg City filing

To: Attorney Giorgione:

I have begun a review of these debt proceedings. Please advise as to the different schedules filed – which ones are we to use in our system; which one represents the “correct” schedule? The ordinance referred to a ‘not to exceed’ amount – we have a schedule totaling \$96,480,000, at 12%, another schedule with no total at 25%, a third schedule for \$14,500,000 at 7% and a fourth schedule for \$14,020,000 at 7%. We need to know: 1) which schedule(s) were in place at the time of enactment of the ordinance; and 2) which is the correct schedule reflecting what will actually be issued. What amount is the City seeking approval for – the ‘not to exceed’ of some lesser amount? If I add up the three schedules with totals at the bottom (first, third and fourth) it totals \$125,000 – are these the correct schedules and are these being issued as separate series? Please clarify before we can continue.

I will also note, in glancing at the debt statement, that the amount of debt shown in footnote 2 – the \$18,000,000 approved, should be shown as outstanding debt rather than the debt which it refunds (shown as outstanding in the amount of \$17,350,000).

Thank you.

Bernadette Barattini
Deputy Chief Counsel
Office of Chief Counsel
Department of Community and Economic Development
Commonwealth Keystone Building
4th Floor
400 North Street
Harrisburg, PA 17120

telephone: 717-720-7309
e-mail address: bbarattini@state.pa.us

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FOR COPIES OF LGUDA FORMATS AND OPINIONS, SEE WEBSITE BELOW.

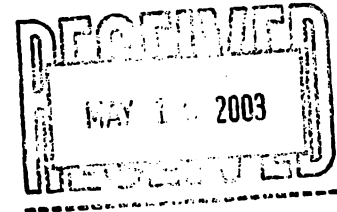
Come Invent the Future <http://www.inventpa.com>

11/17/03

BIRHBG025280



**Pennsylvania Department of Community and Economic Development
Office of Chief Counsel**



We return the enclosed proceedings submitted under the provisions of the Local Government Unit Debt Act. Our approval is stamped thereon.

Also enclosed is the Commonwealth receipt to cover the statutory filing fee.

If any portion of your debt issue is being used to fund unfunded pension fund liability, please note that pursuant to Section 8116 of the Act, you must file certified copies of the ordinance or resolution awarding the bonds or notes and the certificate of approval of the Department with the Public Employee Retirement Commission.

Very truly yours,



**Bernadette Barattini, Deputy Chief Counsel
Local Government Unit Debt Act**

Enc.

**Eckert Seamans
Cherin & Mellott**

MAY 15 2003

Harrisburg, PA

Commonwealth Keystone Building • 400 North Street • 4th Floor • Harrisburg, PA 17120-0225
(717) 720-7309
bbarattini@state.pa.us



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FILE NO. 57285-041

ANDREW J. GIORGIONE
EXTENSION: 1315
E-MAIL: Andrew.Giorgione@Obermayer.com

April 21, 2003

VIA HAND DELIVERY

Bernadette Barattini, Esquire
Assistant Counsel
Department of Community and Economic Development
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

**Re: The Harrisburg Authority
Resource Recovery Refunding Bonds, Series A-C of 2003**

Dear Ms. Barattini:

Enclosed please find the filing fee and six (6) originals of the Application for Approval with attachments of the City of Harrisburg Lease Rental Debt in the Maximum Aggregate Principal Amount of \$77,000,000 relating to The Harrisburg Authority Guaranteed Federally Taxable Resource Recovery Facility Subordinate Revenue and Refunding Revenue Notes and/or Bonds, Series A of 2003, its Guaranteed Federally Taxable Resource Recovery Facility Subordinate Variable Rate Refunding Revenue Notes and/or Bonds, Series B of 2003, and its Guaranteed Resource Recovery Facility Subordinate Refunding Revenue Notes and/or Bonds, Series C of 2003.

Please contact me if you have any questions concerning this Application.

Sincerely,


Andrew J. Giorgione

Enclosures

c: Hugh Sutherland, Esq. (w/out enclosures)

PHILADELPHIA
PENNSYLVANIA
452141

HARRISBURG
PENNSYLVANIA

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CHERRY HILL
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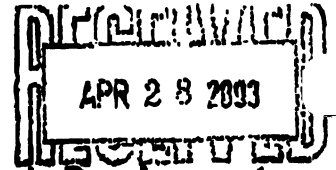
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WILMINGTON
DELAWARE

BIRHBG018140



Pennsylvania Department of Community and Economic Development
Office of Chief Counsel



April 25, 2003

Andrew J. Giorgione, Esquire
Oberman, Rebman, Maxwell and
Hippel, LLP
Suite 400
200 Locust Street
Harrisburg, PA 17101

In re: Harrisburg City - \$77,000,000
Dauphin County

Dear Mr. Giorgione:

We have reviewed the proceedings filed relative to the proposed issuance of lease rental debt. All of the documents appear to be in order, with the exception of the following.

As we discussed this morning, the proceedings were not submitted two-hole punched at the top of the page, as required. Please note this requirement in the future to avoid delays in processing or the return of the proceedings.

77 The ordinance authorizes debt in a maximum amount of \$81 million, although only \$77 million is in fact being issued. Was the final figure arrived at by the time of enactment of the ordinance on April 8th, or was the ordinance enacted at the "not to exceed" amount? If the latter, we will need a debt service schedule set at the maximum parameters to compare with the actual debt service.

Amend report In that regard, I note that the total maturity schedule which is a part of the exclusion report does not total \$77 million, the amount sought to be excluded. We will need appropriate corrections or adjustments to the report to cover the entire amount to be excluded. Also, I could not locate in the exclusion report the project costs, as required, and the projection of revenues and expenses does not appear to cover the life of the issue. Paragraph 22 appears to indicate that the preparer of the report did not feel he could project throughout the life of the issue. This is a requirement of Section 8026 of the LGUDA.

It is unclear in the ordinance as to exactly what prior debt issues, or portions thereof, are being refunded, and there are no amounts identified on the debt statement as being refunded, as required. If a partial refunding, we need to know what maturities or portions of maturities are being refunded. It appears that the permitted purpose for the refunding is to reduce debt service.

Commonwealth Keystone Building • 400 North Street • 4th Floor • Harrisburg, PA 17120-0225
(717) 720-7309
kharatini@state.pa.us

May. 01 2003 09:22AM P2

FAX NO.: 717 232 2338

FROM: MILT LOPUS ASSOCIATES

BIRHBG018111

2
 I am returning the debt statement for correction in order for the principal amount being refunded to be added, and also to clarify the amounts shown as outstanding debt, in respect of the following issues. We show a balance of \$42,700,000 for LRA-3409. The debt statement identifies only \$1,500,000 and a footnote indicates that a portion of that debt has not yet been issued. If the City intends to issue it in the future, then it must still be listed as outstanding. If the City never intends to issue the remaining amount, then we can treat the footnote as a notice of partial noncompletion of sale and remove the remaining balance from our records. Please advise. In addition, we show a balance of \$25,190,000 for LRA-3497 rather than \$11,800,000 as shown. The amount shown for LRA-3690 does not reflect the 5/1/02 payment. *Correct*

Can
 We were not able to locate the following outstanding debt issues on the debt statement: LRA-2074 (1991); LRA-3106 (1998), and LRA-3238 (1998). We do not know that the amount identified as "2001 Series J" - \$29,400,000 relates to, nor the amount identified as "1992 Harristown Development Corp" - \$9,947,683, 1998 "Harrisburg Authority" - \$2,827,585.36 and "Harrisburg Authority" - \$11,100,000. Perhaps these can be matched up with the debt issues we believe are not shown.

1998 A2C
 Finally, we have a "tickler note" in our computer system entered in August of 2002 that indicates that the amount of debt service in later years for LRA-3690 appears to exceed the debt service amounts at approval, and that this was being checked out by the City or bond counsel. Do you have any further information on this matter for us? *no.*

Please submit two copies, two-hole punched at the top of the page, of supplemental or corrected documents, as appropriate, to our office.

Very truly yours,

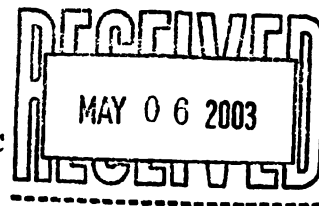
Bernadette Barattini
 Bernadette Barattini, Deputy Chief Counsel
 Local Government Unit Debt Act

Enc.

cat - 1 more

ECKERT SEAMANS CHERIN & MELLOTT, LLC

MEMORANDUM



TO: Bruce A. Barnes
Andrew J. Giorgione, Esq.

FROM: Richard D. Michael, Esq. RDM

DATE: May 5, 2003

RE: The Harrisburg Authority - Resource Recovery Facility Restructuring - 2003 Notes

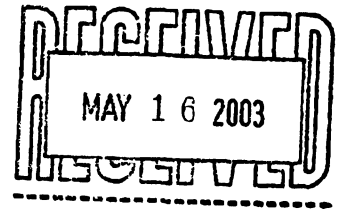
To assist you in preparing a response to Bernadette Barattini of DCED regarding her Debt-Statement questions, I am enclosing copies of responses we have provided to her on December 17, 2001, December 22, 2000 and November 29, 2000, with respect to prior City of Harrisburg Debt Act proceedings. Many of the items raised in her April 25, 2003 letter have been previously addressed with her.

Please call if you have any questions.

RDM:dbb
Enclosures

BIRHBG018108

ECKERT SEAMANS CHERIN & MELLOTT, LLC



213 Market Street
Eighth Floor
Harrisburg, PA 17101

Address correspondence to:
Post Office Box 1248
Harrisburg, PA 17108-1248

Telephone: 717.237.6000
Facsimile: 717.237.6019
www.escm.com

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Pittsburgh

Washington, D.C.

Via Hand Delivery

May 15, 2003

Bernadette Barattini, Esquire
Commonwealth of Pennsylvania
Department of Community and Economic Development
Office of Chief Counsel
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Re: City of Harrisburg, Dauphin County, Pennsylvania - Proceedings for
Approval of Incurrence of \$77,000,000 of Lease Rental Debt, and
Exclusion of Same as Self-Liquidating

Dear Bernadette:

Thank you for speaking with Jim Losty, Carol Cocheres and me yesterday afternoon regarding the above-referenced debt proceedings filed by the City of Harrisburg. In accordance with your request, I am enclosing a Debt Statement of the City of Harrisburg, which references the Department of Community and Economic Development's approval numbers for the incurrence of the debt, and where applicable, the Department's approval numbers for exclusion of the debt as self-liquidating.

As a preliminary matter, in your April 25, 2003 letter to Andrew Giorgione, you raised a question concerning lease rental debt of the City approved at LRA-3690, in connection with the City's guarantee of a bond issue by the Harrisburg Parking Authority. Although our firm was not involved in that bond issue, I was able to secure a final debt service schedule for the bond issue. The schedule indicates that the first principal payment on the bond issue was payable on May 1, 2003, not May 1, 2002. I am enclosing that debt service schedule, as Attachment 1.

In addition, at the bottom of page 2 of the enclosed Debt Statement, I have listed the outstanding principal amounts of certain bonds issued in 1998 by The Harrisburg Authority (the "1998 Bonds"), and certain notes issued by The Harrisburg Authority in 2000 (the "2000 Notes"). As you can see, all of the 2000 Notes, which are guaranteed by the City of Harrisburg (LRA-3497), will no longer be outstanding after The Harrisburg Authority's Series of 2003 Notes are issued. With respect to the 1998 Bonds, a portion of the Series A of 1998 Bonds will not be refunded with proceeds of the Series of 2003 Notes, and will remain

 **ECKERT SEAMANS**
ATTORNEYS AT LAW

Richard D. Michael
717.237.6036
rdm@escm.com

BIRHBG018090

Bernadette Barattini, Esquire
May 15, 2003
Page 2

outstanding. I have attached a debt service schedule (Attachment 2) showing the principal amounts and maturities of the Series A of 1998 Bonds to be refunded, and a debt service schedule (Attachment 3) showing the principal amounts and maturities of the Series A of 1998 Bonds which are not being refunded and which will remain outstanding.

In addition, I am attaching debt service schedules (Attachment 4) listing the maturities and principal amounts of the Series B of 1998 Bonds, Series C of 1998 Bonds, Series D of 1998 Bonds, Series A of 2000 Notes and Series B of 2000 Notes to be refunded; none of this debt will be outstanding after issuance of the Series 2003 Notes.

I hope this information addresses the questions and issues you raised during our conversation yesterday. If you have any further questions or require further information, please contact me.

Very truly yours,



Richard D. Michael

RDM:dbb

cc: *Bruce A. Barnes (w/encs.)*
Andrew J. Giorgione, Esq. (w/encs.)
Carol P. Cocheres, Esq. (w/encs.)
Hugh C. Sutherland, Esq. (w/encs.)

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC
DEVELOPMENT

Local Government Unit Debt Act

Received:

For Secretary of Community and Economic Development

CITY OF HARRISBURG
DAUPHIN COUNTY, PENNSYLVANIA

Certified Copy of Resolution With Appendices

In the Matter of the Guaranty of
Scheduled Periodic Payments Under a
Supplemental Qualified Interest Rate Management Agreement in
Accordance with the Provisions of the
Local Government Unit Debt Act

To: THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
HARRISBURG, PENNSYLVANIA

City of Harrisburg
Guaranty of Scheduled Periodic Payments Under a
Supplemental Qualified Interest Rate Management Agreement With a
Maximum Notional Amount
of \$96,480,000 relating to

The Harrisburg Authority
Guaranteed Resource Recovery Facility Revenue Bonds,
Series D of 2003

RECEIVED

JUL 26 2005

OFFICE OF CHIEF COUNSEL
DCED

633079
7/12/05

BIRHBG068871

The undersigned duly authorized officer of the City of Harrisburg, Dauphin County, Pennsylvania (the "City"), herewith makes this filing pursuant to Section 8284(a)(1) and to Section 8284(a)(2) of the Local Government Unit Debt Act in connection with the City of Harrisburg Guaranty of Scheduled Periodic Payments Under a Supplemental Qualified Interest Rate Management Agreement With a Maximum Notional Amount of \$96,480,000 relating to The Harrisburg Authority Guaranteed Resource Recovery Facility Revenue Bonds, Series D of 2003 (the "2003D Bonds").

The complete transcript of the proceedings which are herewith submitted consists of the following:

1. Certified copy of the Resolution authorizing, among other things, the City of Harrisburg Guaranty of Scheduled Periodic Payments Under a Supplemental Qualified Interest Rate Management Agreement With a Maximum Notional Amount of \$96,480,000 relating to The Harrisburg Authority Guaranteed Resource Recovery Facility Revenue Bonds, Series D of 2003.

Attached to the Certified Copy of Resolution as Exhibits are the following:

- Appendix I Supplemental Interest Rate Management Plan
- Appendix II Supplemental Qualified Interest Rate Management Agreement in substantially final form
- Exhibit "A" Form of Affirmation and Supplement of City Swap Guaranty Agreement
- Exhibit "B-1" Table of Annual Maximum Swap Periodic Payments including Supplement
- Exhibit "B-2" Table of Annual Maximum Cap Periodic Payments
- Exhibit "C" Form of Affirmation and Supplement to Reimbursement Agreement
- Exhibit "D" Schedule of Annual Maximum Net Payments Plus Maximum Lease Rental Debt Service on The Harrisburg Authority Guaranteed Resource Recovery Facility Revenue Bonds, Series D of 2003

2. Proofs of Publication of said "Resolution":

- (a) Notice of Proposed Enactment; and
- (b) Notice of Final Enactment.

Please note that two (2) duplicate copies of this submission are being delivered herewith. The first copy is required by Section 8284(a)(1) of the Debt Act and is filed in connection with the City's Guaranty of Scheduled Periodic Payments under a Qualified Interest Rate Management Agreement.

The second copy is filed pursuant to Section 8284(a)(2) of the Debt Act to evidence the amendment of Ordinance No. 35-2003 as amended by Resolution 162-2003 of the City by adding thereto as a new Exhibit D a combined schedule of maximum net payments per fiscal year for periodic payments guaranteed by the City pursuant to the subject proceedings plus the maximum lease rental debt service on the 2003D Bonds (guaranteed by the City pursuant to the proceedings under Ordinance No. 35-2003 heretofore approved by the department as LRA-4089). Resolution 162-2003 (filed with the department on December 24, 2003) authorized the guaranty by the City of scheduled periodic payments under the original Qualified Interest Rate Management Agreement, which is now being supplemented by an additional swap confirmation.

IN WITNESS WHEREOF, I, the City Clerk of the City of Harrisburg, Dauphin County, Pennsylvania, have hereunto set my hand and affixed the seal of the City this 13th of July, 2005.

CITY OF HARRISBURG,
DAUPHIN COUNTY, PENNSYLVANIA

By: Vicki T. Williams
City Clerk

(SEAL)

Fred Clark (former Authority board member)

King, Randy

From: Giorgione, Andrew [andrew.giorgione@obermayer.com]

Sent: Tuesday, October 14, 2003 1:07 PM

To: King, Randy; Lispi, Dan

Subject: House

Boys -

I have heard from Stan Mitchell that the Rick House issues are as follows:

1. Reynolds (and Freddie) are getting paid \$1m and think they can deliver the votes; and
2. Council is getting nothing; and
3. He is holding the vote until he hears from the Mayor.

I have no clue where this \$1m number is coming from. We have not even finalized the deal yet with Reynolds. Also, I understand Council is getting its money. So, the usual crap is flying.

I guess the Mayor has to speak to Richard. We are running out of time. Kroboth says we are going to need funds asap.

A

10/14/2003

ROBERT H. LONG, JR.¹
SHERILL T. MOYER
JAN P. PADEN
RICHARD B. WOOD
LAWRENCE B. ABRAMS III²
J. BRUCE WALTER
JOHN P. MANBECK
FRANK J. LEBER
PAUL A. LUNDEEN
JACK F. HURLEY, JR.
DAVID B. DOWLING
DAVID F. O'LEARY
DAVID O. TWADDELL
CHARLES J. FERRY
STANLEY A. SMITH
JENS H. DAMGAARD³
DRAKE D. NICHOLAS
THOMAS A. FLEISCH
DEAN H. DUSINBERRE
DONNA M.J. CLARK
CHARLES E. GUTSMALL
PAUL F. WESSILL
SHAWN D. LOCHINGER
JAMES H. CAWLEY

1 ALSO ADMITTED TO THE DISTRICT OF COLUMBIA BAR
2 ALSO ADMITTED TO THE FLORIDA BAR
3 ALSO ADMITTED TO THE MARYLAND BAR
4 ALSO ADMITTED TO THE NEW JERSEY BAR
5 ALSO ADMITTED TO THE NEW YORK BAR

DEAN F. PIERMATTEI
KENNETH L. JOEL
DEBRA M. KRIETE
TODD J. SKILL
DAVID M. BARASCH
THOMAS J. NEHILLA
ROBERT J. TRIBECK
TIMOTHY J. RIEMAN
LOUI J. McLEROY
KEVIN M. GOLD
CARL D. LUNDBLAD
JAMES E. ELLISON
RICHARD E. ARTELL
PAUL J. BRUDER, JR.⁴
JOANNE BOOK CHRISTINE
MICHAEL W. WINFIELD
KATHRYN G. SOPHY
STEPHANIE E. DIVITTORRE
KATHLEEN D. BRUDER⁵
CHRISTY L. PECK
JOHN M. COLE
HEATHER Z. KELLY
JAMES J. JAROCKI
JENNIFER ZIMMERMAN

RHOADS & SINON LLP

ATTORNEYS AT LAW
TWELFTH FLOOR
ONE SOUTH MARKET SQUARE
P.O. BOX 1146
HARRISBURG, PA 17108-1146
TELEPHONE (717) 233-5731
FAX (717) 231-6600
EMAIL jwalter@rhoads-sinon.com
WEBSITE: www.rhoads-sinon.com

June 26, 2003

OF COUNSEL
HENRY W. RHOADS

RETIRED
JOHN C. DOWLING

PAUL H. RHOADS
1907-1984

FRANK A. SINON
1910-2003

JOHN M. MUSSELMAN
1919-1980
CLYLE R. HENDERSHOT
1922-1980

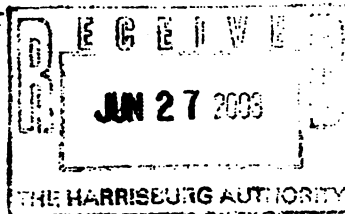
DIRECT DIAL NO.
(717) 233-5731

FILE NO.

6661/01

Re: The Harrisburg Authority – Conflict of Interest

The Harrisburg Authority
Attn: Thomas J. Mealy, Executive Director
One Keystone Plaza, Suite 104
Front & Market Streets
Harrisburg, PA 17101



Dear Tom:

A question has arisen concerning members of the Authority and conflicts of interest in business where they may be involved.

There are essentially two pieces of legislation to be concerned with, the Public Official and Employee Ethics Law, 65 P.S. 401 et seq., and the Municipality Authorities Act, 53 P.S. 301 et seq., repealed, now at 53 Pa. C.S. 5601, et seq. The Public Official and Employee Ethics Law excuses from the definition of "Conflict of Interest" a diminimus economic impact situation. This would exclude any transaction in which the financial interest of the member does not comprise more than 5% of the equity of the business or more than 5% of the assets of the economic interest in indebtedness. Given that definition, the Ethics Act does not appear to be a difficulty for the facts as presented.

The provisions of the Municipality Authorities Act is more problematical. At Section 5614(e), the term "conflict of interest" is defined in the following fashion:

"No member of the Authority or officer or employee of the Authority may directly or indirectly be a party to or be interested in any contract or agreement with the Authority if the contract or agreement establishes liability against or indebtedness of the Authority."

Under this definition, any member of the Authority who indirectly is interested in any contract or agreement with the Authority would violate the conflict of interest provisions. Similarly, any contract with the City which requires the Authority to pay or otherwise establish an Authority liability would violate this provision.

RHOADS & SINON LLP

June 26, 2003

Page 2

It is of note that the Municipality Authorities Section is self-executing and any contract or agreement made in violation of the Section is void. This provision would need to be kept in mind in any future dealings of the Authority. The two Acts are to be construed separately. A violation of either one is a problem.

Very truly yours,

RHOADS & SINON LLP

By: 
J. Bruce Walter

STATEMENT OF FINANCIAL INTERESTS

PLEASE PRINT NEATLY

01 LAST NAME FIRST NAME MI SUFFIX
CLARK FREDRICK A MA

J2 STREET ADDRESS (work or residence) City State Zip Code Area Code Phone
COUNTY OF RESIDENCE DAUPHIN

03 STATUS Check applicable block or blocks, more than one block may be marked. (See instructions on page 2)
A Candidate (including write-in) C ☒ Public Official (Current) D Public Employee (Current) Check here if this is an amended form
B Nominee C Public Official (Former) D Public Employee (Former)

04 PUBLIC POSITION OR PUBLIC OFFICE (member, Commissioner, job title, etc.) you are seeking ☒ hold held
A HARRISBURG AUTHORITY
B

05 POLITICAL SUBDIVISION/AGENCY in which you are/were an Official or Employee, or are a candidate or nominee (Twp., Boro, Board, Commission, Dist., Agency, Authority, etc.)
A AUTHORITY
B

06 OCCUPATION OR PROFESSION (This may be the same as block 4) 07 YEAR The information below represents financial interests for the PRIOR year.
CONSULTANT 2003

08 REAL ESTATE INTERESTS (See instructions on page 2) If NONE, check this box. ☒

CREDITORS (See instructions on page 2). If NONE, check this box. ☒
Creditor Interest Rate

10 DIRECT OR INDIRECT SOURCES OF INCOME (Including, but not limited to employment. See instructions on pg. 2) If NONE, check this box. ☐ (OFFICIAL USE ONLY)
Name Address
HARRISBURG AUTHORITY 1136 (PA)
HARRISBURG AUTHORITY 1136 (PA)

11 GIFTS (See instructions on page 2) If NONE, check this box. ☒
Source of Gift Value of Gift
Address of Source of Gift Reason for Gift

12 TRANSPORTATION, LODGING, HOSPITALITY (See instructions on page 2) If NONE, check this box. ☒ Value
Source (Name and Address)

13 OFFICE, DIRECTORSHIP OR EMPLOYMENT IN ANY BUSINESS (See instructions on page 2) If NONE, check this box. ☐
Business Entity Position Held
HARRISBURG AUTHORITY PRESIDENT

14 FINANCIAL INTEREST IN ANY LEGAL ENTITY IN BUSINESS FOR PROFIT (See instructions on page 2) If NONE, check this box. ☒
Name and Address of Business Interest Held

15 BUSINESS INTERESTS TRANSFERRED TO IMMEDIATE FAMILY MEMBER (See instructions on page 2) If NONE, check this box. ☒
Business (Name and Address) Interest Held
Transferee (Name and Address) Relationship Date Transferred

The undersigned hereby affirms that the foregoing information is true and correct to best of said persons knowledge, information and belief; said affirmation being made subject to the penalties prescribed by 18 Pa.C.S.A. §4904 (unsworn falsification to authorities) and the Public Official and Employees Ethics Act, 65 Pa.C.S. §1109(b).

Signature Fredrick A. Clark Date 3.03.04

THIS FORM IS CONSIDERED DEFICIENT IF ALL BLOCKS ABOVE ARE NOT COMPLETED.

STATEMENT OF FINANCIAL INTERESTS

PLEASE PRINT NEATLY

1 LAST NAME CLARK FIRST NAME FREDRICK MI A SUFFIX MR

2 STREET ADDRESS (work or residence) _____ City _____ State _____ Zip Code _____ Area Code (717) Phone _____

COUNTY OF RESIDENCE _____

3 STATUS Check applicable block or blocks, more than one block may be marked. (See instructions on page 2)

A	Candidate (including write-in)	C <input checked="" type="checkbox"/>	Public Official (Current)	D	Public Employee (Current)	Check here if this is an amended form
B	Nominee	C	Public Official (Former)	D	Public Employee (Former)	

4 PUBLIC POSITION OR PUBLIC OFFICE (member, Commissioner, job title, etc.) you are HARRISBURG AUTHORITY seeking ☒ hold ☐ held ☐

5 POLITICAL SUBDIVISION/AGENCY in which you are/were an Official or Employee, or are a candidate or nominee (Twp., Boro, Board, Commission, Dist., Agency, Authority, etc.)

6 OCCUPATION OR PROFESSION (This may be the same as block 4) CONSULTANT / BUS. DEL. DIR. 07 YEAR The information below represents financial interests for the PRIOR year. 2004

8 REAL ESTATE INTERESTS (See instructions on page 2) If NONE, check this box. ☒

9 CREDITORS (See instructions on page 2). If NONE, check this box. ☒

10 DIRECT OR INDIRECT SOURCES OF INCOME (Including, but not limited to employment. See instructions on pg. 2) If NONE, check this box.		(OFFICIAL USE ONLY)
Name	Address	
<u>CLARK ALLOCES</u>	<u>2ND ST HGB FA.</u>	
<u>REYNOLDS CONST.</u>	<u>2310 W. Vaughan</u>	

11 GIFTS (See instructions on page 2) If NONE, check this box. ☒

Source of Gift	Value of Gift
Address of Source of Gift	Reason for Gift

12 TRANSPORTATION, LODGING, HOSPITALITY (See instructions on page 2) If NONE, check this box. ☒

13 OFFICE, DIRECTORSHIP OR EMPLOYMENT IN ANY BUSINESS (See instructions on page 2) If NONE, check this box. ☒

14 FINANCIAL INTEREST IN ANY LEGAL ENTITY IN BUSINESS FOR PROFIT (See instructions on page 2) If NONE, check this box. ☒

15 BUSINESS INTERESTS TRANSFERRED TO IMMEDIATE FAMILY MEMBER (See instructions on page 2) If NONE, check this box. ☒

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Signature: [Signature] Date: March 20, 2005

THIS FORM IS CONSIDERED DEFICIENT IF ALL BLOCKS ABOVE ARE NOT COMPLETED.

STATEMENT OF FINANCIAL INTERESTS

PLEASE PRINT NEATLY

01	LAST NAME CLARK	FIRST NAME FREDRICK	MI A	SUFFIX								
02	STREET ADDRESS (work or residence) [REDACTED]											
	City [REDACTED]	State [REDACTED]	Zip Code 17101	Area Code 717								
	COUNTY OF RESIDENCE DAUPHIN											
03	STATUS Check applicable block or blocks, more than one block may be marked. (See instructions on page 2)											
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<input type="checkbox"/> B Nominee	<input type="checkbox"/> C Public Official (Former)	<input type="checkbox"/> D Public Employee (Former)										
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B	<input type="checkbox"/> seeking	<input type="checkbox"/> hold	<input type="checkbox"/> held									
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	A HARRISBURG AUTHORITY											
	B											
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	CEO/OWNER		2004									
08	REAL ESTATE INTERESTS (See instructions on page 2) If NONE, check this box. <input checked="" type="checkbox"/>											
	NONE											
09	CREDITORS (See instructions on page 2) If NONE, check this box. <input checked="" type="checkbox"/>											
	[REDACTED]											
10	DIRECT OR INDIRECT SOURCES OF INCOME (including, but not limited to employment. See instructions on pg. 2) If NONE, check this box. <input type="checkbox"/>			OFFICIAL USE ONLY								
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[REDACTED]												
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Source (Name and Address)	Value											
[REDACTED]												
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Business Entity	Position Held											
[REDACTED]												
14	FINANCIAL INTEREST IN ANY LEGAL ENTITY IN BUSINESS FOR PROFIT (See instructions on page 2) If NONE, check this box. <input checked="" type="checkbox"/>											
	<table border="0" style="width:100%;"> <tr> <td style="width:60%;">Name and Address of Business</td> <td style="width:40%;">Interest Held</td> </tr> <tr> <td colspan="2">[REDACTED]</td> </tr> </table>				Name and Address of Business	Interest Held	[REDACTED]					
Name and Address of Business	Interest Held											
[REDACTED]												
15	BUSINESS INTERESTS TRANSFERRED TO IMMEDIATE FAMILY MEMBER (See instructions on page 2) If NONE, check this box. <input checked="" type="checkbox"/>											
	<table border="0" style="width:100%;"> <tr> <td style="width:60%;">Business (Name and Address)</td> <td style="width:40%;">Interest Held</td> </tr> <tr> <td colspan="2">[REDACTED]</td> </tr> <tr> <td colspan="2">Relationship</td> </tr> <tr> <td colspan="2">Date Transferred</td> </tr> </table>				Business (Name and Address)	Interest Held	[REDACTED]		Relationship		Date Transferred	
Business (Name and Address)	Interest Held											
[REDACTED]												
Relationship												
Date Transferred												

The undersigned hereby affirms that the foregoing information is true and correct to best of said person's knowledge, information and belief; said affirmation being made subject to the penalties prescribed by 18 Pa.C.S.A. §4904 (unsworn falsification of authorities) and the Public Official and Employees Ethics Act 65 Pa.C.S. §1109(b).

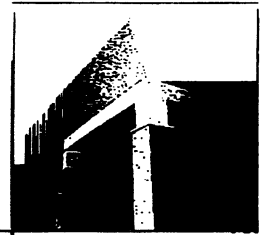
Signature

[Handwritten Signature]

Date

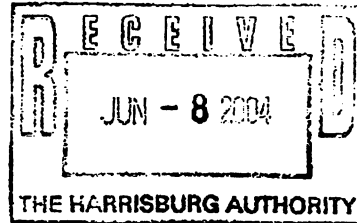
02-07-07

THIS FORM IS CONSIDERED DEFICIENT IF ALL BLOCKS ABOVE ARE NOT COMPLETED.



June 7, 2004

Mr. Thomas Mealy
Executive Director
Harrisburg Authority
1 Keystone Plaza, Suite 104
Front & Market Streets
Harrisburg, PA 17101



RE: The Retrofit Project for the Harrisburg
Materials, Energy, Recycling and Recovery
Facility Project
RCM Project No. 03-1257
Form of Agreement Between Owner and
Construction Manager

Dear Mr. Mealy:

Please find attached six (6) originals of AIA B801 CMA 1992 Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is Not a Constructor, regarding the above referenced project, for your review and signature.

Please be sure to date the first page of all originals. Upon final execution of this Agreement, please return one (1) original to my attention. *7/9/04 Per D. Angle - date Agreements as of 2/16/04. TJM*

If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Sincerely,

REYNOLDS CONSTRUCTION
MANAGEMENT, INC.

David S. Angle
President

DSA:sae

Attachments (6)

cc: Andrew Giorgione, Obermayer Rebmann Maxwell & Hippel, LLP
Dan Lispi, The City of Harrisburg
Corporate File
Project File

3300 NORTH THIRD STREET, HARRISBURG, PA 17110

PHONE: 717.238.5737 FAX: 717.238.9410 WWW.REYNOLDSCONSTRUCTION.COM

Exhibit A

**The Retrofit Project for
The Harrisburg Materials, Energy, Recycling and Recovery Facility
RCM Project #03-1257
Reynolds Construction Management, Inc. - Scope of Services
June 7, 2004**

The following comprises Reynolds' understanding of the Scope of Services that will be provided to The Harrisburg Authority in accordance with The Retrofit Project.

1. The following is a breakdown of the services Reynolds will be providing for the various phases of the Retrofit Project:
 - a. The Retrofit Project – Environmental Remediation Construction. Reynolds will be serving as an owner's representative, assisting the owner in administration of this work.
 - b. The Retrofit Project – Demolition Construction: Reynolds will be serving as Construction Manager for this Scope of Work. The Scope of Work shall include demolition (building/structure/utilities), associated HVAC, Electrical, Plumbing and Temporary Power. Reynolds will provide both preconstruction phase and construction phase services.
 - c. The Retrofit Project – Harrisburg Incinerator Retrofit Construction. Reynolds will provide preconstruction services to assist the owner during the planning of the project. Reynolds will also manage the MBE/WBE Program.
 - d. Cameron Street Steam Line Construction: R. T. Reynolds, Inc. will be serving as Construction Manager for this project. Reynolds will manage the testing of the existing steam line and design of the repairs and modifications and will provide part-time project management during the construction phase.
 - e. The Retrofit Project – Equipment: Reynolds will assist the owner in publicly bidding the following equipment.
 1. Turbine Generator
 2. Exchangers, Condensers and Pumps
 3. Cooling Towers and Fans
 4. Electrical Substation and Switchgear
2. For all work to be publicly bid, Reynolds will perform the following preconstruction tasks:
 - a. Development of Bidding Documents including the development and implementation of Front End documents and the overall bid packaging.
 - b. Bidding will include contractor solicitation to include MBE/WBE participation, Design Document reviews on the Bid-set of documents.
 - c. Pre-bid conference and Pre-bid notifications to contractors.
 - d. Coordination of the actual bid opening and post-bid analysis
3. For the 2.5 Mile Steam line along Cameron Street, Reynolds will perform the following tasks:
 - a. Development and issuance of Request for Qualifications to engineers. For testing and final engineering design.
 - b. Development and issuance of Request for Proposals to engineers for investigations/testing and final engineering design.
 - c. Coordinate and submit testing procedures developed by the engineering company, including coordination of all contractors and engineers relative to the appropriate construction work for testing.

STATEMENT OF FINANCIAL INTERESTS
PLEASE PRINT NEATLY

01 **LAST NAME** OKURA **FIRST NAME** FREDRICK **MI** A **SUFFIX** III

02 **STREET ADDRESS** (work or residence) _____ **City** _____ **State** _____ **Zip Code** _____ **Area Code** (717) **Phone** _____

COUNTY OF RESIDENCE _____

03 **STATUS** Check applicable block or blocks, more than one block may be marked. (See instructions on page 2)

<input type="checkbox"/> A	Candidate (including write-in)	<input type="checkbox"/> C	Public Official (Current)	<input type="checkbox"/> D	Public Employee (Current)	Check here if this is an amended form
<input type="checkbox"/> B	Nominee	<input type="checkbox"/> C	Public Official (Former)	<input type="checkbox"/> D	Public Employee (Former)	

04 **PUBLIC POSITION OR PUBLIC OFFICE** (member, Commissioner, job title, etc.) you are **seeking** ☒ **hold** ☒ **held** ☐
A MEMBER OF THE PENNSYLVANIA STATE ETHICS COMMISSION
seeking ☐ **hold** ☐ **held** ☐
B _____

05 **POLITICAL SUBDIVISION/AGENCY** in which you are/were an Official or Employee, or are a candidate or nominee (Twp., Boro, Board, Commission, Dist., Agency, Authority, etc.)

A _____

B _____

06 **OCCUPATION OR PROFESSION** (This may be the same as block 4) CONSULTANT / BUS. DEV. DIR. 07 **YEAR** The information below represents financial interests for the **PRIOR** year 2004

08 **REAL ESTATE INTERESTS** (See instructions on page 2) **If NONE, check this box.** ☒

09 **CREDITORS** (See instructions on page 2). **If NONE, check this box.** ☒
Creditor _____ Interest Rate _____

10 **DIRECT OR INDIRECT SOURCES OF INCOME** (Including, but not limited to employment. See instructions on pg. 2) **If NONE, check this box.** (OFFICIAL USE ONLY)
Name _____ Address _____
LINK XL TRUCK 201 STINGRAY
LYNDOLPH CORP. 2300 W. VAUGHAN

11 **GIFTS** (See instructions on page 2) **If NONE, check this box.** ☒
Source of Gift _____ Value of Gift _____

Address of Source of Gift _____ Reason for Gift _____

12 **TRANSPORTATION, LODGING, HOSPITALITY** (See instructions on page 2) **If NONE, check this box.** ☒ Value _____
Source (Name and Address): _____

13 **OFFICE, DIRECTORSHIP OR EMPLOYMENT IN ANY BUSINESS** (See instructions on page 2) **If NONE, check this box.** ☒
Business Entity _____ Position Held _____

14 **FINANCIAL INTEREST IN ANY LEGAL ENTITY IN BUSINESS FOR PROFIT** (See instructions on page 2) **If NONE, check this box.** ☒
Name and Address of Business _____ Interest Held _____

15 **BUSINESS INTERESTS TRANSFERRED TO IMMEDIATE FAMILY MEMBER** (See instructions on page 2) **If NONE, check this box.** ☒
Business (Name and Address) _____ Interest Held _____
Transferee (Name and Address) _____ Relationship _____
Date Transferred _____

I, undersigned hereby affirms that the foregoing information is true and correct to best of said persons knowledge, information and belief; said affirmation being made subject to the penalties prescribed by 18 Pa.C.S.A. §4904 (unsworn falsification to authorities), and the Public Official and Employees Ethics Act, 65 Pa.C.S. §1109(b)

Signature _____

Date March 10, 2005

THIS FORM IS CONSIDERED DEFICIENT IF ALL BLOCKS ABOVE ARE NOT COMPLETED.

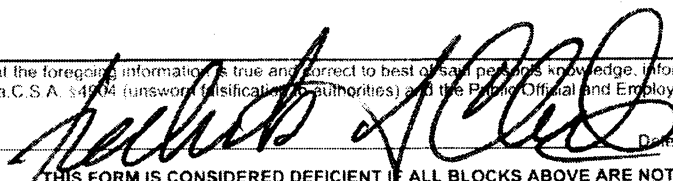
STATEMENT OF FINANCIAL INTERESTS

PLEASE PRINT NEATLY

01	LAST NAME	FIRST NAME	MI	SUFFIX
	CLARK	FREDRICK	A	
02	STREET ADDRESS (work or residence)			
	[REDACTED]			
	COUNTY OF RESIDENCE <u>DAUPHIN</u>			
03	STATUS Check applicable block or blocks, more than one block may be marked. (See instructions on page 2)			
	A <input type="checkbox"/> Candidate (including write-in)	C <input checked="" type="checkbox"/> Public Official (Current)	D <input type="checkbox"/> Public Employee (Current)	<input type="checkbox"/> Check this block if you are amending an original filing
	B <input type="checkbox"/> Nominee	C <input type="checkbox"/> Public Official (Former)	D <input type="checkbox"/> Public Employee (Former)	
04	PUBLIC POSITION OR PUBLIC OFFICE (member, Commissioner, job title, etc.) you are			
	A <u>BOARD MEMBER</u> <input type="checkbox"/> seeking <input checked="" type="checkbox"/> hold <input type="checkbox"/> held			
	B <input type="checkbox"/> seeking <input type="checkbox"/> hold <input type="checkbox"/> held			
05	POLITICAL SUBDIVISION/AGENCY in which you are/were an Official or Employee, or are a candidate or nominee (Twp., Boro, Board, Commission, Dist., Agency, Authority, etc.)			
	A <u>HARRISBURG AUTHORITY</u>			
	B			
06	OCCUPATION OR PROFESSION (This may be the same as block 4)		07 YEAR The information below represents financial interests for the PRIOR year	
	<u>CEO/OWNER</u>		<u>2004</u>	
08	REAL ESTATE INTERESTS (See instructions on page 2) If NONE, check this box. <input checked="" type="checkbox"/>			
	<u>NONE</u>			
09	CREDITORS (See instructions on page 2) If NONE, check this box. <input checked="" type="checkbox"/>			Interest Rate
	Creditor			
10	DIRECT OR INDIRECT SOURCES OF INCOME (including, but not limited to employment. See instructions on pg. 2) If NONE, check this box. <input type="checkbox"/>			(OFFICIAL USE ONLY)
	Name <u>CLARK RESOURCES</u> Address <u>321 N. FRONT ST. HARRISBURG, PA 17101</u>			
11	GIFTS (See instructions on page 2) If NONE, check this box. <input checked="" type="checkbox"/>			Value of Gift
	Source of Gift			
	Address of Source of Gift			
	Reason for Gift			
12	TRANSPORTATION, LODGING, HOSPITALITY (See instructions on page 2) If NONE, check this box. <input checked="" type="checkbox"/>			Value
	Source (Name and Address)			
13	OFFICE, DIRECTORSHIP OR EMPLOYMENT IN ANY BUSINESS (See instructions on page 2) If NONE, check this box. <input checked="" type="checkbox"/>			Position Held
	Business Entity			
14	FINANCIAL INTEREST IN ANY LEGAL ENTITY IN BUSINESS FOR PROFIT (See instructions on page 2) If NONE, check this box. <input checked="" type="checkbox"/>			Interest Held
	Name and Address of Business			
15	BUSINESS INTERESTS TRANSFERRED TO IMMEDIATE FAMILY MEMBER (See instructions on page 2) If NONE, check this box. <input checked="" type="checkbox"/>			Interest Held
	Business (Name and Address)			Relationship
	Transferee (Name and Address)			Date Transferred

The undersigned hereby affirms that the foregoing information is true and correct to best of said person's knowledge, information and belief; said affirmation being made subject to the penalties prescribed by 18 Pa.C.S.A. §4904 (unsworn falsification to authorities) and the Public Official and Employees Ethics Act, 65 Pa.C.S. §1109(b).

Signature



Date

02-07-07

THIS FORM IS CONSIDERED DEFICIENT IF ALL BLOCKS ABOVE ARE NOT COMPLETED.

FINANCIAL ADVISOR'S REPORT:

Mr. Barnes reported that he had distributed a written report to the board, and that an update to the Harrisburg School District financing will be in the approximate amount of \$64 or \$74 Million. He also advised that he believes the financing will be ready for the next Authority meeting in July. He will keep the board updated.

Mr. Clark inquired as to whether the future financing of the retrofit for the incinerator would be an Authority financing with a City guarantee. Mr. Clark then requested that a meeting and/or conference call be set up as soon as possible between himself, the Authority's Solicitor and it's Executive Director to discuss the participation of Mr. Clark in another role regarding the Authority's retrofit project of the incinerator.

Mr. Clark also requested a meeting with Mr. Barnes, to discuss a diversity role for the Resource Recovery Retrofit financing project.

REPORT OF COUNSEL:

It was noted by Mr. Walter that a written report had been prepared and distributed to the board. There were no questions or comments to the written report.

GENERAL PUBLIC COMMENTS:

No individuals present expressed a desire or requested an opportunity to speak to the members of the board or to make a public comment.

OLD BUSINESS:

None.

NEW BUSINESS:

A motion was made by Mr. House, seconded by Mr. Clark, that the Chairman be authorized to execute the following Change Order No. 8 issued to *Natgun Corporation* relative to the *Lower Reservoir Replacement Project*, to provide all labor, materials and equipment necessary to establish the modified final grade elevations as determined by The Harrisburg Authority and to provide a discharge hose to transport overflow from the system to a storm water catch basis, *resulting in a total net contract price increase of \$8,849.75 and no change to the contract completion date.* The motion was unanimously approved.

A motion was made by Mr. House, seconded by Mr. Clark, that the Chairman be authorized to execute the following Change Order No. 9 issued to *Natgun Corporation* relative to the *Lower*



REYNOLDS

BUILDING PARTNERS

101
3300 NORTH THIRD STREET, HARRISBURG, PA 17110
(717) 238-5737 ♦ (717) 238-9410 FAX

WWW.REYNOLDSCONSTRUCTION.COM

August 6, 2003

Mr. Dan Lispi
City of Harrisburg
City Government Center
10 North 2nd Street
Harrisburg, PA 17101

Dear Mr. Lispi:

Thank you for meeting with Rick, Jessica, and myself on Friday, July 25, 2003 to discuss the proposed waste to energy facility project. Reynolds is very interested in providing services to the City of Harrisburg which will assist them in making this a successful project.

Subsequent to our meeting on July 25, 2003, we met with representatives from Barlow Projects, Inc., to review the technical aspects of the project and to listen to their thoughts on how Reynolds could contribute to the project as a member of the project team. Based on their recommendations and our telephone conversation on Tuesday, August 5th, we are submitting a proposal for agency construction management services for the project as well as a proposal to provide an Owner's Representative.

Reynolds believes that the agency construction management approach will provide the most benefit to the City on this project for the following reasons:

- The City will maintain greater control of the project
- The public bidding laws will be more easily met
- MBE/WBE participation can be controlled (please note that both proposals include management of the MBE/WBE program.)
- Bonding can be allocated to multiple primes with the aggregate equaling the project cost
- Multiple prime contracts will encourage local bid participation

Enclosed you will find two proposals for:

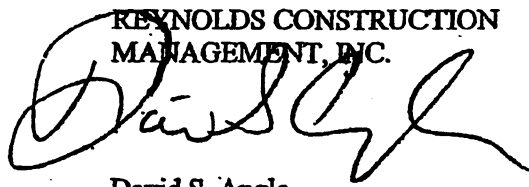
- Owner's Representative Services and
- Construction Management Services

Each proposal includes a delineation of work tasks, estimated hours, proposed rates, and projected costs. We would be glad to meet with you and the appropriate members of the project team to review our proposals and answer any questions. We will consider any adjustments to the scope of work based on your input, and adjust our proposal accordingly.

Reynolds looks forward to working with the City and their project team on this exciting project, and to be a part of the continued growth and improvement of the City of Harrisburg. Please call me if you should have any questions regarding our proposals.

Sincerely,

REYNOLDS CONSTRUCTION
MANAGEMENT, INC.



David S. Angle
President

DSA:jem

Attachments

cc: Fred Rimmer, The Harrisburg Authority
Tom Mealy, The Harrisburg Authority
Joel Baker, Reynolds Construction Management
File - 101

HARRISBURG WASTE TO ENERGY FACILITY PROPOSAL FOR SERVICES

The City of Harrisburg is planning to retrofit their existing incinerator facility, using the latest technology available. The designer and builder of the new waste to energy facility is Barlow Projects Inc. from Fort Collins, Colorado. The City has requested that Reynolds Construction Management Inc. submit a proposal to provide an Owner's Representative during the final design and bid phases and during the construction and commissioning phases of the project.

Reynolds has met with the City's representative for the project, Dan Lispi, on several occasions in order to fully understand the scope of work of the project. We have also met with Barlow Projects' executives Ron Barmore and Jack Akins to review the technical aspects of the project and to discuss their role on the project. The meeting with Barlow was very informative and Reynolds came away with a great deal of information including a partial set of design documents.

Based on the input from Barlow Projects Inc., Reynolds is submitting two proposals to the City for their consideration; one is for providing an Owner's Representative for the duration of the project and the other is for full construction management of the project.

A. Owner's Representative Option

Reynolds proposes to provide an onsite project manager to act as the Owner's Representative during the duration of the project. This person will have the full staff of Reynolds Construction Management Inc. as a resource and will have necessary clerical support. Reynolds project manager will be an integral member of the Owner's team. In addition, Reynolds will provide staff and consulting services to manage the MBE/WBE program.

Scope of Work:

- Project Planning and Administration
- Review /Comment on Budgets and Estimates
- Review/Comment on Schedule
- Attend Meetings
- Management of the MBE/WBE Program
- Review/Comment on Bid Documents
- Assist with Bidding and Local Participation
- Assist with Receipt of Bids and Contract Awards
- Project Oversight/Administration
- Attend Meetings
- Manage MBE/WBE Program During Construction
- Quality Enhancement
- Budget and Cost Control
- Review Schedules
- Project Documentation
- Coordinate with Commissioning
- Coordinate Inspection/Punchlist
- Coordinate Close-Out Documents



HARRISBURG WASTE TO ENERGY FACILITY PROPOSAL FOR SERVICES

B. Construction Management Option

Barlow Projects has proposed that the construction, beyond the core facility, be broken down into multiple bid packages and be publicly bid utilizing a construction manager.

Barlow would be responsible for the design and construction of the core facility including but not limited to the equipment from the feed chute to the economizer. Work outside this area, including services such as electric, steam piping, etc. to their equipment, would be part of the bid packages managed by the construction manager.

Reynolds proposes to provide agency construction management services to assist the city with the management of the entire project, acting as the owner's agent, and to manage the construction of the work outside the core facility. In addition, Reynolds will provide staff and consulting services to manage the MBE/WBE program. Reynolds will provide a full on site staff including a Project Manager, Project Superintendent, Project Coordinator and technical support as required.

Scope of Work:

- Project Management, Planning and Administration
- Prepare Budgets and Estimates
- Prepare Project Schedule
- Attend Meetings
- Management of the MBE/WBE Program
- Prepare Bid Packages
- Bid Project
- Assist with Receipt of Bids and Contract Awards
- Project Oversight/Administration
- Chair Meetings
- Manage MBE/WBE Program During Construction
- Budget and Cost Control
- Update Schedules and Schedule Control
- Project Documentation
- Quality Enhancement
- Contractor Coordination
- Coordinate with Commissioning
- Coordinate Inspections/Punchlist
- Coordinate Clout-Out Documents



HARRISBURG WASTE TO ENERGY FACILITY FEE PROPOSAL FOR OWNER'S REPRESENTATIVE SERVICES

Pre-Construction/Bidding Phase (12 Weeks)

Staff Position	Task	Hours	Rate	Amount
Sr. Project Mgr.	Project Planning & Administration	80	\$100	\$8,000
Sr. Project Mgr.	Review/Comment on Budgets & Estimates	60	\$100	\$6,000
Sr. Project Mgr.	Review/Comment on Schedule	20	\$100	\$2,000
Sr. Project Mgr.	Attend Meetings	40	\$100	\$4,000
Sr. Project Mgr.	Coordinate with MBE/WBE Program	40	\$100	\$4,000
Sr. Project Mgr.	Review/Comment on Bid Documents	40	\$100	\$4,000
Sr. Project Mgr.	Assist with Bidding and Local Participation	80	\$100	\$8,000
Sr. Project Mgr.	Assist with Receipt of Bids and Contract Awards	60	\$100	\$6,000
Arch./Civil/Structural Est.	Review Budgets and Estimates	40	\$100	\$4,000
Mechanical Est.	Review Budgets and Estimates	40	\$100	\$4,000
Electrical Est.	Review Budgets and Estimates	40	\$80	\$3,200
General		80	\$40	\$3,200
Sub-Total		620		\$56,400

Construction Phase (78 Weeks)

Staff Position	Task	Hours	Rate	Amount
Sr. Project Mgr.	Project Oversight/ Administration	3,000	\$100	\$300,000
Sr. Project Mgr.	Attend Meetings			
Sr. Project Mgr.	Coordinate with MBE/WBE Program			
Sr. Project Mgr.	Quality Enhancement			
Sr. Project Mgr.	Budget and Cost Control			
Sr. Project Mgr.	Review Schedules			
Sr. Project Mgr.	Project Documentation			
Arch./Civil/Structural Est.	Technical Support	100	\$100	\$10,000
Mechanical Est.	Technical Support	100	\$100	\$10,000



HARRISBURG WASTE TO ENERGY FACILITY FEE PROPOSAL FOR OWNER'S REPRESENTATIVE SERVICES

Electrical Est.	Technical Support	100	\$80	\$8,000
Clerical		800	\$40	\$32,000
Sub-Total		4,100		\$360,000

MBE/WBE Program

Staff Position	Task	Hours	Rate	Amount
Consultants		21	\$5,000	\$105,000
Fred Clark	Coordination of MBE/WBE	300	\$110	\$33,000
Clerical		300	\$40	\$12,000
Sub-Total		621		\$150,000

Commissioning Close-Out Phase (12 Weeks)

Staff Position	Task	Hours	Rate	Amount
Sr. Project Mgr.	Project Oversight/ Administration	480	\$100	\$48,000
Sr. Project Mgr.	Attend Meetings			
Sr. Project Mgr.	Coordinate with Commissioning			
Sr. Project Mgr.	Coordinate Inspections/Punchlist			
Sr. Project Mgr.	Coordinate Close-Out Documents			
Clerical		100	\$40	\$4,000
Sub-Total		580		\$52,000

Reimbursable Expenses

Expense	Months	Unit Price	Amount
Pre-Construction Reimbursable Expenses	3	\$300	\$900
Photocopies	21	\$150	\$3,150
Postage/UPS	21	\$100	\$2,100
Jobsite Office Space	21	\$250	\$5,250
Jobsite Office Equipment/Computer	21	\$250	\$5,250

HARRISBURG WASTE TO ENERGY FACILITY FEE PROPOSAL FOR OWNER'S REPRESENTATIVE SERVICES

Jobsite Office Supplies	21	\$50	\$1,050
Jobsite Office Telephone	21	\$150	\$3,150
Miscellaneous Costs	Blank Sum	N/A	\$1,050
Sub-Total			\$21,900

TOTAL FEE

Pre-Construction/Bidding Phase \$56,400
 Construction Phase \$360,000
 MBE/WBE Program \$150,000
 Commissioning/Close-Out \$52,000
 Reimbursables \$21,900
TOTAL \$640,300

HARRISBURG WASTE TO ENERGY FACILITY FEE PROPOSAL FOR CONSTRUCTION MANAGEMENT SERVICES

Pre-Construction/Bidding Phase (12 Weeks)

Staff Position	Task	Hours	Rate	Amount
Sr. Project Mgr.	Project Management, Planning & Administration	80	\$100	\$8,000
Sr. Project Mgr.	Prepare Budgets and Estimates	80	\$100	\$8,000
Sr. Project Mgr.	Prepare Project Schedule	40	\$100	\$4,000
Sr. Project Mgr.	Attend Meetings	40	\$100	\$4,000
Sr. Project Mgr.	Coordinate with MBE/WBE Program	40	\$100	\$4,000
Sr. Project Mgr.	Assist with Receipt of Bids and Contract Awards	60	\$100	\$6,000
Asst. Project Mgr.	Prepare Bid Packages	60	\$68	\$4,080
Asst. Project Mgr.	Bid Project	120	\$68	\$8,160
Arch./Civil/Structural Est.	Prepare Budgets and Estimates	80	\$100	\$8,000
Mechanical Est.	Prepare Budgets and Estimates	100	\$100	\$10,000
Electrical Est.	Prepare Budgets and Estimates	100	\$80	\$8,000
Scheduler	Prepare Project Schedule	40	\$68	\$2,720
Clerical		120	\$40	\$4,800
Sub-Total		960		\$79,760

Construction Phase (78 Weeks)

Staff Position	Task	Hours	Rate	Amount
Sr. Project Mgr.	Project Oversight/ Administration	3,000	\$100	\$300,000
Sr. Project Mgr.	Chair Meetings			
Sr. Project Mgr.	Coordinate with MBE/WBE Program			
Sr. Project Mgr.	Budget and Cost Control			
Sr. Project Mgr.	Update Schedules and Schedule Control			
Sr. Project Mgr.	Technical Support			
Asst. Project Mgr.	Project Documentation	3,000	\$68	\$204,000
Project Superintendent	Quality Enhancement	3,000	\$90	\$270,000



HARRISBURG WASTE TO ENERGY FACILITY FEE PROPOSAL FOR CONSTRUCTION MANAGEMENT SERVICES

Project Superintendent	Contractor Coordination			
Project Superintendent	Technical Support			
Electrical Est.	Technical Support	200	\$80	\$16,000
Scheduler	Update Schedules	200	\$68	\$13,600
Project Coordinator		3,000	\$40	\$120,000
Sub-Total		12,400		\$923,600

MBE/WBE Program

Staff Position	Task	Hours	Rate	Amount
Consultants		21	\$5,000	\$105,000
Fred Clark	Coordination of MBE/WBE	300	\$110	\$33,000
Clerical		300	\$40	\$12,000
Sub-Total		621		\$150,000

Commissioning Close-Out Phase (12 Weeks)

Staff Position	Task	Hours	Rate	Amount
Sr. Project Mgr.	Project Oversight/ Administration	480	\$100	\$48,000
Sr. Project Mgr.	Attend Meetings			
Sr. Project Mgr.	Coordinate with Commissioning			
Sr. Project Mgr.	Coordinate Inspections/Punchlist			
Sr. Project Mgr.	Coordinate Close-Out Documents			
Project Superintendent	Quality Enhancement	240	\$90	\$21,600
	Contractor Coordination			
Clerical		480	\$40	\$19,200
Sub-Total		1,200		\$88,800

HARRISBURG WASTE TO ENERGY FACILITY FEE PROPOSAL FOR CONSTRUCTION MANAGEMENT SERVICES

Reimbursable Expenses

Expense	Months	Unit Price	Amount
Pre-Construction Reimbursable Expenses	3	\$500	\$1,500
Photocopies	21	\$300	\$6,300
Postage/UPS	21	\$200	\$4,200
Faxes	30	\$200	\$6,000
Jobsite Office Space	21	\$350	\$7,350
Jobsite Office Equipment/Computer	21	\$500	\$10,500
Jobsite Office Supplies	21	\$100	\$2,100
Jobsite Office Telephone	21	\$200	\$4,200
Miscellaneous Costs	Lump Sum	N/A	\$1,350
Sub-Total			\$43,500

TOTAL FEE

Pre-Construction/Bidding Phase	\$79,760
Construction Phase	\$923,600
MBE/WBE Program	\$150,000
Commissioning/Close-Out	\$88,800
Reimbursables	\$43,500
TOTAL	\$1,285,660

Giorgione, Andrew

From: Fred Clark [fclark@reynoldsconstruction.com]
Sent: Monday, January 09, 2006 9:20 AM
To: Giorgione, Andrew; tjmealy@aol.com; LLingle@CityofHBG.com; Sdade@cityofHBG.com; jlukens@cityofhbg.com; ddispi@driconsultingdev.com; jkeller@nextel.blackberry.net; Lhouse@nextel.blackberry.net; Lhouse427@aol.com; bruce@foreman-foreman.com
Subject: RE: Mayoral Meeting

Good Morning Everyone!

Before the suggested 2 30 pm meeting that may take place today, for I saw Bruce, Tom, Andy, and Dan over the last several days and they did not mention there was a meeting schedule to take place on Monday with the Mayor..... No big deal, other than the emails that have just been sent Friday till now.

I was surprise to learn nor did I realize that after our last Harrisburg Authority Meeting, that there was a need or that we were asking or wanting to meet with the Mayor to discuss anything, so I am wondering the following questions if someone would be so kind to reply as to them I would very much appreciate it ... for I honestly do not know the answers.

Who called and asked for today's meeting?

Why are we meeting?

What is it that we want to discuss?

What is the hopeful or successful outcome as to what it is that we wish to accomplish?

If it seems usual to ask these questioning advance, I humbly apolgize in advance for I do not mean to seem too inquisitive.

Thanks

Freddie

From: Giorgione, Andrew [mailto:AGiorgione@klettrooney.com]
Sent: Monday, January 09, 2006 9:01 AM
To: tjmealy@aol.com; LLingle@CityofHBG.com; Sdade@cityofHBG.com; jlukens@cityofhbg.com; ddispi@driconsultingdev.com; jkeller@nextel.blackberry.net; Fred Clark; Lhouse@nextel.blackberry.net; Lhouse427@aol.com; bruce@foreman-foreman.com
Subject: RE: Mayorial Meeting

Dan and I would suggest a meeting at 2:30 in Linda's or Tom's conference rooms to prepare for the meeting with the Mayor.

From: tjmealy@aol.com [mailto:tjmealy@aol.com]
Sent: Friday, January 06, 2006 1:01 PM
To: LLingle@CityofHBG.com; Sdade@cityofHBG.com; jlukens@cityofhbg.com; Giorgione, Andrew; ddispi@driconsultingdev.com; jkeller@nextel.blackberry.net; fclark@reynoldsconstruction.com; Lhouse@nextel.blackberry.net; Lhouse427@aol.com; bruce@foreman-foreman.com
Subject: Mayorial Meeting

I was just informed by the Mayor that the meeting scheduled for Wednesday, January 11th, to discuss the Barlow matter has been rescheduled for Monday, January 9th, at 3:15 pm. The

1/9/2006

BIRHBG003330

2:30

Stephen R. Reed (former Mayor, City of Harrisburg)

October 4, 2012

To: Chairman Eichelberger, Minority Chairman Blake and Members
of the Senate Local Government Committee

The Harrisburg Resource Recovery Facility, which opened in the early 1970's, provided an alternative to the landfilling of municipal solid waste. From its initiation to present day, it is a sophisticated set of components and operations.

The U.S. Congress adopted and the U.S. Environmental Protection Agency (EPA) subsequently implemented a variety of changes and more restrictive standards regarding emissions in the 1990's, which would affect not only the Harrisburg facility but others across the nation.

This gave rise to the planning and ultimate undertaking of the retrofit and upgrade to the Harrisburg facility.

In the course of that planning, a variety of options were considered, including a process of waste disposal involving gasification retention of the existing process with new, replacement equipment, and others.

A process using forced air, that provided better control of the incineration of waste, was ultimately selected. It was in use elsewhere and was considered a better way to dispose of waste through its patented newer technology.

The planned retrofit and upgrade of the facility using this technology was subsequently the subject of many a public meeting and hearing. The Pennsylvania Dept. of Environmental Protection, as required, conducted its own public meetings, as did City Council, the Harrisburg Authority and the County.

At the very heart of the issue of the significantly higher costs--and therefore higher borrowing--that the project precipitated is the question of how the initial project costs would be so under-estimated. To this day, I have never heard a complete answer to this question.

The inventor who developed and had already put the newer technology into use had devised the initial project cost estimate and was to be the one to implement the project.

When City Council reviewed this project in detail and at length, they hired their own independent engineering firm to review the project plan. The Dauphin County Commissioners separately hired their own independent engineering firm to do the same thing. Additionally, the Harrisburg Authority's engineering firm reviewed the project.

At the public meetings and hearings, the project details, including costs, were a matter of full public record for review, questioning and challenge.

In no independent review nor in any testimony or submittals was there a conclusion or warning that the project was significantly under-estimated in costs and that the project would therefore be far more expensive to undertake.

The decisionmakers in this matter, including the City Council, County Commissioners, the Harrisburg Authority board members, and the mayor, are not engineers and would not have any specialized knowledge to assess a cost estimate on a project of this sophistication and technology.

Absent any information to the contrary, there was not an open question of project costs being too low during the decisionmaking process. Had there been---and if the much higher project costs were known---I think it accurate to say the project would not have been started. An alternative would have had to be selected, possibly involving the creation of a new landfill in the area---as the question of how to dispose of municipal solid waste still had to be addressed by one means or another.

Having an upfront accurate cost estimate is obviously key to this whole matter as financing decisions flow from such.

Not having accurate upfront estimates, resulting in far higher costs later to complete the project, would have and has had a cascading adverse effect on the facility debt load.

I would therefore recommend:

(1) That the Local Government Unit Debt Act be amended. We have fairly consistent cost measures and standards for conducting such capital projects as water, sewer and road construction. This is less true when it comes to more specialized capital projects that are not as widely undertaken, such as the Harrisburg Resource Recovery Facility's retrofit and expansion.

As and when more specialized projects come about for submission to the Pennsylvania Dept. of Community and Economic Development, as required by state law, the law should further require that the cost estimates shall be specifically reviewed and verified by an independent reviewer or panel, selected by DCED, who would be expert in the specialized area of construction that is being submitted for DCED review.

This review should be automatic. So as to negate any new costs to taxpayers for doing such a review, the costs should be borne by the applicant submitting the project debt plan to DCED.

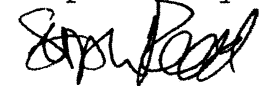
Presently, DCED has a limited time during which to accept and act on any debt submittals. In order to conduct this type of more involved review, the law should be amended to grant DCED the additional time to do so.

As and when cost estimates are verified as credible, DCED can then act to approve the debt issuance. If found not to be credible, DCED would have the option to deny the filing.

(2) Further, the Act could be amended to further set forth that for such specialized projects that require a cost estimate reviewer or panel review, any debt listed as self-liquidating for the project would also be subject to the same verification, which could be done by a reviewer separate from and in addition to whomever is reviewing cost estimates, which would be at the option of DCED to determine. This, too, should be automatic.

These statutory amendments are aimed at preventing a recurrence of the experience involving the Harrisburg Resource Recovery Facility. I would be pleased to assist the Committee and its staff in drafting such amendatory language.

Respectfully submitted:



Stephen R. Reed





Steam Plant

Office of the Mayor

The City of Harrisburg

**City Government Center
10 North Market Square
Harrisburg, PA 17101-1678**

**Stephen R. Reed
Mayor**

(717) 255-3040

December 13, 2001

**to - Honorable, Members
Harrisburg City Council**

re - Retrofit of Incinerator

As promised, this serves to transmit information regarding the planned retrofit of what is generically referred to as the "Incinerator" that is the operational charge of the Department of Incineration and Steam Generation.

The Harrisburg Authority (Authority) owns this two-unit burn municipal waste combustor that began operating in 1973 and the City of Harrisburg operates the Facility under a management agreement with the Authority. The Facility was originally designed to combust 360 tons per day per unit, however, its current maximum capacity is 245 tons per day per unit. The Federal Clean Air Act mandated that all large municipal waste combustors (units larger than 250 tons per day) meet new and more stringent air pollution controls by December 19, 2000. The Harrisburg facility was unable to comply with the new regulations with its existing equipment, and as of December 19, 2000, ceased to operate as a large municipal waste combustor. In January of 2001 the City made physical changes to the units to de-rate their maximum capacity below 250 tons per day, and has operated the facility as a small municipal waste combustor since that time. Pursuant to the terms of consent orders and agreements with the Pennsylvania DEP and the United States EPA, the City must either retrofit the facility to comply with new air pollution requirements, or it must cease to operate the existing units on or before June 18, 2003.

In September 2000 Barlow Projects, Inc. (BPI) presented a preliminary report to the City and the Authority outlining a retrofit concept that offered a modernization option that appeared to be economically feasible. This retrofit option is based on BPI's patented inclined fluidized bed combustion technology. At that time, the preliminary direct construction cost of the work needed for the retrofit was estimated at approximately

**Members, City Council
Page Two
December 13, 2001**

RE: Retrofit of Incinerator

\$ 50 million. In January of this year, at the City's request, The Harrisburg Authority directed BPI to undertake a more detailed feasibility study of retrofitting the Harrisburg Material Energy Recycling and Recovery Facility. Among other things, the purpose of the study was to address several key questions: 1) can the facility be rebuilt using BPI's patented combustion technology to meet current environmental regulatory air emissions criteria and adequately perform for a 25 to 30 year life expectancy; 2) what would be the maximum amount of waste the Facility would be capable of processing and the expected energy output; and 3) what would be the estimated cost of retrofitting the Facility to achieve the performance and compliance required? With this information in hand, the City would be able to better consider its options with respect to making the significant capital investment required for the retrofit versus closing the facility down permanently and seeking other waste disposal options.

The results of the study indicated that from a technical and engineering standpoint, its proprietary technology can be used to successfully retrofit the project. The maximum guaranteed waste throughput was determined to be 720 tons per day, based on waste with heating value of 5200 BTU per pound. Sufficient steam would be available to reliably produce 18 megawatts of electric capacity delivering a new output of over 122 million kilowatt hours per year and 1.57 billion pounds of steam per year would also be available for sale. The total estimate of the direct construction cost for the retrofit, based on the scope of work necessary to return the Facility to a reliable operational status capable of meeting the current regulatory requirements as defined in the feasibility study, is \$67,195,000. A detailed breakdown of the cost estimate is found in Appendix G of the attached report.

The major reason for the increased cost over what was presented in the preliminary report are summarized below:

- The preliminary report was based on a repair of the existing boilers; during the current study, it was determined that the boilers should be replaced;**
- The current study determined that ash extractors, the waste feed system, the overhead cranes, and the pumps must be replaced rather than repaired as initially assumed;**

**Members, City Council
Page Three
December 13, 2001**

RE: Retrofit of Incinerator

- **The cost of equipment to remove nitrogen oxides (selective catalytic nitrogen reduction) from the air was greater than originally estimated;**

- **The current cost includes an expansion of the tipping floor and the pit, asbestos abatement, a contingency and other miscellaneous items and equipment not included in the preliminary estimate.**

With the final project cost now known, the report also identified significant increases in the revenues produced by the project, primarily in energy production. The replacement boilers are more efficient and operate at higher pressure resulting in increased steam and electrical output. In addition, the engineers originally recommended a pollution control system known as a semi-dry scrubber and baghouse system. Upon further study it was determined to be more advantageous to utilize a dry-dry system. Either system is capable of meeting air emission regulations, however, the dry-dry system is able to operate efficiently at much lower exit gas temperatures. This allows for increased energy recovery, and its use is expected to result in a 10% increase in energy sales.

The study also examined the revenue projections from the tipping fees that will be received from the waste delivered to the facility after the facility retrofit is complete and in operation in the Year 2004. The revenue estimates from tipping fees are based on approximately 70% of the waste to be delivered to the Facility at rates currently in place at the facility today, including waste generated in the City.

This means that 70% of the tipping revenues will be guaranteed revenue, received from City customers and from a major new waste contract that has now been executed by The Harrisburg Authority. Market analyses conducted indicate that the remaining 30% of the waste can be obtained in the open market, just as it is now, that will pay competitive rates for waste disposal services. The study contains financial analyses that are found in Appendix H that provide comprehensive detail of all of the key assumptions, expenses and revenues over a range from low to high forecasts. The mid-range or expected case indicates that the Facility is fully capable of generating sufficient revenue to pay all debt service and operating costs, including the payment of all existing debt service, without the use of general tax revenues from the City.

**Members, City Council
Page Four
December 13, 2001**

RE: Retrofit of Incinerator

The Facility has served a valuable public purpose and will continue to do so if retrofitted. Last year, it burned over 188,000 tons of municipal solid waste, produced over 988 million pounds of steam and co-generated 46.4 million Kilowatts of electrical energy. Since these revenue-producing components have existed, the Facility has burned over 4.4 million tons of trash, produced over 14.2 billion pounds of steam and co-generated over 846 million Kilowatts of electricity. This saved over 9.2 million cubic yards of landfill space and produced energy equivalent to more than 800 million gallons of foreign fuel oil. The Facility's operations in Year 2001 will add to these totals.

If the retrofit does not proceed, there are very significant adverse financial impacts on the City. It will produce a loss of \$1.7 million in reimbursement to the General Fund for the monies expended by the General Fund in the Year 2001 for working capital monies. It will eliminate \$2,161,802 in service charges for the Years 2001 and 2002 which go to the General Fund and without which the City would definitely have a major tax increase by the Year 2002, combined with the lay-off of some existing City staff in all City agencies. A failure to retrofit eliminates the \$983,099 payment for the Facility's water and sewer bills, which likely means an increase in these utility rates for the rest of the customers throughout the City.

Worse, if the retrofit does not proceed, it means that the General Fund will have to provide a \$3,513,217 subsidy to the Facility in the Year 2002 and will force the eventual closure of the Facility, causing the lay-off of approximately 60 personnel, with an additional \$1.2 million to be paid out in unemployment compensation benefits and severance pays.

In summary, not going ahead with the retrofit has a fiscal impact of \$9,255,000 in lost revenues in the Year 2002 alone. This would trigger a 5.2 mill tax increase on all property owners at the end of the Year 2002, a \$120 per year increase in the trash disposal fee charged to all City households, and a lay-off of many City staff.

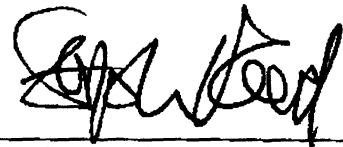
From financial, environmental and long-range planning perspectives, there is every reason to proceed with the retrofit and a failure to do so produces considerable adverse impact, with the City being subsequently forced to dispose of its trash in a distant landfill. Landfills permanently scar the land and are significant generators of methane gas, a key gas contributing to global warming, while a retrofitted Facility has major environmental

**Members, City Council
Page Five
December 13, 2001**

RE: Retrofit of Incinerator

benefits, including the independent generation of energy to reduce the energy grid's dependence on fossil fuels and foreign oil.

Based on the results of the study, I have directed that preparations begin to assemble the necessary elements for a financing of the retrofit of the Harrisburg Materials, Energy, Recycling and Recovery Facility. It is our objective to complete such a financing in two phases (a Bond Anticipation Note for partial project costs and then full permanent project financing) in the Year 2002. Staff will be available to you to give a formal presentation of the results of the report and to answer questions that you or the public may have.



Mayor Stephen R. Reed

**SRR/psr-j
Attachment**

cc of transmittal memo only to:

**Daniel Lispi
John Lukens
Hendrick van Eden
Judith Schimmel, Esquire
Napoleon Saunders
Robert Kroboth**

cc of transmittal with report:

**Otto Banks
Eric Waters
Linda Thompson
Randy King**

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT**

**CERTIFICATE OF APPROVAL
LOCAL GOVERNMENT UNIT DEBT ACT**

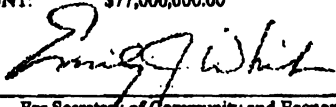
DATE: May 15, 2003

APPROVAL NO.: LRA-3954

AMOUNT: \$77,000,000.00

APPROVAL NO.: E-3295

AMOUNT: \$77,000,000.00



For Secretary of Community and Economic Development

**CITY OF HARRISBURG
DAUPHIN COUNTY, PENNSYLVANIA**

APPLICATION FOR APPROVAL

**In the Matter of the Proposed
Incurrence of, and Exclusion of, Indebtedness in
Accordance with the Provisions of the
Local Government Unit Debt Act**

**To: THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
HARRISBURG, PENNSYLVANIA**

**City of Harrisburg
Lease Rental Debt in the
Maximum Aggregate Principal Amount
of \$77,000,000 relating to**

The Harrisburg Authority

**Guaranteed Federally Taxable Resource Recovery Facility Subordinate
Revenue and Refunding Revenue Notes and/or Bonds,
Series A of 2003**

**Guaranteed Federally Taxable Resource Recovery Facility Subordinate
Variable Rate Refunding Revenue Notes and/or Bonds,
Series B of 2003**

VI. Applicable debt limitations

(a) nonelectoral - 250% of the borrowing base	\$ 106,978,943.00
(b) nonelectoral plus lease rental - 350% of the borrowing base	\$ 149,770,520.00

IN WITNESS WHEREOF, we, the undersigned, Mayor and City Controller, respectively, of the City of Harrisburg, Dauphin County, Pennsylvania, affix our signatures to this Debt Statement of the City, as of this 29th day of November, 2001.

CITY OF HARRISBURG,
DAUPHIN COUNTY, PENNSYLVANIA

By: _____


Mayor

By: _____


City Controller

COMMONWEALTH OF PENNSYLVANIA

SS:

COUNTY OF DAUPHIN

We, the undersigned, first being duly sworn individually according to law, verify, depose and say that: we are the Mayor and City Controller, respectively, of the City of Harrisburg, Dauphin County, Pennsylvania (the "Local Government Unit"); we prepared and executed the foregoing Debt Statement of the Local Government Unit; and the facts contained in the foregoing Debt Statement of the Local Government Unit are true and correct.

CITY OF HARRISBURG,
DAUPHIN COUNTY, PENNSYLVANIA

By: _____

[Signature]
Mayor

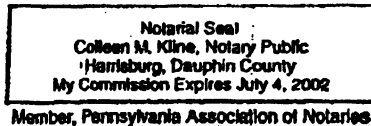
By: _____

[Signature]
City Controller

SWORN TO AND SUBSCRIBED
before me, a Notary Public,
this 29th day of November, 2001.

[Signature]
Notary Public

(SEAL)



(5) Required by Section 8002(c)(16)(v) of the Act	<u>\$7,045,191</u>	<u>\$4,954,695</u>	<u>\$4,544,940</u>
SUBTOTAL	\$7,045,191	\$4,954,695	\$4,544,940

(c) The "Total Revenues", as such phrase is defined in the Act, of the City, for each of the three (3) full fiscal years ended next preceding the date of this Borrowing Base Certificate being, for each such fiscal year, the total amount set forth in Paragraph 2(b) deducted from the amount set forth in Paragraph 2(a), were as follows:

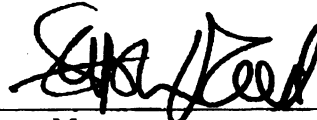
<u>Fiscal Year</u> <u>Ended 12/31/00</u>	<u>Fiscal Year</u> <u>Ended 12/31/01</u>	<u>Fiscal Year</u> <u>Ended 12/31/02</u>
\$42,231,759	\$42,109,035	\$44,033,937

the total of which is \$128,374,731.


(d) The annual arithmetic average of such Total Revenues for the full three (3) years ended next preceding the date of this Borrowing Base Certificate, as such Total Revenues are set forth in Paragraph 2(c), is \$42,791,577.

3. We, the undersigned, further certify that we have made due and proper investigation of and with respect to matters and things involved in this Borrowing Base Certificate.

IN WITNESS WHEREOF, we affix our hands, as of this __th day of April, 2003.



Mayor

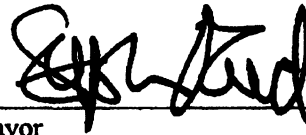


City Controller

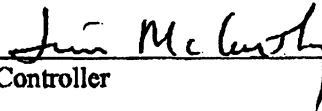
CITY OF HARRISBURG
DAUPHIN COUNTY, PENNSYLVANIA

SECTION 8110(b) CERTIFICATE

In compliance with Section 8110(b) of the Local Government Unit Debt Act, it is hereby certified that with regard to debt of the City of Harrisburg, Dauphin County, Pennsylvania, previously excluded as self-liquidating, credited or as subsidized, no decrease in the amount to be excluded is required by any change in circumstance other than decreases resulting from the payment of bonds or notes.



Mayor



City Controller

Dated: April 8, 2003

King, Randy

From: Giorgione, Andrew [andrew.giorgione@obermayer.com]
Sent: Monday, October 27, 2003 4:34 PM
To: Richard House (E-mail)
Cc: Lispi, Dan
Subject: CITY COUNCIL SPECIAL PROJECTS ACCOUNT
Richard -

Below is the summary of the Special Projects Account, in the manner you discussed it with the Mayor. We spoke to him and he said to conform it to your discussion with him.

Is this acceptable?

Andrew
<<@JRX01!.DOC>>

10/27/2003

**CITY COUNCIL
SPECIAL PROJECTS ACCOUNT**

- A. How will the Account be established?

The Harrisburg Authority will establish a Special Projects Account for City Council.

- B. How and in what amount will the Account be funded?

The Authority will fund the Account at \$500,000.

- C. How can the money be spent?

City Council will make requisitions to the Authority for the expenditure of funds for any lawful purpose. City Council should request that the City Solicitor provide guidelines under the Optional Charter Law and Third Class City Code for lawful expenditures by Council of funds in the Account. Moreover, the City Solicitor can provide guidance on how such funds must be requisitioned for payment, particularly funds in excess of \$10,000. Finally, depending on the parameters provided by the City Solicitor, Council may want to consider establishment of its own internal request, review and approval processes for use of funds, which your Solicitor could draft for you.

✓

CITY OF HARRISBURG

INTEROFFICE MEMORANDUM

LAW BUREAU



DATE: October 31, 2003

TO: Mayor Stephen R. Reed

FROM: Steven R. Dade
Acting City Solicitor

SUBJECT: City Council Special Project Fund

Attached please find a draft memo to Richard House regarding funds for City Council Special Projects. It is my understanding, from Andrew Giorgione and Richard House, that you have agreed in principal to this proposal. I have spoken to Robert Kroboth, Ginger Miller and Tom Mealy regarding this issue and all agree that the attached proposal is the best way to address this matter. I have advised President House that I would have this memo to him first thing Monday morning. Please advise if this memo is in keeping with your discussions with President House.

Encl.

cc w/ Encl.:

cc { Robert Kroboth
Thomas Mealy
Ginger Miller
Andrew Giorgione, Esq.

If all of you keep this up, you will permanently kill the prospect of the retrofit bonds being adopted by Council. The draft you provided does even remotely resemble what was agreed to and, unchanged, what was drafted would almost certainly trigger a negative reaction. With so little time available to this office, I find myself again having to edit and rewrite staff work products. Send the attached as amended.

S. Reed
S. Reed 11-3-03

attachments

CITY OF HARRISBURG

INTEROFFICE MEMORANDUM

LAW BUREAU



DATE: October 31, 2003

TO: Honorable Richard K. House, Sr.
President Harrisburg City Council

FROM: Steven Richard Dade
Acting City Solicitor

SUBJECT: City Council Special Project Funds

This will address the establishment of a Council Special Projects Fund, which can be accomplished in either of the below listed ways.

(1) The sum of \$500,000, ^{designated} representing the settlement and closing cost fee payable to The Harrisburg Authority on the closing of the retrofit bonds, would be placed into an Authority special project account for the exclusive draw and use of Council Members. Funds could be expended for any lawful purpose related to a public project or activity. It would be your option as to whether you would want the fund drawn upon directly by individual ~~#####~~ eligible Council Members by their submitting a requisition under their signature to the Authority or whether Council would want to first have every individual Council Member's requisition first approved by a Council Resolution. Since these are not city funds, you are not legally required to have a Council Resolution.

The Authority already has in place a requisition and payment process, which involves submittal of the requisition or invoice, using a form provided by the Authority. The Authority then accepts the requisition or invoice on pre-approval and sends to the submitting Council Member a final payment voucher, for the Council Member's signature. The Authority then issues the check either to the named vendor or sends the check to the Council Member for his or her ~~#####~~ sending it to the vendor.

All Authority funds are expended in accordance with law, of course, and are annually audited by an independent auditor and this would apply to the Council Special Projects Fund, ^{of course,}

The funds would remain in the account until ultimately drawn and expended and need not be entirely spent in 2004. These are non-lapsing monies that continue in place and under investment until used.

(2) Alternatively, the \$500,000 could be paid by The Harrisburg Authority to the City and the City would insert the allocation into the 2004 Budget within the Department of General Expenses with the sub-heading of Council Special Projects Fund. Funds received by the city, and therefore being city monies, require a different requisition process, which is set forth below.

(new paragraph)

This allocation need not be spent within the 2004 fiscal year, but will remain within the Councilmanic Special Projects account until spent. These funds may be used for any lawful public purpose and must be approved by Resolution of Harrisburg City Council. All such Resolutions should be drafted by the City Solicitor, but at a minimum must be reviewed by the City Solicitor (acknowledged by the Solicitor's signature) prior to introduction at a legislative session. In addition, all resolutions for charitable donations/gifts will include the following language; "Be it hereby further resolved, the City Controller or other appropriate City officials may audit and/or request financial documentation from the recipient to ensure compliance with this Resolution."

After a Resolution has been passed by City Council, availability of funding must be confirmed by the City Clerk. A statement of each member's account will be sent to the City Clerk on a monthly basis. This statement, as well as any Resolutions that had been adopted since the date of that report, should be used to determine each member's available balance. If there is any question regarding the balance in any member's account, the City Clerk should contact the Budget Manager.

After verification of funding availability, if the amount to be given is under \$1,000.00, a request for payment can be entered into the Pentamation System, using the Resolution as documentation for the request. This request should then be sent up to the Controller's Office for review to ensure that it is in compliance with all City guidelines for procurement and payment. Upon review and approval by the Controller's Office, it will be forwarded to the City's Accounting Office to have a warrant (check) cut. These warrants will be issued in accordance with the pre-established cycle of bi-weekly check runs, which coincide with the City's disbursement of payroll.

If the amount is over \$1,000.00, a requisition to obtain a purchase order must be entered into the Pentamation System. A copy of the Resolution should be sent to the Purchasing Office as documentation for the necessity of the requisition. The requisition will then go through the four-step approval process:

- 1) Review by Office of Budget and Analysis for verification of availability of funding, and use of the proper budget unit and account code(s)
- 2) Review by Office Head (City Clerk or designee)
- 3) Review by Purchasing Office to ensure compliance with all City purchasing policies and guidelines, such as need for public bidding process, quotes, etc. (if applicable)
- 4) Review by Office of City Controller to ensure compliance with all City policies and guidelines

After all four approvals have been obtained, the Purchasing Office will convert the requisition into a purchase order and prepare it for all legally required signatures. Per the Optional Charter that the City abides by, all bonds, notes, contracts and written obligations of the City shall be executed on its behalf by the Mayor and the Controller. The original purchase order will be mailed to the recipient of the funds. A copy of the purchase order will be sent to the Office of City Council/City Clerk for record keeping purposes and entering of request for payment.

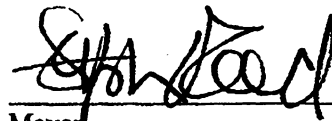
After the copy of the purchase order has been received in Office of City Council/City Clerk, a request for payment should be entered into Pentamation. The same policies and procedures that were described above for the amount less than \$1,000.00 will apply here and should be followed.

Warrants for payment will be available 5 business days following the date of issuance.

CITY OF HARRISBURG
DAUPHIN COUNTY, PENNSYLVANIA

SECTION 8110(b) CERTIFICATE

In compliance with Section 8110(b) of the Local Government Unit Debt Act, it is hereby certified that with regard to debt of the City of Harrisburg, Dauphin County, Pennsylvania, previously excluded as self-liquidating, credited or as subsidized, no decrease in the amount to be excluded is required by any change in circumstance other than decreases resulting from the payment of bonds or notes.



Mayor



City Controller

Dated: November 13, 2003

THE HARRISBURG AUTHORITY

**RESOLUTION NO. 1991-001
As Amended November 18, 2002**

WHEREAS, in January 1990, The Harrisburg Authority proposed to Harrisburg City Council that its Articles of Incorporation be amended to expand its powers to operate as a general purpose authority, and

WHEREAS, Harrisburg City Council adopted and approved the amendment to the Articles of Incorporation of The Harrisburg Authority making it a general purpose authority; and

WHEREAS, The Harrisburg Authority has an extensive and experienced track record associated with issuing tax exempt and taxable bonds and notes; and

WHEREAS, The Harrisburg Authority is now capable of serving as a viable vehicle for financing non-city related projects by non-city tax exempt and taxable entities without risk or liability to the City of Harrisburg or to The Harrisburg Authority; and

WHEREAS, the undertaking of issuing tax exempt and taxable bond and notes for non-city related entities would create an additional revenue source from the issuer fees and annual service fees charged on such bonds and notes; and

WHEREAS, the City of Harrisburg has requested The Harrisburg Authority to create a "City Special Projects Reserve Fund" in which all non-city issuer fees and service fees and any other revenues derived from such transactions be deposited and placed; and

WHEREAS, all such funds in the "City Special Projects Reserve Fund" should be invested and reinvested at the maximum available yield and available for draw down determined solely by the City of Harrisburg as represented and requisitioned by the Mayor and the Authority shall disburse funds from this account as directed.

NOW THEREFORE BE IT RESOLVED that all non-city related issuer fees, service fees and any other revenues derived from the financing of non-city related projects by non-city tax exempt and taxable entities may be set aside at the discretion of The Harrisburg Authority and restricted for uses determined solely by the City of Harrisburg and be deposited into a "City Special Projects Reserve Fund" created by The Harrisburg Authority; and

BE IT FURTHER RESOLVED, that all funds in the "City Special Projects Reserve Fund" be invested and reinvested at the maximum available yield; and

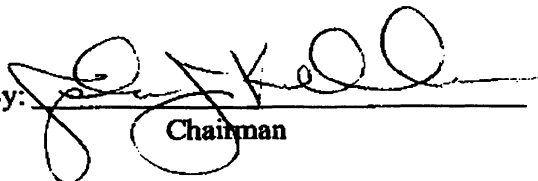
BE IT FURTHER RESOLVED, that the funds in the "City Special Projects Reserve Fund"

be available for drawdown by the City of Harrisburg as represented and requisitioned by the Mayor upon presentation of a Requisition Certificate which provides the correct and complete payee for the issuance of an Authority check disbursing the requisitioned funds; and

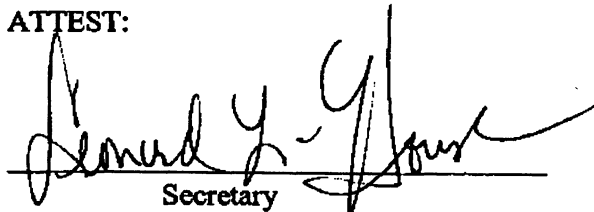
BE IT FINALLY RESOLVED, that the Authority's Executive Director and Chairman be and are hereby authorized and directed on behalf of The Harrisburg Authority and under its seal, to take any action that is necessary or required to carry out the intent and purpose of this Resolution.

Duly adopted this 18th day of November, 2002, by the Board of The Harrisburg Authority in lawful session duly assembled.

THE HARRISBURG AUTHORITY

By: 
Chairman

ATTEST:


Secretary

(SEAL)

INTER-OFFICE MEMORANDUM**CITY OF HARRISBURG**

April 12, 2003

CONFIDENTIAL**TO:** Mayor Stephen R. Reed**FROM:** Linda Lingle
Business Administrator *Lingle***SUBJECT:** Resource Recovery Facility

Mayor, Judith Heh wishes to lobby City Council members to pass the Retrofit Bond, and seeks your guidance with regard to where her efforts are most needed. Her current plan is to meet with Otto Banks, Linda Thompson and Eric Waters. Is this in line with your thinking?

She should focus on ALL of them, including John Wright and those listed above. Even after chatting with them directly, there is no doubt in my mind that further lobbying---and presence by AFSCME and SGF employees---will be needed at the public meetings held by City Council at which they will consider and vote upon the Retrofit Bond legislation. Attendees should not just attend the meeting ^{when} ~~where~~ the vote will occur---but the meetings before then, which is when Council will gauge opinions on the project and form conclusions.

S. Reed
S. Reed 4-15-03

cc: Randy King

Daniel Lippin

BIRHBG024997

**THE HARRISBURG AUTHORITY
CITY SPECIAL PROJECT RESERVE FUND
REQUISITION CERTIFICATE**

THE HARRISBURG AUTHORITY
Harrisburg, Pennsylvania

Requisition No. ____

The undersigned hereby certifies as follows:

1. The obligation(s) to the payee(s) in the amount(s) set forth in the attached exhibit(s), which exhibit(s) is made a part hercof,

- (a) has been incurred properly by the City for a project known as the _____ (the "Project") and in accordance with the attached preapproval certificate; and
- (b) is a proper charge from the City Special Project Reserve Fund. The foregoing amount is requisitioned from the City Special Project Reserve Fund, which fund was set up in accordance with The Harrisburg Authority's Resolution No. 1991-001 adopted January 17, 1991, as amended. Said "City Special Project Reserve Fund" has been set up at the M & T Bank, - Account No. 37408-89864; and
- (c) is unpaid, is of appropriate value and quality, and is reasonably necessary or appropriate for the Project; and
- (d) has not been the basis of any previous disbursement from the City Special Project Reserve Fund.

2. The obligation described in the attached exhibit(s) was incurred properly by the City as follows:

Payee:

Purpose(s) for which
obligation was
incurred:

Amount to be Paid:
(appraisals, indication
of recognized value or
similar evidence of
value, if available,
attached as exhibit(s))

3. Check one:

- ☐ (a) The requisition applies to item(s) solely offered for sale in a non-competitive market, or are solely available from the payee and are within recognized values for similar items as found in an appropriate market guide, as reflected in attached exhibit(s).
- ☐ (b) If (a) is not applicable and expenditure exceeds \$10,000, items subject to the requisition have been properly advertised for bid.
- ☐ (c) Is a proper charitable donation which benefits the City of Harrisburg.

4. The terms used herein, and not otherwise defined herein, are used in the same manner and with the same meaning as so defined in the Municipality Authorities Act.

THE CITY OF HARRISBURG

Dated: _____

By: _____

cc: The Harrisburg Authority
Stephen R. Reed
Robert F. Kroboth
Daniel R. Lispi

Exhibit "B"

CITY OF HARRISBURG

INTEROFFICE MEMORANDUM

LAW BUREAU



DATE: October 31, 2003

TO: Mayor Stephen R. Reed

TO FROM: Steven R. Dado
Acting City Solicitor

SUBJECT: City Council Special Project Fund

Attached please find a draft memo to Richard House regarding funds for City Council Special Projects. It is my understanding, from Andrew Giorgione and Richard House, that you have agreed in principal to this proposal. I have spoken to Robert Kroboth, Ginger Miller and Tom Mealy regarding this issue and all agree that the attached proposal is the best way to address this matter. I have advised President House that I would have this memo to him first thing Monday morning. Please advise if this memo is in keeping with your discussions with President House.

Encl.

cc w/ Encl.: Robert Kroboth
Thomas Mealy
Ginger Miller
Andrew Giorgione, Esq.

If all of you keep this up, you will permanently kill the prospect of the retrofit bonds being adopted by Council. The draft you provided does even remotely resemble what was agreed to and, unchanged, what was drafted would almost certainly trigger a negative reaction. With so little time available to this office, I find myself again having to edit and rewrite staff work products. Send the attached as amended.

S. Reed 11-3-03

attachments

BIRHBG029418

CITY OF HARRISBURG

INTEROFFICE MEMORANDUM

LAW BUREAU



DATE: October 31, 2003

TO: Honorable Richard K. House, Sr.
President Harrisburg City Council

FROM: Steven Richard Dade
Acting City Solicitor

SUBJECT: City Council Special Project Funds

This will address the establishment of a Council Special Projects Fund, which can be accomplished in either of the below listed ways.

(1) The sum of \$500,000, ^{designated} representing the settlement and closing cost fee payable to The Harrisburg Authority on the closing of the retrofit bonds, would be placed into an Authority special project account for the exclusive draw and use of Council Members. Funds could be expended for any lawful purpose related to a public project or activity. It would be your option as to whether you would want the fund drawn upon directly by individual ~~eligible~~ eligible Council Members by their submitting a requisition under their signature to the Authority or whether Council would want to first have every individual Council Member's requisition first approved by a Council Resolution. Since these are not city funds, you are not legally required to have a Council Resolution.

The Authority already has in place a requisition and payment process, which involves submittal of the requisition or invoice, using a form provided by the Authority. The Authority then accepts the requisition or invoice on pre-approval and sends to the submitting Council Member a final payment voucher, for the Council Member's signature. The Authority then issues the check either to the named vendor or sends the check to the Council Member for his or her ~~signature~~ sending it to the vendor.

All Authority funds are expended in accordance with law, of course, and are annually audited by an independent auditor and this would apply to the Council Special Projects Fund, ^{of course}.

The funds would remain in the account until ultimately drawn and expended and need not be entirely spent in 2004. These are non-lapsing monies that continue in place and under investment until used.

BIRHBG029419

Page Two

(2) Alternatively, the \$500,000 could be paid by The Harrisburg Authority to the City and the City would insert the allocation into the 2004 Budget within the Department of General Expenses with the sub-heading of Council Special Projects Fund. Funds received by the city, and therefore being city monies, require a different requisition process, which is set forth below.

(new paragraph)

This allocation need not be spent within the 2004 fiscal year, but will remain within the Councilmanic Special Projects account until spent. These funds may be used for any lawful public purpose and must be approved by Resolution of Harrisburg City Council. All such Resolutions should be drafted by the City Solicitor, but at a minimum must be reviewed by the City Solicitor (acknowledged by the Solicitor's signature) prior to introduction at a legislative session. In addition, all resolutions for charitable donations/gifts will include the following language: "Be it hereby further resolved, the City Controller or other appropriate City officials may audit and/or request financial documentation from the recipient to ensure compliance with this Resolution."

After a Resolution has been passed by City Council, availability of funding must be confirmed by the City Clerk. A statement of each member's account will be sent to the City Clerk on a monthly basis. This statement, as well as any Resolutions that had been adopted since the date of that report, should be used to determine each member's available balance. If there is any question regarding the balance in any member's account, the City Clerk should contact the Budget Manager.

After verification of funding availability, if the amount to be given is under \$1,000.00, a request for payment can be entered into the Pentamation System, using the Resolution as documentation for the request. This request should then be sent up to the Controller's Office for review to ensure that it is in compliance with all City guidelines for procurement and payment. Upon review and approval by the Controller's Office, it will be forwarded to the City's Accounting Office to have a warrant (check) cut. These warrants will be issued in accordance with the pre-established cycle of bi-weekly check runs, which coincide with the City's disbursement of payroll.

If the amount is over \$1,000.00, a requisition to obtain a purchase order must be entered into the Pentamation System. A copy of the Resolution should be sent to the Purchasing Office as documentation for the necessity of the requisition. The requisition will then go through the four-step approval process:

- 1) Review by Office of Budget and Analysis for verification of availability of funding, and use of the proper budget unit and account code(s)
- 2) Review by Office Head (City Clerk or designee)
- 3) Review by Purchasing Office to ensure compliance with all City purchasing policies and guidelines, such as need for public bidding process, quotes, etc. (if applicable)
- 4) Review by Office of City Controller to ensure compliance with all City policies and guidelines

BIRHBG029420

Page Three

After all four approvals have been obtained, the Purchasing Office will convert the requisition into a purchase order and prepare it for all legally required signatures. Per the Optional Charter that the City abides by, all bonds, notes, contracts and written obligations of the City shall be executed on its behalf by the Mayor and the Controller. The original purchase order will be mailed to the recipient of the funds. A copy of the purchase order will be sent to the Office of City Council/City Clerk for record keeping purposes and entering of request for payment.

After the copy of the purchase order has been received in Office of City Council/City Clerk, a request for payment should be entered into Pentamation. The same policies and procedures that were described above for the amount less than \$1,000.00 will apply here and should be followed.

Warrants for payment will be available 5 business days following the date of issuance.

BIRHBG029421

✓
T. Mealy / 10-19-06

- \$11 mil + being held while plant floundered
+ construction shut down for
6 weeks

(A) - \$60,000 for Flyash system
40,000 Probe Air System
Vendor
Lump, Carbon, Calibration Cassettes

— T

- Does he have money hidden elsewhere?

— S&F

(B) - Project Man - D. Lissi

— Advise all he is in charge;
S&F, TITA to take direction
from him

(C) - TITA - all acts re S&F

THE HARRISBURG AUTHORITY

ONE KEYSTONE PLAZA, SUITE 104
FRONT AND MARKET STREETS
HARRISBURG, PA 17101
(717) 232-3777

FAX: (717) 232-8590

May 19, 2003

To - Thomas J. Mealy

The Honorable Stephen R. Reed, Mayor
City of Harrisburg
Martin L. King Jr. City Government Center
10 North Second Street
Harrisburg, PA 17101-1678

In re: City Special Projects Reserve Fund

Dear Mayor Reed:

I am enclosing for your consideration, a requisition for disbursement of funds from the City Special Projects Reserve Fund.

Per your instructions to Bob Kroboth, the Harrisburg Parking Authority has agreed to pay this outstanding invoice and in turn the City has agreed to reimburse the Harrisburg Parking Authority upon the receipt of funds estimated to be received in September 2003. The requisition includes:

1. Payment to Sherwoods Spirit of America in the amount of \$32,130.00 (Requisition No. 767)

Please call the Authority office at 232-3777 once the requisition has been signed. We will promptly pick up the requisition and deliver the check to the City.

Should you have any questions, please do not hesitate to contact me.

Sincerely yours,

Thomas J. Mealy

Thomas J. Mealy
Executive Director

TJM:ts

Enclosures

cc: THA Board Members (w/encs)

Robert Kroboth (w/encs)

Richard Kotz, HPA (w/enc)

CITY SPECIAL PROJECTS RESERVE FUND

REQUISITION FOR PAYMENT

TO: THE HARRISBURG AUTHORITY
One Keystone Plaza, Suite 104
Front and Market Street
Harrisburg, PA 17101

Requisition No. 767

1. The undersigned, Mayor of the City of Harrisburg, hereby requisitions the following amount of money constituting a request for payment to:

Payee: Sherwoods Spirit of America
130 Lincoln Avenue
Santa Fe, NM 87501

Purpose of Payment: Various items listed for the City of Harrisburg Archives

Amount: \$32,130.00

The foregoing amount is requisitioned from the City Special Projects Reserve Fund, which fund was set up in accordance with The Harrisburg Authority's Resolution No. 1991-001 dated January 17, 1991. Said "City Special Projects Reserve Fund" has been set up at the M & T Bank - Account No. 37408-89864.

2. The undersigned certifies that said amount is unpaid and has not been the basis of any previous requisition for payment from the City Special Projects Reserve Fund.

CITY OF HARRISBURG

Dated: May 19, 2003

By: _____


Stephen R. Reed, Mayor

Copies: The Harrisburg Authority, Original
Stephen R. Reed, Mayor
Robert F. Kroboth, City Finance Director
Daniel R. Lispi
George Hicks - National Civil War Museum

PAID \$32,130.00

CHECK NO. 1532
DATE 5/19/03

○ BILL & BILL REFERRED TO YOU.

PER HGG AUTHORITY, \$515,000

FROM BOND ISSUE WENT INTO

THE SPECIAL PROJECTS ACCT.

○ FOR MAYOR'S WWW MUSEUM.

PER BOC MTG - YOU ASSURED

THAT THIS WOULD NOT HAPPEN.

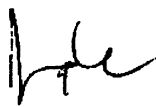
○
URGENT

Steam Plant

INTER-OFFICE MEMORANDUM

CITY OF HARRISBURG
December 13, 2005

TO: Mayor Stephen R. Reed
FROM: Linda Lingle
Business Administrator
SUBJECT: State of the City



Welcome back, Mayor! Four items of note occurred in your absence.

STEAM GENERATING FACILITY

Barlow now wants the City to:

forego 100% of excess revenue for 5 years to partially guarantee the \$25 million bridge loan it needs to complete the Incinerator,

increase the base fee of its Operations Agreement with the City to \$1.25 million, and

release cash to avoid a work stoppage.

After much heated discussion internally, it was agreed that it was in the City's best interest to do what is reasonable and necessary to complete as much of the facility as possible as soon as possible. As Barlow has \$9.6 million dollars in outstanding payables and a number of essential sub-contractors have threatened to walk off the job, The Harrisburg Authority is considering paying certain of Barlow's sub-contractors to keep them on the job to complete Unit 2. The payments will be made jointly to Barlow and the sub-contractor to minimize any argument that The Authority has assumed and/or is responsible for debt incurred by Barlow. Such payments will not exceed \$1.9 million, the amount that The Authority owes Barlow under the original contract, and will be made contingent on the terms of the commitment letter we receive from Barlow's financier, CIT, concerning the bridge loan. Under this arrangement, The Authority would be reimbursed for funds expended in this regard at the bridge loan closing or by processing a deduct change order. At this point, we do not expect to see the commitment letter from CIT until sometime tomorrow.

It is significant to note that Barlow has a deadline of 12/18 to pay Cianbro its agreed-upon settlement payment of \$4.8 million, which it cannot do without the bridge financing. If Barlow cannot get the financing, it is likely that they will have to file bankruptcy, which will leave us with the problem of having to raise additional funds to complete the facility ourselves. A number of our City team members believe that we should avoid that possibility at all costs, even if it means giving into onerous demands.

In addition, the offer to buy the facility has decreased by \$15 million such that it is questionable whether or not we will be able to retire all of our debt, and it is certain that there will be no profit for the City if the deal goes forward as it currently exists. As you may recall, Barlow originally agreed to purchase the facility for \$228 million. At last communication, they lowered their offer to \$213 million. We confirmed that approximately \$223 million is needed to retire all of the debt associated with the facility and countered with \$225.5 million. There is some sentiment on the City team that even if the City is left with \$10 million in debt on the facility, such is preferable to continuing to carry \$223 million of debt. However, I've told the team that, absent other instructions from you, our bottom line is that all debt must be retired.

The following individuals have been participating in the discussions concerning the Steam Generating Facility: Dan Lispi, Andy Giorgione, John Lukens, Tom Mealy, Bruce Foreman, Steven Dade, Bob Kroboth and me.

HOUSE ANNUITY

Jim McCarthy has flatly refused to approve the purchase order needed to pay for an annuity to provide Mr. House with a pension benefit. Despite the best efforts of Steven Dade and Bob Kroboth, Mr. McCarthy has maintained that this would constitute additional compensation and would have to be approved by City Council. Mr. McCarthy expressed some anger and frustration with the Administration's request because he has contributed to the pension plan for 28 years and Mr. House will reap the same benefit without having to make contributions. In addition, Mr. McCarthy showed a copy of your Executive Order establishing the annuity for Mr. House to Councilman-elect Dan Miller, which may cause us some problems down the road.

Mr. McCarthy suggested two alternative courses of action:

1. Prevail upon some City supporters to contribute to a Trust and Agency account which would be established to fund the annuity. Perhaps Bill Balaban, whose firm earned \$224,526.56 in the last two years for working on the Crawford case, Tony Piscotti and Fred Clark could be persuaded to contribute to this cause.
2. Prevail upon other agencies to "hire" Mr. House as a consultant and pay him with an annuity or in the amount necessary to purchase the annuity, which is between \$36,000 and \$40,000 depending on when it is purchased. Possibilities in this regard include: The Harrisburg Parking Authority, The Harrisburg Redevelopment Authority, The National African American Cultural Center and the School District.

Since Mr. McCarthy felt compelled to call Mr. House to let him know that he was not going to approve the payment for the annuity, Mr. House has been very concerned about his pension benefit. I have told Mr. House that we are exploring a number of options since you have given him your word that we would do this for him. Please advise as to how you wish us to proceed.

SNOW REMOVAL

There has been some controversy with regard to the effectiveness of our snow removal activities associated with the 12/9 storm. There was a forecast of 4" - 8" of snow beginning late Thursday (12/8) and continuing into Friday. Public Works evaluated the need to coat the streets with liquid calcium and decided against it as it would deplete the manpower needed to plow. The snow team was activated at 11:00 PM on Thursday. By 3:00 PM Friday, 90% of the streets were clear and the forecast was for sun and above-freezing temperatures on Saturday and Sunday. Based on that forecast, Public Works felt that the sun would melt the remaining snow over the weekend, and dismissed the snow crew to avoid overtime costs.

Saturday was sunny and 36 degrees. The snow melted as hoped. However, Saturday night the temperature plummeted to below freezing, and never got above-freezing on Sunday. In addition, Sunday was overcast. Consequently, ice patches formed.

The complaints have been two-fold: about the ice patches and about streets that went un-plowed. The only streets which had not been plowed by Friday at 4 PM were the narrow streets on which cars were parked in such a manner as to impede our plowing efforts. We've been spreading salt for two days and have been continuing efforts to plow the narrow streets.

There is a forecast for 2" - 4" of snow and a wintery mix for Thursday and Friday of this week.

BUDGET

The first round of budget hearings convened last night. I've participated in worse. We were there until 9:00 PM and the big topics of discussion were the salaries of Joe Link and Ed Nielsen. Joe did a good job of explaining that his salary is higher than most because he is directing the activities of two offices. I was specifically asked to explain why Mr. Nielsen's salary was \$24,000 higher than his predecessor's, which I did by saying that Mr. Heaney was responsible solely for economic development but the position was redefined, its scope broadened and its level of responsibility expanded to include economic development, tourism and special projects when Mr. Heaney left City employment. Hope that was right.

I did ten minutes on the sacrifices made by City staff, particularly AFSCME and management employees, when Susan Wilson commented on salary increases for staff. The meeting adjourned shortly after that.

Needless to say: glad to have you back!



Seam Plant

**Office of the Mayor
The City of Harrisburg**

M.L.K. City Government Center
10 North Second Street
Harrisburg, PA 17101-1678

Stephen R. Reed
Mayor

(717) 255-3040

October 25, 2006

to -- Karen McPhillips
John Lukens
Daniel R. Lispi

It is the considered opinion of this office, having reviewed the manner in which the Resource Recovery Retrofit Project has unfolded during the past two years, that there was a lack of final authority on making project decisions related to project components, budget management, timing of work, and related matters. The project appears to have, instead, been operated by a joint committee comprised of the city, Authority, consultant and primary vendor, with periodic divergent opinions as to what should be done and with individual project components doing as they individually chose. While differing views should certainly be presented and discussed, if they exist, there has to be final project authority for final decision-making to assure strong project management.

Daniel R. Lispi was engaged by the Authority to serve as project manager, the same role he played when he was a city employee. This serves to advise that he remains project manager and final decision making rests with him henceforth regarding projected-related decisions. All project participants must remain unalterably committed to project completion and increasing the monthly revenues generated by the facility on a fast track schedule.



Mayor Stephen R. Reed

cc: Fredrick Clark
Linda Lingle, Robert Kroboth

July 10, 2007

Mayor Stephen Reed and The Honorable Council Members
Office of the City Clerk
City of Harrisburg
City Government Center
10 North Second Street, Suite 1 Lower Level
Harrisburg, PA 17101

RE: The Harrisburg Authority, Dauphin County, Pennsylvania
Bonds Guaranteed by the City of Harrisburg:

- Guaranteed Resource Recovery Facility Refunding Revenue Bonds, Series A, B, and C of 1998
- Guaranteed Taxable Resource Recovery Facility Refunding Revenue Bonds, Series D of 1998
- Guaranteed Federally Taxable Resource Recovery Facility Subordinate Variable Rate Revenue Notes, Series A of 2002
- Guaranteed Federally Taxable Resource Recovery Facility Subordinate Revenue and Refunding Revenue Bonds, Series A and B of 2003
- Guaranteed Resource Recovery Facility Subordinate Refunding Revenue Notes, Series C of 2003
- Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series F of 2003

Bonds Guaranteed by the City of Harrisburg and Dauphin County:

- Guaranteed Resource Recovery Facility Revenue Bonds, Series D of 2003
- Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds, Series E of 2003

Dear Mayor Reed and Honorable Council Members:

Financial Security Assurance Inc. ("FSA") is the insurer of the above-referenced bonds (the "Bonds") issued by The Harrisburg Authority (the "Authority"), which are guaranteed by the full faith and credit pledge of the City of Harrisburg (the "City"). In addition, for the Series 2003 D and E Bonds only, the full faith and credit guaranty of Dauphin County (the "County") is additionally pledged. At present, outstanding principal of FSA-insured bonds guaranteed solely by the City (the "City Guaranteed Bonds") equals \$118,245,000 and outstanding principal of FSA-insured bonds guaranteed by the City and County equals \$110,980,000. FSA has more financial exposure to the City than any other lender or credit enhancer in the country. FSA has underwritten the credit of the City because we believed there was no doubt as to the willingness of the City to honor its obligations.

As you are well aware, the Authority's waste-to-energy facility (the "Facility") has failed to generate net revenues sufficient to provide adequate debt service coverage for the Bonds. This shortfall in net revenues led to a deficiency in funds required for the payment of interest on the Bonds that was due June 1, 2007. The City, in fulfillment of its guaranty, transferred sufficient monies to the Trustee to make the interest payment on a timely basis. FSA commends the City for fulfilling its obligations under the guaranty on a timely basis (i.e. prior to a draw under the debt service reserve fund relating to the Bonds) and expects the City to continue its strong support of the Bonds, the Facility, and the Authority.

FSA understands that the City currently has its own fiscal concerns, evidenced by operating deficits and low liquidity. FSA recommends that the City adopt a financial workout plan designed to provide the

Financial Security Assurance

31 West 52nd Street • New York, New York 10019 • Tel: 212.826.0100 • Fax: 212.688.3101
New York • Dallas • San Francisco • London • Madrid • Paris • Singapore • Sydney • Tokyo

Facility with adequate funding to complete its retrofitting and fund debt service payments or take some other measures to ensure that sufficient funds will be available via the City's guaranty to make debt service payments.

FSA respectfully urges the City Council to reconsider its rejection of a Facility workout plan proposed by the Authority and its financial advisors. If the City fails to take measures now to provide the necessary support to the Authority and its Bonds, there may be far-reaching repercussions that will affect the City in the future.


If the City does not make its guaranty payments on a timely basis and, therefore, does not honor its guaranty to the Bond trustee and the holders of the Bonds, an Event of Default will occur under the City Guaranty.

Repudiation by the City under its Guaranty would need to be publicly disclosed under the Federal securities laws and would likely cause negative publicity regarding the City's creditworthiness in the capital markets. The ignominy associated with such a failure by the City to honor a full faith and credit obligation may be borne by residents of the City for years to come. The City may lose access to the capital markets. Future credit assessments based on the City's own merits could be non-investment grade, even if the credit fundamentals call for a higher rating.

FSA strongly urges the Mayor and the members of the City Council to seek a resolution of the issues confronting the Authority's workout plan in respect of the Facilities and the Bonds. Quick and responsible City Council action is now necessary to avoid irreparable harm to the City's financial future.

If FSA can help in any way please let me know. We would welcome the opportunity to meet with you at your earliest convenience.

Sincerely Yours,



Elizabeth Hill
Managing Director
Municipal Oversight

cc: Linda Lingle, City of Harrisburg
Robert Kroboth, City of Harrisburg
Robert Ambrose, The Harrisburg Authority
Bruce Foreman, Foreman & Foreman, PC
Steven Dade, City of Harrisburg
Bethann Gabler, City of Harrisburg
Andrew J. Giorgione, Buchanan Ingersoll & Rooney
Bruce Barnes, Milt Lopus Associates
Carol Cocheres, Eckert Seamans Cherin & Mellott, LLC
Jay R. Wenger, Susquehanna Group Advisors

REVEREND JAMES A. BISHOP, EVELYN :	IN THE COURT OF COMMON PLEAS
DANIEL, WENDI TAYLOR, DWAYNE :	DAUPHIN COUNTY, PENNSYLVANIA
JACKSON, ALBERT MOTLEY, :	
DOROTHY S. MATTHIAS, HOWARD J. :	
STEWART, RAYMOND L. TALLEY, :	
PATRICK H. BAIR, PAMELA S. PARSON, :	
LINA CEDENO, REBECCA S. FOX, and :	
REVEREND ROBERT F. MATTHIAS, :	
Plaintiffs :	NO. 5018 Equity 1992
vs. :	
STEPHEN REED, in his official capacity :	
as Mayor of Harrisburg, :	
Defendant :	CIVIL ACTION - LAW

BEFORE KLEINFELTER and CLARK, JJ.

ORDER

AND NOW, this 29th day of May, 1997, plaintiffs' motion for summary judgment is granted in part and denied in part. We grant plaintiffs' motion where it pertains to the request for declaratory judgment on the following matters:

(a) Pursuant to the Optional Third Class City Code, 53 Pa.C.S.A. §41101 et seq, City Council had the sole authority to negotiate the terms of the contract with Harrisburg Authority regarding the déposition of the proceeds from the sale of the water system to Harrisburg Authority.

(b) By law, City Council had the sole authority to make appropriations and expenditures from the proceeds arising from the sale of the water system.

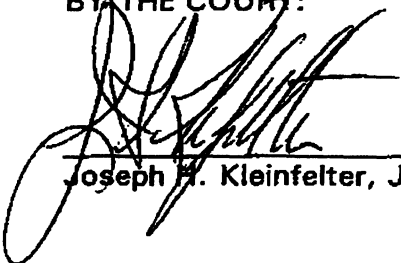
(c) The defendant needed express authorization from City Council to negotiate with Harrisburg Authority for the disposition of the proceeds from the sale of the water system and the appropriations from the proceeds.

(d) Because defendant lacked the express authority to negotiate the transactions with Harrisburg Authority and to appropriate funds for such projects as the Special Projects Revolving Loan Program, Defendant unlawfully usurped powers vested in City Council.

Plaintiffs' request to fine the Mayor for violation of Section 36904 of the Third Class City Code is denied.

Pursuant to the determination of mootness in the attached opinion, we deny plaintiffs' request to enjoin defendant from appropriating funds from the proceeds of the sale of the water system. Defendant's motion for summary judgment is granted on this issue.

BY THE COURT:



Joseph H. Kleinfelter, Judge

5-29-13 27
I hereby certify that this is a true and correct copy of the original

Prothonotary

CITY SPECIAL PROJECTS RESERVE FUND

REQUISITION FOR PAYMENT

TO: THE HARRISBURG AUTHORITY
One Keystone Plaza, Suite 104
Front and Market Street
Harrisburg, PA 17101

Requisition No. 777

1. The undersigned, Mayor of the City of Harrisburg, hereby requisitions the following amount of money constituting a request for payment to:

Payee: Stephen R. Reed
212 Cumberland Street
Harrisburg, PA 17102

Purpose of Payment: Various items listed for the City of Harrisburg Archives

Amount: \$32,928.51

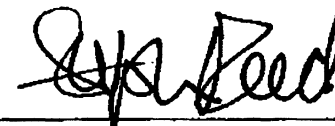
The foregoing amount is requisitioned from the City Special Projects Reserve Fund, which fund was set up in accordance with The Harrisburg Authority's Resolution No. 1991-001 dated January 17, 1991. Said "City Special Projects Reserve Fund" has been set up at the M & T Bank - Account No. 37408-89864.

2. The undersigned certifies that said amount is unpaid and has not been the basis of any previous requisition for payment from the City Special Projects Reserve Fund.

CITY OF HARRISBURG

Dated: May 20, 2003

By: _____



Stephen R. Reed, Mayor

Copies: The Harrisburg Authority, Original
Stephen R. Reed, Mayor
Robert F. Kroboth, City Finance Director
Daniel R. Lispi
George Hicks - National Civil War Museum

PAID

CHECK NO. 1542
DATE 5/21/03

REIMBURSEMENT INVOICE:

5/20/03

Payable to:

Stephen R. Reed
212 Cumberland Street
Harrisburg, PA 17102

For attached invoices..... \$ 32,928.51

(See attached explanatory note)

May 20, 2003

Explanatory Notes:

- o In pulling files that have been set aside in storage, for the purpose of making room for future files, I had occasion to review past fiscal materials. I was aware that there were past personal expenditures for items for the City, the City Archives, the eventual National Civil War Museum, and upcoming other museum projects--that had not been submitted for reimbursement---but was astounded to find the extent of such.
- o Under IRS Rules, I cannot take a tax deduction for these items, as federal rules state that if reimbursement was or would be available, they cannot be a deduction; moreover, given the extent of the items, in terms of aggregate amount, it is fiscally unfeasible to simply donate them absent deductibility.
- o All items have been and are part of the City Archives, located not only at City Government Center/McCormick Public Services Center, but the National Civil War Museum or the D & D Building (used for archival storage); in fact, some of the items are and have been on display, including in the suite of the Office of the Mayor for years.
- o Normally, reimbursement for such items is submitted for General Fund payment. The 2003 fiscal constraints on the City preclude this now.
- o Appended invoices cover a range of years; many are from earlier years, before the City had a more defined source of payment for artifacts and memorabilia; personal expenditures essentially started the City Archives and museum inventory acquisitions; reimbursement requests have been, in the past, submitted and paid; the enclosed have not been previously submitted and are therefore now submitted.
- o It is not a stretch to suggest that the items herein listed on various invoices have increased in value---in many cases, significantly so.
- o There may be more items in other files, not yet discovered.

Keiper, Michele

From: Giorgione, Andrew J.
Sent: Monday, May 21, 2007 7:58 AM
To: Keiper, Michele
Subject: FW: Covanta's Pro-forma Assumptions

Attachments: HBG1_GENERAL-#1010158-v1-Covanta_Based_HMERRF_Cash_Flow_Analysis
05172007.DOC; Covanta Proforma 05172007.xls



HBG1_GENERAL-#1 Covanta Proforma
010158-v1-Covan... 05172007.xls ...

pp

Andrew J. Giorgione, Esquire
BUCHANAN INGERSOLL & ROONEY
17 N. Second Street, 15th Floor
Harrisburg, PA 17101
Direct: (717) 237-4863
Fax: (717) 233-0852
andrew.giorgione@bipc.com

-----Original Message-----

From: Lukens, John [mailto:jlukens@cityofhbg.com]
Sent: Thursday, May 17, 2007 3:36 PM
To: Mayor's Office
Cc: Lingle, Linda; tharambrose@aol.com; Bruce Foreman; Stauder, Paul;
dlispi@drlconsultingdev.com; Giorgione, Andrew J.
Subject: FW: Covanta's Pro-forma Assumptions

Mayor,

As indicated in the following string of e-mails, while reviewing Covanta's proforma yestersay I discovered some calculation errors in Covanta's worksheet. After consultation with Covanta and Andrew Giorgione the inadvertent errors were confirmed and corrected. As a result, the cash flow analysis that Mr. Giorgione submitted to you earlier is incorrect. Attached are the corrected Covanta analyses.

It is worth mentioning that Bob Ambrose and I independently drafted our own projections, which respectively indicate slightly higher shortfalls, each within 6% of the aggregate shortfall in Covanta's projections.

John

-----Original Message-----

From: Stauder, Paul [mailto:pstauder@CovantaEnergy.com]
Sent: Wednesday, May 16, 2007 9:43 PM
To: Lukens, John
Cc: dlispi@drlconsultingdev.com; Caraccio, Daniel
Subject: Re: Covanta's Pro-forma Assumptions

John

I've looked at the covanta model and I found what you were describing. In shortfall is the cit debt of 3m/yr was not included in years 4 + 5, but was included in prior years. Our original model didn't have cit because its not an issue we are close to and doesn't show up on the debt service schedule provided by barnes. In a later version, we were asked to include, which we did however when adding this line to the new sub-total we were only interested in the first three years bec this was the time frame in which the funds ran out on the swap and when we would buy the plant. The auth asked for a 5 year

BIRHBG040059

Steam Plant

Mayor's Office

From: Lukens, John
Sent: Monday, November 20, 2006 8:45 AM
To: Mayor's Office
Cc: King, Randy

Mayor,

Beth Ann Gabler sent me an e-mail indicating that Linda Thompson would like me to attend a Public Works Committee meeting on the Incinerator at 5:05 on Monday, December 4th. However, before I respond to Ms. Gabler, I would like to know whether or not you think I should attend such meeting. It may be an opportunity to explain to City Council why excluding the Incinerator from the TRAN funding has the potential to shut the facility down and advise them of the consequences of such. You may recall my October 9th memo (attached), which analyzes the financial consequences if the facility is shut down. I know that nothing I say is going to change Linda Thompson's mind. However, it may be helpful for other Council members and the public to know the long range ramifications of Ms. Thompson's (and others') shenanigans. Please advise.

John

to - John Lukens

You should attend the Dec. 4th meeting. Present with you should be Fred Clark, a senior representative of Barlow (and James Barlow himself if available), Daniel R. Lispi and the new Authority executive director Robert Ambrose.

Any and all presentation by the facility team should be done in a businesslike, professional manner. Do not get sucked into a nasty back-and-forth that Ms. Thompson almost certainly will want to conduct. This meeting is showtime for her and has no positive purpose intended.

The completion plan discussed at the Hbg. Authority meeting Nov. 30 should be represented. The completion financing should be highlighted. The definitive goal of completion work and having all 3 units **operating** as soon as possible in 2007 must be emphasized.

Closure of the facility is not an option for all the reasons you have properly outlined in the attached. Any sale of the facility, which we have always said we would do if the proposal were submitted to us, would have to involve defeasance of all debt as the minimum price. (Not to be discussed is that one prospective buyer is looking at the facility to buy it but since they have submitted no proposal, this may not be real in the end). If we have no immediate buyer, sale of the transmission line to NRG and lease of the administration building can occur, with the former being the first action to be taken. Lease of the admin bldg. would be marketed only if there is sufficient admin space within the plant to house operating personnel.

S. Reed 12-3 06

S. Reed

cc; Daniel R. Lispi
 Linda Lingle, Robert Kroboth
 Robert Ambrose, Karen McKillip
 Hon. Fredrick Clark

Randy King
 w attachments

11/20/2006

Dan Lispi (former Director of Special Projects)



November 19, 2003

Via E-Mail

Daniel R. Lispi
Assistant to the Mayor for Special Projects
City of Harrisburg
10 North Second Street
Martin Luther King, Jr. Government Center
Harrisburg, PA 17101

RE: Contract security

Dear Dan:

Over the course of the last couple of weeks and as the result of several conversations involving our respective project and finance teams, the Authority and its finance team have come to the conclusion that the requirements necessary to satisfy the conditions of the CIT project financing plan are not acceptable. As a result, Barlow Projects has developed an alternative for the Authority's consideration. The security package is a combination of payment and performance bonds and significant cash retainage. It offers the Authority the security needed to assure a successful project and generates a project savings of approximately \$5 million that can be added to project contingency.

The Barlow scope of work will include all costs necessary to fabricate and install the proprietary combustion and air pollution control systems chosen by the Authority. The scope will include all related systems and services necessary to process waste and produce steam. Barlow will guarantee the process and the performance of its system along with the price and the schedule. In addition Barlow will supply the engineering and procurement services necessary for the Authority to procure the systems necessary to produce electricity including the turbine generator, the cooling tower and condenser and the other contractors packages related to the electrical, plumbing, HVAC, and elevator contracts.

Table A is an illustration of the major cost components of the Barlow system. The Barlow system itself includes approximately \$47.4 million in installed equipment. By utilizing a combination of payment and performance bonds on key systems and contract retention of almost \$9 million, Barlow is offering the Authority contract security equal to 91% of the value of the installed equipment. Payment and Performance Bonds and the contract retention will be held by the Authority until the Barlow system has been completed and passed its performance tests. This is defined as Substantial Completion in the contract.

The remaining \$11.2 million of Barlow's contract represents the various services offered by us and our own project contingency.

2000 Vermont Drive, Fort Collins, Colorado, USA
PH: (970) 226-8557 FAX: (970) 226-8559
WWW.BARLOWPROJECTS.COM



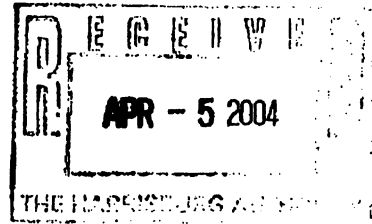
**The City of Harrisburg
Office of the Mayor
City Government Center
10 North Second Street, Suite 405
Harrisburg, PA 17101-1681**

**Special Projects
Office**

April 5, 2004

VIA HAND-DELIVERY

**Mr. Thomas J. Mealy
Executive Director
The Harrisburg Authority
Suite 102
Front and Market Street
Harrisburg, PA 17101**



Subject: DRL Consulting and Development LLC Contract

Dear Mr. Mealy:

Attached for your records is a signed and executed original contract between DRL Consulting and Development LLC and The Harrisburg Authority and the City of Harrisburg.

Sincerely yours,

**Daniel R. Lispi
Assistant to the Mayor
Mayor's Office of Special Projects**

DRL/rjs

Enclosure (1)

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (this "Agreement") is made as of the 2nd day of April 2004, by and between **DRL Consulting and Development LLC** with an address at 1042 Rolleston Street Harrisburg, PA 17104 ("Consultant"), and **The Harrisburg Authority**, a Pennsylvania municipal authority, with a principal place of business at One Keystone Plaza, Suite 104, Front and Market Streets, Harrisburg, PA 17101 (the "Authority") and the **City of Harrisburg**, a Third Class City of the Commonwealth of Pennsylvania with a principal place of business at 10 North Second Street, Harrisburg PA 17101, in its capacity as managing agent under a certain Management Agreement dated as of December 7, 1993, as amended and supplemented (the "Management Agreement"), with the Authority (collectively, "City" when it is intended to include both the City of Harrisburg and the Authority).

BACKGROUND

WHEREAS, the Consultant was an employee of the City of Harrisburg for over seventeen (17) years and, during that time, represented the City on the creation and operation of many of the assets of the City of Harrisburg and the Authority, including the construction, operation and financing of the substantial retrofit (the "Retrofit Project") of the Harrisburg Materials, Energy, Recycling and Recovery Facility (the "Facility"); and

WHEREAS, over many years as a City of Harrisburg employee Consultant led the efforts to develop and finance the Retrofit Project; and

WHEREAS, Consultant possesses significant background, knowledge and expertise and played a significant role in the development, permitting, financing, and construction of the Retrofit Project; and

WHEREAS, the City of Harrisburg is the primary guarantor of the bonds issued to finance the retrofit project and managing agent for the Authority in its operation of the Retrofit Project under the Management Agreement; and

WHEREAS, the Consultant is now engaged in the business of consulting private and public entities in various construction, contracting, and permitting and other matters; and

WHEREAS, the City desires to engage Consultant to assist it in the completion of the Retrofit Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt of which the parties hereby acknowledge, the parties hereto, intending to be legally bound hereby, agree as follows:

Section 1. Engagement and Duties.

1.1 The City shall engage Consultant and Consultant accepts such engagement for the term set forth in Section 3 hereof, on the terms and conditions set forth in this Agreement. Consultant shall faithfully and diligently pursue his duties in accordance with the terms and conditions of this Agreement and shall not commit any act or omit any act which would derogate from Consultant's duties hereunder or cause any detriment to the City.

1.2 Subject to the direction of the City, Consultant agrees to provide the following services:

- Provide management recommendations and implementation to the City regarding environmental compliance for Retrofit Project.
- Provide testimony in support of the City in any litigation brought against the Retrofit Project.
- Provide advice and recommendations and implementation concerning current and prospective solid waste agreements to realize additional revenue and maximize tipping revenue.
- Advise the City of any opportunities for the extension of energy sales agreements and represent the City in any negotiations for such agreements.
- Advise the City of any opportunities to economically dispose of or beneficially use the ash residue from the Facility after the on-site ash disposal capacity is exhausted and represent the City in negotiations to secure disposal capacity or re-use opportunities.
- Provide advice and recommendations to the City to assist in decision-making, scheduling, cost control, financing matters and dispute resolution during the construction phase of the Retrofit Project.
- Attend meetings, job-site conferences, and provide any necessary correspondence or communications needed to accomplish the above.
- Perform other such tasks as assigned by the City to assist in the timely completion of the retrofit project or the current or future operation of the HMERRF, and such other duties as may be assigned by the City.

1.3 Consultant shall be available to act as a consultant as requested by the City during normal working hours, as well as during other hours of the day from time to time as needed.

1.4 Consultant shall be free to exercise his discretion and independent judgment as to method and means of performance of his services pursuant to this Agreement and shall in no sense be considered an employee, partner or joint venture of the City.

1.5 In connection with providing services under this Agreement, the City of Harrisburg agrees to provide Consultant with one parking space at no charge at a mutually agreeable location.

Section 2. Fees and Expenses.

2.1 Consultant shall keep a written record of services provided to the City, including the dates of services rendered and a description of services rendered. Consultant shall keep such records on as contemporaneously a basis as possible, and shall submit same to the City and the Authority on a monthly basis, format as is reasonably requested by the City. The City agrees to compensate Consultant in the annual amount not to exceed \$90,000, from the Resource Recovery Fund or Retrofit Bond Proceeds on or before the 15th day of each month. Compensation shall be calculated based upon a retainer amount of \$ 1500 per month, and an hourly fee of \$175. No payment in excess of \$90,000 per year shall be made without due authorization of the Board of Directors of The Harrisburg Authority, except that Consultant shall be entitled to a 5% increase in compensation in the second and third year of this Agreement.

2.2 Consultant may submit invoices for expenses incurred on behalf of the City of Harrisburg or the Authority, subject to approval by the appropriate body.

Section 3. Term.

This Agreement shall begin on March 1, 2004 and shall continue in effect until February 28, 2007 (the "Expiration Date"), unless terminated sooner as provided herein.

Section 4. Confidential and Business Related Information.

4.1 Consultant recognizes and acknowledges that:

a. in the course of Consultant's engagement or continued engagement by the City, it will or may be necessary for Consultant to create, use or have access to:

(i) technical, business or customer information, materials or data belonging to the City and relating to the Business, which information

has not previously been released to the public with the City's authorization, including, but not limited to: corporate information (e.g., contractual arrangements, strategies, litigation or negotiations); marketing information, (e.g., sales, strategies, tactics, methods, customers, prospects, or market research data); financial information, technical information, including patented information subject to licensing agreements with the City (collectively, "Confidential Information"), as well as,

(ii) other information and materials that concern the Business that come into Consultant's possession by reason of his engagement with the City (collectively, "Business Related Information"),

- b. the Confidential Information and Related Information are the property of the City;
- c. the use, misappropriation or disclosure of the Confidential Information or the Business Related Information would constitute a breach of trust and could cause serious and irreparable injury to the City; and
- d. it is essential to the protection of the City's business interests that the Confidential Information and Business Related Information be kept secret and that Consultant not disclose the Confidential Information or the Business Related Information to others or use same to Consultant's own advantage or the advantage of others.

4.2 In recognition of the acknowledgments contained in paragraph 4.1 above, Consultant agrees:

- a. to hold and safeguard the Confidential Information and Business Related Information in trust for the City, his heirs, personal representatives, successors and assigns;
- b. not to appropriate or disclose or make available to anyone at any time, either during engagement with the City or subsequent to the termination of engagement with the City for any reason, any of the Confidential Information or Business Related Information, whether or not developed by Consultant, except as required in the performance of Consultant's duties to the City; and to keep in strictest confidence, both during the Consultant's engagement and subsequent to termination of engagement, any information which in good faith and good conscience ought to be treated as Confidential Information or Business Related Information; and during the period of engagement and thereafter, not to disclose or divulge, or allow to be disclosed or divulged, to any person, firm or corporation, or use directly or indirectly, for the Consultant's own benefit or the benefit of others, any information which in

good faith and good conscience ought to be treated as Confidential Information or Business Related Information.

- 4.3 City agrees to provide Consultant reasonable access to City files, documents, drawings records, data or any relevant information to assist Consultant in performing the obligations under this Agreement, and when requested by Consultant, provide copies of such records at no charge to Consultant.

Section 5. Copyright.

Consultant recognizes and understands that Consultant's duties for the City may include the preparation of materials, including but not limited to written or graphic materials, and that any such materials conceived or written by Consultant shall be considered "works made for hire" as defined and used in the Copyright Act of 1976, 17 USC §1 et seq. and that the City will therefore solely retain and own all rights in said materials, including right of copyright.

Section 6. Non-Solicitation of Employees.

Consultant agrees that during the term of his engagement with the City (whether pursuant to this Agreement or otherwise), and for a period of one (1) year following the termination of such engagement for any reason, neither he nor any entity with which he is at the time affiliated or by which he is employed or engaged shall solicit, entice away or in any other manner persuade or attempt to persuade any employee to (a) commence a direct or indirect business relationship with Consultant or any entity with which he is at the time affiliated or by which he is employed or engaged, or (b) discontinue its, his or her relationship with the City.

Section 7. Remedies.

7.1 Consultant agrees that any violation on his part of any covenant in Section 4, 5 and 6 hereof will cause such damage to the City as will be serious and irreparable and the exact amount of which will be difficult to ascertain, and for that reason, he agrees that the City shall be entitled, as a matter of right, to a temporary, preliminary and/or permanent injunction and/or other injunctive relief, ex parte or otherwise, from any court of competent jurisdiction, restraining any further violations of Consultant. Such injunctive relief shall be in addition to and in no way in limitation of, any and all other remedies the City shall have in law and equity for the enforcement of such covenants and provisions.

7.2 In connection with any action to enforce any remedy of the City under this Agreement, Consultant agrees to pay all costs and expenses (including, without limitation, attorneys' fees) paid or incurred by or on behalf of the City. All of the costs and expenses referenced in this Section 7.2 shall be immediately due and payable by Consultant, with interest thereon at the rate of ten percent (10%) per annum.

Section 8. Return of Materials.

Upon the termination of Consultant's engagement with the City for any reason, Consultant shall promptly deliver to the City all materials and documents belonging to or concerning the City, the Business or relating to the affairs of any of the foregoing and, without limiting the foregoing, will promptly deliver to the City any and all other documents or materials containing or constituting Confidential Information or Business Related Information.

Section 9. Consultant's Representations.

Consultant represents and warrants to the City that:

- 9.1 Consultant is not a party to any engagement, confidentiality agreement or other agreement or restriction that would restrict or interfere with Consultant's performance of services pursuant to this Agreement;
- 9.2 To the best of Consultant's knowledge, Consultant has the full capacity and ability to perform this Agreement;
- 9.3 Consultant is a citizen of the United States; and
- 9.4 Consultant is ready, willing and able to perform Consultant's duties hereunder, has all right, power and authority to do so and will utilize his best efforts in the performance hereof.

Section 10. Taxes.

Consultant acknowledges that he is an independent contractor of the City. Consultant shall pay all federal, state, local and foreign taxes, including but not limited to estimated taxes, required of self-employed persons in respect of payments made to him under this Agreement.

Section 11. Indemnification.

Consultant shall defend, indemnify and hold harmless the City and his heirs, personal representatives, successors and assigns from and against any and all damages, deficiencies or claims arising from the breach or alleged breach by Consultant of any provisions of this Agreement, or the untruth or alleged untruth of any representation or warranty of Consultant hereunder, and all actions, suits, proceedings, demands, assessments, judgments, costs, legal fees and expenses incidental thereto.

Section 12. Independent Contractor

Nothing contained in this Agreement is intended to or shall be construed in any manner to, create or establish the relationship of employer/employee between the parties. Consultant shall at all times remain independent contract with respect to the services to be performed under this Agreement.

Section 13. Miscellaneous.

13.1 Consultant shall have no authority to enter into any contracts on behalf of the City of Harrisburg or the Authority nor may Consultant incur any charges or other obligations on the City of Harrisburg, the Authority's or any Client's behalf or charge any goods or services to the City of Harrisburg, the Authority or any Client, without the prior written consent of the City or the Authority as their interest may appear.

13.2 This Agreement supersedes any and all prior agreements between the parties and represents the entire understanding of the parties hereto with respect to the engagement of Consultant and there are no other agreements, warranties or representations except as herein provided. This Agreement may not be altered or amended except in writing executed by both parties hereto. The obligations which Consultant has undertaken herein shall survive the termination of his engagement by the City.

13.3 Nothing in this Agreement shall be construed to affect any rights, benefits or compensation due to Consultant upon separation and/or retirement from his City of Harrisburg employment. The City of Harrisburg specifically agrees that the leave benefit provisions outlined on the August 5, 2002 memorandum (attached hereto as Exhibit A) shall apply upon separation, and Consultant's health care insurance premiums and other applicable benefits shall be covered by the City of Harrisburg from the date when Consultant begins to receive retirement benefits under the City of Harrisburg's pension plan. This provision shall survive the termination of this Agreement.

13.4 Neither party may assign its rights or duties hereunder, in whole or in part, without the prior written consent of the other party. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the City and Consultant.

13.5 This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, without reference to principles of choice of laws.

13.6 If any of the provisions of this Agreement or the application of any of such provisions hereof shall for any reason be held invalid by a court of competent jurisdiction, such invalidity shall not affect or impair any other provision hereof, it being the intention of the parties hereto that such other provisions shall be and remain in full force and effect.

13.7 The waiver by any party hereto of a breach of any provision of this Agreement by the

other party hereto shall not operate or be construed as a waiver of any other or subsequent breach by such other party of such or any provision.

13.8 This Agreement may be signed by the parties in counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

Section 14. Termination

14.1 Termination of this Agreement may occur for any breach of this agreement remaining uncured after fourteen (14) days written notice thereof, including any conflict of interest that would render Consultant unable to objectively and effectively carry forth the duties under this Agreement.

14.2 Notice of Termination shall be sent by the City by certified mail and shall take effect unless extended by mutual agreement or cured within a two-week period after the date of the notice, whereupon Section 8 and any other Sections pertaining to the conclusion of activities under this Agreement will take effect.

14.3 Consultant may terminate this Agreement upon ninety (90) days notice to the City, at the end of which any and all obligations of the respective parties will cease, and Section 8 and any other Sections pertaining to the conclusion of activities would take effect.

Section 15. Notice

All notices, requests, demands or other communications which are required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by certified mail, return receipt request, postage prepaid, as follows:

City of Harrisburg	Mayor Stephen R. Reed 10 North Second Street - Suite 202 Harrisburg, PA 17101
Copy to City Solicitor	Steven R. Dade 10 North Second Street - Suite 402 Harrisburg, PA 17101
The Harrisburg Authority	Thomas Mealy Executive Director Front & Market Streets - Suite 104 Harrisburg, PA 17101
Consultant	Daniel R. Lispi 1042 Rolleston Street Harrisburg, PA 17104

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year set forth above.

WITNESS

Rodney J. Schenberger

Daniel R. Lispi
Daniel R. Lispi, President

WITNESS

THE HARRISBURG AUTHORITY

Karla M. McKillip

Fred J. Kelly
Vice Chairman

APPROVED AS TO FORM AND LEGALITY

[Signature]
Solicitor

Thomas J. Masly
Asst. Secretary

WITNESS

CITY OF HARRISBURG

[Signature]
Solicitor

[Signature]
Mayor
Jim McCarthy
Controller

In the case of the RRF retrofit, Barlow was unable to obtain a performance bond, because of its tenuous financial condition. Nonetheless, the retrofit moved forward without a bond, based on an "alternative security package." When Barlow failed to complete the retrofit, the lack of a performance bond left the Authority with no meaningful protection, resulting in substantial additional costs being incurred to correct and complete the retrofit.

The documents that have been produced to date indicate that the negotiations surrounding the security package were handled primarily by Mr. Lispi and Mr. Giorgione on behalf of the Authority.^{237,238,239} Under the Sale and Installation Agreement, Barlow provided the Authority with a "security package" consisting of the following:

- The Authority's deferred payment of \$13 million related to certain equipment, including the APC Technology and Combustion Units, which payment would not be required until the equipment was delivered to the site;
- Approximately \$18 million of financial security (payment and performance bonds) posted by Cianbro, a subcontractor, in connection with the delivery and installation of the equipment;
- Approximately \$5 million of financial security (equipment bonds) posted by certain equipment manufacturers, including the solids handling system, the non-catalytic reduction system, the refuse crane and instrumentation;
- 20 percent retainage on the contract price; and
- \$1 million in warranty security in the form of a bond, cash, letter of credit or other acceptable financial instrument.²⁴⁰ *was this ever provided?*

²³⁷ November 19, 2003 letter from Ronald Barmore to Daniel Lispi (Barmore identifies proposed structure for security package, which includes mixture of payment and performance bonds on the equipment and Cianbro work, and retention on other components. In the letter, Mr. Lispi is identified as Assistant to the Mayor for Special Projects).

²³⁸ Transcript from the June 21, 2007 Public Works Committee meeting.

²³⁹ Deposition testimony of Mr. Giorgione on December 10, 2008, page 36.

²⁴⁰ Amended and Restated Agreement for the Sale of Equipment dated December 31, 2003, Section 7.01. Based on the documentation provided to date, we are not aware that the final component (\$1 million in warranty security) ever was provided by Barlow.

THA File

Dade, Steven

From: Dade, Steven
Sent: Wednesday, March 31, 2004 5:29 PM
To: Mealy, Thomas; Lispi, Dan
Subject: FW: Hbg. Authority-Lispi Consulting Agreement

Dan/Tom:

I have had Colleen correct the formatting of the Agreement and add two new sections: Section 15. Notice; and Section 12. Independent Contrator. These changes do not effect the substance of the Agreement or the page numbering so the signatures pages already executed can be used. Please review the revised Agreement. I have placed the revised agreement with signature pages attached in Dan's "in box".



consulting
agreement.wpd

King, Randy

From: Giorgione, Andrew [andrew.giorgione@obermayer.com]

Sent: Monday, October 27, 2003 4:34 PM

To: Richard House (E-mail)

Cc: Lispi, Dan

Subject: CITY COUNCIL SPECIAL PROJECTS ACCOUNT

Richard -

Below is the summary of the Special Projects Account, in the manner you discussed it with the Mayor. We spoke to him and he said to conform it to your discussion with him.

Is this acceptable?

Andrew

<<@JRX011.DOC>>

10/27/2003

**CITY COUNCIL
SPECIAL PROJECTS ACCOUNT**

- A. How will the Account be established?

The Harrisburg Authority will establish a Special Projects Account for City Council.

- B. How and in what amount will the Account be funded?

The Authority will fund the Account at \$500,000.

- C. How can the money be spent?

City Council will make requisitions to the Authority for the expenditure of funds for any lawful purpose. City Council should request that the City Solicitor provide guidelines under the Optional Charter Law and Third Class City Code for lawful expenditures by Council of funds in the Account. Moreover, the City Solicitor can provide guidance on how such funds must be requisitioned for payment, particularly funds in excess of \$10,000. Finally, depending on the parameters provided by the City Solicitor, Council may want to consider establishment of its own internal request, review and approval processes for use of funds, which your Solicitor could draft for you.



Memorandum

TO: Dan Lispi, Andy Giorgione

January 12, 2004

FROM: Ron Barmore

SUBJECT: Project Security - Sales and Installation of Equipment Contract

The major responsibilities associated with the Sales and Installation of Equipment Contract between Barlow Projects Harrisburg, LLC and The Harrisburg Authority can be summarized in three phases; the manufacture and delivery of equipment, the installation of that equipment, and the timely performance of the combustion units. The security package offered by Barlow to the Authority addresses each phase of the contract.

Manufacture and Delivery of Equipment:

Barlow is offering 100% retention to secure the manufacture and delivery of the patented and proprietary equipment. Barlow will not bill the Authority any of the \$13 million for the Aireal™ combustion system and the proprietary Procedair air pollution control system until equipment is delivered.

Equipment bonds will be supplied by the equipment vendors for the SNCR system, refuse cranes, instrumentation, solids handling system and balance of plant equipment.

Equipment installation:

Payment and Performance bonds will be supplied by the installation subcontractor for the installation services.

Performance and schedule:

20% retention (\$9.1 million) will be held by the Authority and released on a pro-rata basis upon the timely demonstration of performance of each combustion unit.

There is no greater security available to the Authority than Barlow's funds. Just prior to the delivery of the Barlow proprietary equipment, the Authority will hold over \$4 million in retention PLUS the \$13 million that will be billed for the equipment. Barlow cash plus the equipment and installation bonds will offer the Authority a very comprehensive and complete security package. The table below further illustrates that fact.

CONSTRUCTION AND BULK COMMODITIES	18,153,202	P&P Bond
SNCR	1,717,000	Equipment bond
SOLIDS HANDLING	1,296,268	Equipment bond
BALANCE OF PLANT	992,843	Equipment bond
REFUSE CRANES	869,145	Equipment bond
INSTRUMENTATION	1,668,312	Equipment bond
COMBUSTION SYSTEM	7,000,000	No payment until delivery
AIR POLLUTION CONTROL	6,000,000	No payment until delivery
PROJECT INSURANCE	354,800	N/A
BOILERS	7,338,925	Retention
TOTAL	45,390,495	
RETENTION	20%	9,078,099

Developing an adequate security package has not been easy on any of us, but I'm confident that what is described herein will provide The Authority with the assurances they need that the project will be built on time and perform to all of our expectations.

I look forward to our meetings on Thursday and Friday to finalize the agreements.

A motion was made by Mr. House, seconded by Mr. Clark, that the Chairman is authorized to execute the Professional Services Agreement between The Harrisburg Authority and Barlow Projects, Inc. in essentially the form as distributed, for engineering services related to the retrofit of the Resource Recovery Facility upon satisfactory review by the City of Harrisburg, the Executive Director and the Authority's Solicitor. Funding for the professional services will be provided by the 2000 Resource Recovery Financing. The motion was unanimously approved.

A discussion was held whereby Mr. Clark questioned why this agreement was given to the board at the last minute. It was noted that closing or settlement on the 2000 Resource Recovery Bonds is scheduled for early December and that the deadline with DEP and EPA is December 19th regarding this agreement. It was also noted that both dates are prior to the next regularly scheduled Authority meeting, therefore it is imperative that the authorization for execution of the Professional Services Agreement be given this evening in order to meet the other two deadlines.

At this time the Chairman announced that board member, John Keller had just telephoned to advise that he would not be able to be in attendance this evening due to a personnel issue at his full time job.

CONSTRUCTION FUND REQUISITIONS:

A motion was made by Mr. House, seconded by Mr. Clark, that the Authority approve the following requisitions for payment:

1976 Sewer Construction Fund

Requisition No.	574	(00) Allfirst Trust Company, N.A. (2404)	4,000.00
			\$ 4,000.00

1988 Sewer Project - Series A

Requisition No.	2211	(00) Dauphin Electric (QB 2432)	125.22
Requisition No.	2212	(00) Dauphin Electric (QB 2432)	119.54
Requisition No.	2213	(00) Dauphin Electric (QB 2432)	7,045.98
Requisition No.	2214	(00) Dauphin Electric (QB 2432)	59.40
Requisition No.	2215	(00) The Harrisburg Authority (QB 2429)	1,051.97
			\$ 8,402.11

1998 Series B Resource Recovery Construction Fund

Requisition No.	162	(00) HDR Engineering, Inc. (QB 7320)	1,980.00
			\$ 1,980.00

Rick LaFerriere

From: Rick LaFerriere [rick.laferriere@barlowprojects.com]
Sent: Friday, August 29, 2003 5:41 PM
Cc: Randall Wheeler; Lisa Novack; Dennis Davidson; Diane Yashiro; Doccontrol6025; Gregg Tomberlin; Jerry Harris; John Ardary; John Wolford
Subject: Barlow Projects, Inc. Request for Quotation Number 1001-M132, Harrisburg WTE Facility Retrofit Project, Induced Draft Fans (M132)

Dear Sir or Madam:

Barlow Projects, Inc. (BPI) has been selected by The Harrisburg Authority for the retrofit design and construction of a mass solid waste to energy facility located in Harrisburg, Pennsylvania and hereby invites you to submit a bid on the Induced Draft Fans, RFQ # 1001-M132.

The attached zip file contains all of the documents associated with this inquiry. This transmission is final and a hard copy will not be sent. It is incumbent upon the recipient to forward these documents to your respective manufacturers or sales engineers as applicable.

In addition to completing and returning the enclosed Letter of Acknowledgment form, please acknowledge your receipt of this e-mail and successful opening of the attached documents via a return e-mail.

We look forward to your proposal.

Regards,

Rick LaFerriere
Manager of Purchasing
Barlow Projects, Inc.
2000 Vermont Drive
Fort Collins, CO 80525
Ph.: 970-228-8557
Fx.: 970-228-8688
Email: Rick.LaFerriere@barlowprojects.com

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12/19/2003

INTER-OFFICE MEMORANDUM

CITY OF HARRISBURG

April 12, 2003

CONFIDENTIAL

TO: Mayor Stephen R. Reed

FROM: Linda Lingle
Business Administrator

SUBJECT: Resource Recovery Facility

Mayor, Judith Heh wishes to lobby City Council members to pass the Retrofit Bond, and seeks your guidance with regard to where her efforts are most needed. Her current plan is to meet with Otto Banks, Linda Thompson and Eric Waters. Is this in line with your thinking?

She should focus on ALL of them, including John Wright and those listed above. Even after chatting with them directly, there is no doubt in my mind that further lobbying---and presence by AFSCME and SGF employees---will be needed at the public meetings held by City Council at which they will consider and vote upon the Retrofit Bond legislation. Attendees should not just attend the meeting ^{when} ~~where~~ the vote will occur---but the meetings before then, which is when Council will gauge opinions on the project and form conclusions.

S. Reed

S. Reed 4-15-03

cc: Randy King

Daniel Lipp

BIRHBG024997

Giorgione, Andrew

From: Daniel Lispi [dlispi@driconsultingdev.com]
Sent: Tuesday, December 20, 2005 1:36 PM
To: Giorgione, Andrew
Subject: RE: THA

That blows. Maybe we could get CIT to lend the amount to defease and agree to purchase the transfer station back from them in the amount need to get back to 218. Then the Authority issues bondsto fund the re-purchase with the bonds being guaranteed by the County. Think about it.

From: Giorgione, Andrew [mailto:AGiorgione@klettrooney.com]
Sent: Tuesday, December 20, 2005 1:26 PM
To: dlispi@driconsultingdev.com; James.Losty@Rbcdain.com
Subject: FW: THA

Please review....

From: Luttinger, Kenneth
Sent: Tuesday, December 20, 2005 12:50 PM
To: Giorgione, Andrew
Cc: Luttinger, Kenneth
Subject: RE: THA

Yes, I have.

The senior indenture from 1998 and the subordinate indenture from 2002 both contain covenants that require the Authority "to maintain or cause to be maintained the Facility/Waste Management Facility and every part thereof in good repair, working order and condition, will continuously operate the same and will, from time to time, make all needful and proper repairs, renewals and replacements so that the aggregate efficiency and capacity of the Facility/Waste Management Facility shal at no time be unreasonably impaired or reduced."

Both indentures also prohibit the sale of fixed properties having a value in excess of \$100,000 unless a Consulting Engineer files a certificate with the Trustee and the Authority recommending the sale and certifying that such sale is in the best interests of the Authority and will not impair the security of the Bonds and the retention of the assets is not necessary for the efficient operation of the Facility/Waste Management Facility.

Additionally, the Authority covenants to maintain rates and charges for use of the Facility at a level necessary to cover operating expenses, 100% of debt service requirements and to restore any deficiency in the debt service reserve fund.

I assume that the 2000 Indenture that is subordinate to the 1998 Indenture and senior to the 2002 Indenture has the same terms.

As such, absent the defeasance of the three indentures through the provision for payment of the three series of bonds and notes in accordance with the requirements of the three indentures, the facilities may not be sold.

Assuming that the transfer station generates significant revenues, and in light of the fact that the City

12/20/2005

BIRHBG003320

currently guarantees all of the bonds and notes, it would be possible for the City to sell its own bonds or notes in an amount sufficient together with the proceeds from the sale of the Facility to wholly defease the outstanding bonds and notes. The bonds or notes could be secured by revenues from the transfer station (whether the revenues are sufficient for the bonds to be solely revenue bonds without a general obligation pledge would depend on the projected level of revenue). To the extent that the revenues from operation of the transfer station are sufficient to pay debt service on the new debt, such new debt could be excluded from the City's debt statement as self-liquidating debt and would not encumber the City's ability to issue new debt. Alternatively, it may be possible for the Authority to issue new debt secured by revenues from the operation of the transfer station and a City guaranty, which debt could additionally be treated as self-liquidating.

I will be around if you would like to discuss this.

Ken

Kenneth R. Luttinger
krluttinger@klettrooney.com
Klett Rooney Lieber & Schorling
One Oxford Centre, 40th Floor
Pittsburgh, PA 15219
www.klettrooney.com
office: 412.392.2165
fax : 412.392.2128

IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the Internal Revenue Service, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).

From: Giorgione, Andrew
Sent: Tuesday, December 20, 2005 10:04 AM
To: Luttinger, Kenneth
Subject: THA

Ken - any opportunity to look at the documents I sent to you last week.

Andrew J. Giorgione, Esquire
KLETT ROONEY LIEBER & SCHORLING, P.C.
17 N. Second Street, 15th Floor
Harrisburg, PA 17101
Direct: (717) 231-3831
Fax: (717) 231-7712
agiorgione@klettrooney.com

12/20/2005

BIRHBG003321

Steam Plant

King, Randy

From: Lispi, Dan
Sent: Thursday, May 30, 2002 3:56 PM
To: John Luciew
Cc: King, Randy
Subject: RE: Incinerator

The bond issue size is approximately 16.7 million - The uses of the funds are as follows

City operating and utility charges	\$10,702,564
Design and Engineering fees	759,000
Capital Costs	477,880
Prior Year Accounts Payable	1,149,129
Permitting Expenses	664,000
Debt Service Reserve fund	600,000
Capitalized Interest	1,657,518
Estimated Bond Insurance Premium	356,360
Estimated Cost of Issuance	400,000

As you can see, the majority of the proceeds of this issue will go to the City, to recover unpaid charges of City services provided to the incinerator fund. Most of these charges were known at the end of last year and the City's 2002 budget anticipates the receipt of these amounts. The remaining amounts are for additional engineering and design and permitting expenses to refine the cost estimates and obtain the environmental permits and other necessary elements to issue the retrofit bonds. The bonds are being issued in two stages because we are not yet in a position to issue the construction bonds, but funds are needed now to address the above uses.

The second issue, which is expected to be approximately \$92 million will pay the actual construction costs of the retrofit. \$67 million of the 92 million is the direct construction cost. A detailed breakdown of the costs and the feasibility of the project was provided in a study performed by Barlow Projects and the report was submitted to Council last fall. The report concluded that the retrofit project was technically and financially feasible.

We hope to be in a position to issue these bonds in the early part of 2003. A Committee meeting was held last week and Council is expected to vote on the issue next week.

Let me know if you have any other questions.

-----Original Message-----

From: John Luciew
Sent: Thursday, May 30, 2002 12:30 PM
To: dlispi@cityofhbg.com
Subject: Incinerator

Hi Dan,

Just doing a story on the new incinerator bond issue, which council is now pondering.
Wondering what the money would go for. The amount has increased since the projected \$10 million figure. Also, wondering about the second bond issue for the main project. When will that come and in what amount.

Also, do you know when council is to vote on this first issue, and why is it needed in two stages like this?

Any general explanation will help a lot. Thanks

John.

Giorgione, Andrew J.

From: Caraccio, Daniel [dcaraccio@CovantaEnergy.com]
Sent: Wednesday, July 11, 2007 4:05 PM
To: Stauder, Paul
Cc: Daniel Lispi; Giorgione, Andrew J.; john@durbinassoc.net
Subject: Action Items From Lunch Meeting Today
Attachments: Doc3 (2).doc

Pursuant to your request, a quick summary of action items discussed at lunch today:

1. Dan Lispi: - contact Mayor to forewarn him about the Covanta letter being sent to City Council members
(draft attached in case you haven't seen it)
2. Paul Stauder: - send letter to Council Members
- FSA attend next Council Meeting??
- contact John Keller regarding receivable help
3. Andy Giorgione: - Meet with Linda Thompson on Friday
- Draft letter/statement for Councilwoman Vera White
- Coordinate for Tuesday Council Meeting
- Provide some guidance to Covanta on what, if any, items we need to present at the Tuesday meeting
4. John Durbin: - contact Fred Clark regarding receivable help
- Meet with Linda Thompson and Andy on Friday
5. Dan Caraccio: - type up this email and make sure Andy doesn't forget his items since he's 40 now.
- Copy of "larger" proforma to Councilwoman Thompson

Potential "gives" for Councilwoman Thompson Friday Meeting:

1. Go back to initial construction price of 25.5M.
2. Shave off 2-3M of the working capital number
3. Oversight Committee for Construction Project

Please review and let me know if this captures all the items and accurately reflects the items discussed earlier today. Thanks.

Daniel J. Caraccio
Business Manager

COVANTA
ENERGY

for a cleaner world

Covanta Delaware Valley, LP
10 Highland Avenue
Chester, PA 19013
P 610.497.8111 F 610.497.8042 C 484.574.7778
www.CovantaHolding.com

7/11/2007

BIRHBG039993

CONFIDENTIAL

December 29, 2006

TO: Mayor Stephen R. Reed

FROM: Daniel R. Lispi

SUBJECT: Resource Recovery Update

1) **Covanta Agreement**

Meetings were conducted (Bruce Foreman, Andrew Giorgione and I) with Covanta all this week to negotiate the Interim Operating Agreement, and negotiations concluded today. The Agreement attached provides that on January 2, 2007 Covanta will assume all aspects of the operation of the Facility with their employees. The term is 90 days, and Covanta is to be paid/reimbursed for actual costs incurred with no mark-up. Covanta will work on an offer for sale or lease during the interim period and the Agreement provides a Right of First Refusal during the Interim Period and for an additional 30 days thereafter.

The Agreement has been conditionally executed by the Chairman of the Authority who will be out of town from now until next week. The executed Agreement has not yet been given to Covanta but it will be effective January 2, 2007 unless you object.

2) **Labor Issues**

A meeting was held this morning with the Authority, Covanta and AFSCME to discuss the situation. The Authority and Covanta made it clear that the intent is that the Facility be staffed with Covanta employees after January 2, 2007. City employees will be interviewed for available positions and qualified employees would be offered jobs. AFSCME representatives indicated that they have not been notified by the City as to the status of the current Facility employees. Further discussions between the City and AFSCME are planned to effect an orderly transition.

3) **Swap**

Andrew and I met with George Hartwick yesterday to discuss the proposed swap agreement. George had received the "benefit" of a briefing by Nick DiFrancesco and was initially very negative. At the end, he did not say that he would not support it, but also did not say he would. He indicated that he wanted to discuss the matter with Jeff Haste. I spoke to Jeff after the meeting and briefed him on the content of the meeting with George. Jeff remains supportive of the swap or the loan to complete the

Facility. It is very important that you contact both Jeff and George as soon as possible.

Obviously, timing is critical the funds are needed immediately to support the operation in the short term and to get moving on the improvements.

William Cluck, Esq. (current Authority Board member)

Law Office of William J. Cluck

587 Showers Street
Harrisburg PA 17104
717-238-3027
fax 717-238-8033
billcluck@billcluck.com

October 4, 2012

Thank you for the opportunity to appear before the State Senate Local Government Committee and testify about the Local Government Unit Debt Act, related statutes and the financings of the Harrisburg Resource Recovery Facility ("RRF"). I am a licensed attorney in the Commonwealth of Pennsylvania and have concentrated my practice in environmental and land use law for 25 years. I am a member of the Board of Directors of the Harrisburg Authority. I was first appointed by Harrisburg City Council in April 2010. That appointment was voided by the Pennsylvania Supreme Court on May 26, 2010. The Supreme Court held that the power to appoint members of the Board of the Harrisburg Authority resided with the Mayor and not City Council. Thereafter, I was reappointed by Mayor Thompson and confirmed unanimously by City Council in the summer of 2010.

I am here today by invitation of Senators Eichelberger and Blake. However, my testimony is in my capacity as a citizen activist. I do not speak for the Board of the Harrisburg Authority.

By way of background, the following sections summarize the history of the Harrisburg Authority, describes the RRF, identifies previous repair and modernization projects, and provides a chart of significant events involving RRF financing, the historical relationship between Dauphin County and the City of Harrisburg for waste management planning, identifies the numerous financings for the RRF that has resulted in over \$325 million in existing debt, and finally, my efforts to raise public awareness of the need for a forensic investigation prior to my appointment to the Board.

History of Harrisburg Authority (as provided in numerous Official Statements for Authority Bonds and Notes)

The Authority, a body corporate and politic under the law of the Commonwealth, was created pursuant to the Municipal Authorities Act. On November 18, 1987, the Council of the City enacted an ordinance adopting and approving an

amendment to the Articles of Incorporation of the Harrisburg Sewerage Authority, a municipality authority created in 1957 under the Municipal Authorities Act, whereby the Harrisburg Sewerage Authority's name was changed to the Harrisburg Water and Sewer Authority and its powers modified. Pursuant to such ordinance, the Harrisburg Water and Sewer Authority was empowered to engage in, finance and construct public works projects relating to water treatment and conveyance systems as well as to continue the original responsibility of the Harrisburg Sewerage Authority to finance improvements to the major sewage collection facilities of the City. On January 23, 1990, the Council of the City enacted an ordinance adopting and approving an amendment to the Articles of Incorporation of the Harrisburg Water and Sewer Authority whereby the Harrisburg Water and Sewer Authority's name was changed to The Harrisburg Authority and its powers modified to include all those powers authorized for a general purpose municipal authority under the Municipal Authorities Act. The amendment to the Articles of Incorporation was filed at Department of State of the Commonwealth on January 30, 1990 and became effective as of that date. Pursuant to this amendment to the Articles of Incorporation, the terms of existence of the Authority was extended to January 1, 2040. The governing body of the Authority is a Board consisting of five members appointed by the Mayor of the City and confirmed by the Council of the City. Board members' terms of office are staggered. None of the Board members of the Authority are members of the Council of the City, nor is any Board member of the Authority an elected official of the City.

The Waste Management Facility

As of 2003, before the retrofit project, the facility consisted of two municipal waste combustors rated at 360 tons per day with heat recovery and steam generation, electricity co-generation facilities, the transfer station and an ash landfill. The RRF was originally constructed in 1969 by the Harrisburg Incinerator Authority as a refuse-fired resource recovery facility and placed into operation in 1972. In December 2000, certain revised federal air quality regulations became applicable to incinerators with a capacity greater than 250 tons per day. The RRF was unable to meet those regulations. On January 9, 2001, the City, EPA and DEP entered into an agreement whereby the RRF reduced its permitted capacity for each combustor to 250 tons per day. Under that agreement, the City was required to cease operations no later than June 18, 2003.

Repair and Modernization Projects

By the late 1980's, the combustors had physically deteriorated, their ability to process waste had declined and the facility experienced certain environmental regulatory compliance difficulties. In 1988, the City entered into Consent Orders

and Agreements with DER to assure compliance with air quality and solid waste regulations. Major capital repairs were completed in 1990 and 1991 to comply with the 1988 COAs and regulations. By 1997, significant additional repairs and modifications to the combustors had again become necessary, in order to reduce air emissions and to comply with an Administrative Order by Consent with EPA, and were performed. Significant repairs were again performed in 1999.

The Authority engaged Barlow Projects, Inc. in November 2000, as engineers to plan and design a thorough modernization of the facility. Barlow produced a Phase I Engineering and Feasibility Study costing approximately \$759,000, funded from the proceeds of the 2002 Notes. The design basis Barlow initially proceeded with proved to be too expensive. Thereafter, in September 2002, the Authority's executive director issued a work order authorizing Phase II retrofit Design Engineering and Feasibility Study. The retrofit project was to be completed by January 2, 2006.

Barlow ran into many issues with subcontractors, had cost overruns and delays in construction as early as September 2004. By March 2005, Barlow was in crisis due to the collapse of the subcontract with the boiler manufacturer apparently due to unanticipated increases in the price of steel. Over the next year and a half, the Barlow contract was amended multiple times, the retainage relied upon for security instead of performance bonds was released and the cost of completion increased substantially.

Barlow was unable to obtain additional financing to complete construction. In December 2005, the Authority entered into an agreement with CIT Financial to provide an additional \$25 million. The details of that transaction are extremely complicated and have been the subject of federal litigation, which is now on appeal to the Third Circuit.

At the end of December 2006, the Authority fired Barlow, terminated the operating agreement with the City and entered into an agreement with Covanta Energy Services to operate the facility.

Covanta eventually entered into a long term contract with the Authority in March 2007 to operate the RRF. Covanta also provided \$25 million to complete the retrofit project.

Relationship Between Dauphin County and City/ RRF Financings

Date	Party	Event	Financed Amount	Eventual Status of financing/Uses of Funds	Comments
1972	Harrisburg Incinerator Authority ("HIA")	Incinerator placed into operation			
1977	Harrisburg Incinerator Authority and City of Harrisburg	HIA sells incinerator to City			
12-4-87	Dauphin County	Incorporates Dauphin County Intermunicipal Solid Waste Authority			Dissolved by County in 2000
1988	Pa Legislature	Enacts Act 101- requires counties to draft ten year waste management plans			
1991	Dauphin County	Enacts Resolution 3-1991. 10 yr waste plan, selects Dauphin Meadows landfill, excludes City incinerator. DEP approves plan 5-6-91. City appeals to Environmental Hearing Board			City represented in appeal by I firm Obermeyer Rebmann Maxwell & Hippell
12-23-93	City of Harrisburg/Harrisburg Authority	City sells incinerator to Harrisburg Authority. City and Authority enter into management agreement for City to operate facility. Application for approval of lease	Guaranteed Resource Recovery Facility Revenue Bonds, Series A- \$31,230,000 Guaranteed Taxable	1993 Series A bonds (\$31,230,000) were refunded by the 1998 Series A bonds (aggregate principal amount \$28,720,000). The 1998	Series A Cost of issuance - \$ 670,703.25. Eckert Seamans Cherin & Mellott - bond counsel- \$250,420.25. Series B Cost of issuance - \$204,296.75. Obermayer, Rebmann, Maxwell & Hippel - underwriters' counsel fee \$195,000

		<p>rental debt-excluded as self-liquidating- under provisions of Local Government Unit Debt Act filed by City of Harrisburg on October 22, 1992. Secretary of DCED, Karen Miller approved application on December 2, 1992. Closing on the 1993 revenue bonds did not occur until December 23, 1993.</p>	<p>Resource Recovery Facility Revenue Bonds, Series B - \$ 9,435,000</p>	<p>Series A bonds (\$ 33,110,000) were partially refunded by 2003 Series A,B,C - the outstanding principal amount as of July 1, 2009 of the 1998 Series A bonds was \$ 11,271,000.</p> <p>1993 Series B bonds (\$9,435,000) were refunded by 1998 Series D bonds (aggregate principal amount \$8,675,000). 1998 Series D partially refunded with 2000 Notes and remaining bonds refunded by 2003 A,B,C Bonds.</p>	
1995	Dauphin County/ City of Harrisburg	County and City enter into settlement of City's appeal of County's waste plan.			County and Solid Waste Authority required to assist City in obtaining waste stream sufficient to generate revenues to finance retrofit of RRF
11-26-96	Harrisburg Authority	Revenue note used to finance extraordinary repairs and capital	\$3,500,000 Resource Recovery Facility	The 1996 Note was refinanced by the \$	<p>Cost of issuance was \$ 49,350.00, dispersed as follows:</p> <ul style="list-style-type: none"> Eckert Seamans Cherin &

		<p>additions and working capital needs.</p> <p>\$ 2,903,613.00 was transferred to the solid waste revenue fund and was used to pay the following operating expenses:</p> <ul style="list-style-type: none"> • \$ 925,303 utilities costs • \$ 1,347,814 unpaid expenses due to City as management agent of the facility • \$ 630,496 unpaid administrative charge due to City as management agent 	<p>Revenue Note, Series of 1996 (not guaranteed by City)</p>	<p>3,000,000 1997 Series A Revenue Note.</p> <p>The 1997 Series A Revenue Note was refunded by the \$ 3,815,000 1998 Series C Revenue Bonds.</p> <p>The 1998 Series C Revenue Bonds were advance refunded by 2003 A,B,C Bonds</p> <p>Although the City did not initially guarantee the 1996 Revenue Note, ultimately, the City guaranteed the 2003 ABC Bonds.</p>	<p>Mellott -</p> <ul style="list-style-type: none"> • Note Counsel fee \$ 35,000 • Structuring Fee \$ 20,000 • Milt Lopus Associates, Inc. - financial advisor fee \$ 6000 • Rhoads and Sinon, LLP - Bank Counsel fee \$ 1500 • Balaban and Balaban - Authority Solicitor Fee \$ 3000
4-10-97	Harrisburg Authority	<p>Source was April 1, 1996 Pennsylvania Pool Financing Fund, City was applicant as guarantor for Authority. Proceeds used to design, acquire, construct and equip transfer station.</p>	\$7,943,274	Refunded by 1998B bonds	

6-30-97	Harrisburg Authority	Refinanced the 1996 Note.	\$3,000,000 Guaranteed Resource Recovery Revenue Note to Fulton Bank.	The 1997 Note was refunded by the 1998 Series C Guaranteed Resource Recovery Facility Refunding Revenue Bonds, principal amount due was \$2,700,710.	Costs of issuance- \$43,686.37 Eckert Seamans Cherin & Mellott, LLC - Note Counsel Fee \$25,000 Milt Lopus Associates, Inc. - Financial Advisor's Fee - \$10,000 Caldwell & Kearns - Bank Counsel Fee - \$3000 Balaban and Balaban - Authority Solicitor Fee - \$3000
8-27-98	Harrisburg Authority	Self-Liquidating Debt in the amount of \$55,765,000- report prepared by HDR Engineering, Inc.	<p>Series A, \$33,110,000 Guaranteed Resource Recovery Facility Refunding Revenue Bonds.</p> <p>Series B, \$8,585,000 Guaranteed Resource Recovery Facility Refunding Revenue Bonds.</p> <p>Series C, \$3,815,000 Guaranteed Resource Recovery Facility Refunding Revenue Bonds</p> <p>Series D, \$</p>	<p>Series A advanced refunding 1993a series bonds, \$28,720,000 remains outstanding, fund reserves and cost of issuance. The 1998 Series A bonds (\$33,110,000) were partially refunded by 2003 Series A,B,C - the outstanding principal amount as of July 1, 2009 of the 1998 Series A bonds was \$11,271,000.</p> <p>Series B will prepay the 1997 pool loan of which</p>	<p>Cost of Issuance Series A - \$558,549.07 Eckert Seamans- bond counsel fee \$32,403.25, Float counsel fee \$12,961.30, structuring counsel fee \$16,201.62 Milt Lopus- financial advisor fee \$22,682.28 Obermayer Rebmann-underwriters counsel fee \$32,403.25 Samuel T. Cooper III - bond counsel \$9720.98 Balaban and Balaban - Authority counsel \$9720.98.</p> <p>Series B - \$148,575.61 Eckert Seamans- bond counsel fee \$8401.75, Float counsel fee \$3360.70, structuring counsel fee \$4200.88 Milt Lopus- financial advisor fee \$5881.22 Obermayer Rebmann-underwriters counsel fee \$8401.75 Samuel T. Cooper III - bond counsel \$2520.52 Balaban and Balaban - Authority counsel \$2520.52</p>

			<p>10,255,000 Guaranteed Taxable Resource Recovery Facility Refunding Revenue Bonds</p>	<p>\$7,923,274 remains, fund reserves and cost of issuance. Series B was retired by the 2003 ABC bonds.</p> <p>Series C will refund the 1997 note which has balance of \$2,700,710, fund reserves and cost of issuance. The 1998 Series C Revenue Bonds were advance refunded by 2003 A,B,C Bonds Although the City did not initially guarantee the 1996 Revenue Note, ultimately, the City guaranteed the 2003 ABC Bonds.</p> <p>Series D will advance refund 1993 series B bonds of which \$8,675,000 remain, fund reserves and cost of</p>	<p>Series C - \$3,739,545.23 (source: page 4 of Official Statement- but Exhibit C only has \$15,204.27) Only cost of issuance listed was Financial Security Assurance, Inc. for insurance premium- \$15,204.27 Series D - \$148,921.14 Eckert Seamans- bond counsel fee \$9195.00, Float counsel fee \$3678.00, structuring counsel fee \$4597.50 Milt Lopus- financial advisor fee \$6436.50 Obermayer Rebmann- underwriters counsel fee \$9195.00 Samuel T. Cooper III - bond counsel \$2758.50 Balaban and Balaban - Authority counsel \$2758.50</p>
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				issuance. 1998 Series D partially refunded with 2000 Notes and remaining bonds refunded by 2003 A,B,C Bonds.	
12-6-99	Senator Piccola	EHB granted Senator intervenor status to oppose expansion of Dauphin Meadows landfill			DEP had denied expansion of landfill. Landfill appealed. Landfill ultimately closed
1-5-00	Dauphin County	Newly elected Commissioners John Payne and Lowman Henry adopt Resolution 1-2000 creating task team to investigate feasibility of dissolving County Solid Waste Authority. Task team consists of Commissioner Payne, Mayor Reed and Andrew Giorgione.			
1-31-00	Dauphin County	Dauphin County Court of Common Pleas approves petition of county to appoint Andrew Giorgione of Obermeyer Rebmenn as special counsel to serve on solid			

		waste issues.			
2-8-00	Dauphin County	Task Force (Commissioner Payne, Mayor Reed, Andrew Giorgione) issue report recommending dissolution of County Solid Waste Authority			
2-9-00	Dauphin County	Patriot News publishes article on effort of newly elected county commissioners to dissolve county's solid waste authority. Commissioners Payne and Henry replace authority solicitor, name Andy Giorgione as new authority solicitor and name city special projects director Dan Lispi to board of waste authority. Payne and Henry pledge to work closely with city.			
2-22-00	Dauphin County	Establishes Office of Municipal waste Management and enters into Intergovernmental Cooperation Agreement with City		Between 2000 and 2007, Dauphin County paid Dan Lispi \$ 217,152.37 and Andrew Giorgione's law firms \$985,459.93.	City Council approved Intergovernmental Cooperation Agreement on March 15, 2000.

4-27-00	Senator Piccola	EHB grants summary judgment in favor of Dauphin Meadows and remands application to expand landfill to DEP for further review.			
September 2000	City/THA	Barlow Projects presents preliminary report outlining retrofit concept that offered a modernization option that, according to Mayor Reed, appeared to be economically feasible.			Initial meeting between Barlow, City and THA was August 8, 2000.
11-16-00	Harrisburg Authority	Board adopts resolution to enter into Professional Services Agreement with Barlow Projects			
11-27-00	Harrisburg Authority	THA signs Barlow contract- exempt from competitive bidding- "involves engineering applications of patented technology to the retrofit of the RRF"- contract price \$300,000			
12-06-00	Harrisburg Authority	Proceeds used for capital project and restructuring	Series A\$4,195,000 Guaranteed	Series A Construction account	Series A Cost of issuance \$168,484.28 Samuel T Cooper III - special

		<p>project. The capital project included funding engineering studies for major retrofit, \$400,000.</p> <p>Barlow Projects identified as Authority's consulting engineer.</p> <p>The restructuring project advance refunding of a portion of 1998B bonds and 1998D bonds. Also proceeds were used to repay debt service on 1998 bonds due in 2000 and 2001. \$4.1 million was used to reimburse THA for \$1.5 million in incurred but unpaid operating expenses, \$2.5 million for current year operating expenses, and \$113,000 for operating reserve.</p>	<p>Resource Recovery Facility Revenue Notes</p> <p>Series B\$21,000,000 Guaranteed Federally Taxable Resource Recovery Facility Revenue Notes</p>	<p>\$800,000 1998B escrow fund \$3,084,473.02</p> <p>Series B used to establish 1998D and 1998 (2001) escrow fund \$9,559,871.96 and pay City guarantee fee \$4,226,909.43</p> <p>2000 Notes paid by 2003ABC Notes.</p>	<p>counsel to THA- fee \$4162.53</p> <p>Milt Lopus Associates, Inc. - financial advisor to THA- \$4662.04</p> <p>Eckert Seamans Cherin & Mellott, LLC- note counsel fee \$8325.06, tax analysis counsel fee \$2497.52, structuring counsel fee \$4162.53, float agreement counsel fee \$3330.03</p> <p>Obermayer Maxwell & Hippel LLP- underwriters' counsel fee - \$8325.06</p> <p>Rhodes & Sinon- THA counsel- \$2497.52</p> <p>Financial Security Assurance Inc- bond insurance premium- \$79,243.55</p>
1-9-01	Harrisburg Authority/City	Derating agreement with EPA and DEP to reduce capacity of RRF - RRF must shut down by June 2003.			
7-25-01	Barlow	Issues Phase I Retrofit Design			

		Engineering and Feasibility Study			
8-30-01	Barlow	Issues Revision 1 to Phase I Retrofit Design			
11-15-01	Barlow	Issues Revision 2 to Phase I Retrofit Design			
12-13-01	City	Mayor Reed memorandum to City Council detailing Barlow study and advocating retrofit project			
8-14-02	Harrisburg Authority	Uses of funds: Working capital \$12,210,000 (\$1,149,129 to pay unpaid prior year utility expenses, \$11,085,871 for current year operating expenses including reimbursing city \$5,165,000); Engineering and Design fees, Permitting fees \$1,423,000 (Obermeyer law firm paid \$150,591.31, Barlow Projects paid \$717,274); Capitalized interest \$1,108,872.22 (to pay interest on 2002 notes through Nov. 2004)	\$17,000,000 Guaranteed Federally Taxable Resource Recovery Facility Subordinated Variable Rate Revenue Notes, Series A of 2002		Costs of Issuance \$637,832.40 Eckert Seamans- Underwriters Counsel \$60,000 Eckert Seamans- Authority Special Counsel Fee \$20,000 Rhoads & Sinon Authority Solicitor Fee \$7000 Obermeyer Rebmann Bond Counsel Fee \$ 75,000 Financial Security Assurance Bond Insurance Premium- \$336,330.40 Milt Lopus Associates Financial Advisor Fee \$15,000

8-30-02	City of Harrisburg	City files appeal of DEP's issuance of waste permit for incinerator. City discontinued appeal on 12-4-02.			City of Harrisburg represented by Andrew Giorgione of Obermeyer Rebmann Maxwell & Hippell
9-26-02	THA/Barlow	Phase II work order issued, purpose of phase 2 is to meet permit requirements and develop revenue enhancement options			
12-17-02	Dauphin County	Ordinance 7-2002 adopted, flow control all waste to RRF when retrofit completed. Resolution 27-2002 adopted, requires Department of Solid Waste to amend 10-year waste plan and to implement, administer and enforce the plan.			
2-10-03	Dauphin County	EHB denies motion for summary judgment filed by Dauphin Meadows landfill seeking to overturn DEP's denial of landfill expansion. Dauphin County was granted intervenor status, along with Senator Piccola, to			Dauphin County represented by Andrew Giorgione of Obermeyer Rebmann Maxwell & Hippell

		oppose landfill expansion.			
3-3-03	City of Harrisburg	Intervenes in citizen appeal of waste permit for incinerator			City represented by Andrew Giorgione of Obermeyer Rebmann Maxwell & Hippell
3-20-03	City/County	Intergovernmental Cooperation Agreement renewed for additional three years.			
6-4-03	Harrisburg Authority	The 2003 Restructuring Project consisted of advance refunding or retiring a portion of the 1998A bonds; all of the 1998B bonds, 1998C bonds and 1998D bonds; all of the 2000Notes; funding working capital to assist in paying costs of compliance with EPA/DEP agreements (\$1,950,863.36- which was transferred on 6-6-03 from construction fund to revenue account); funding debt service reserve for 2003 Notes and paying cost of issuance including municipal bond insurance premium.	<p>\$22,555,000 Guaranteed Federally Taxable Resource Recovery Subordinate Revenue and Refunding Revenue Bonds Series A</p> <p>\$29,085,000 Guaranteed Federally Taxable Resource Recovery Subordinate Revenue and Refunding Revenue Bonds Series B</p> <p>\$24,285,000 Guaranteed Resource Recovery Facility Subordinate Refunding</p>		<p>Cost of Issuance (ABC combined) Harrisburg Authority administrative fee \$50,000 Klett Rooney Trustee Counsel Fee \$5000 Eckert Seamans Underwriter Counsel Fee \$82,000 Rhoads & Sinon Authority solicitor fee \$10,000 Obermeyer Rebmann bond counsel fee \$85,000, Tax structuring counsel fee \$20,000, No merit opinion fee \$20,000 Stanley Mitchell Esq. Bond counsel fee \$20,000 Milt Lopus Associates financial advisor fee \$15,000 Barlow & Associates consulting engineer fee \$20,000 Financial Security Assurance Inc bond insurance premium \$1,746,640.81</p>

			Revenue Notes Series C		
6-26-03	THA	Rhodes & Sinon issues legal opinion on conflicts of interest			
6-30-03	Harrisburg Authority/City	Incinerator shuts down pursuant to consent order with EPA and DEP			
8-6-03	Reynolds Construction	Submits proposal to Dan Lispi to serve as THA Owner's representative for retrofit project			
9-18-03	City Council	Buchart Horn issues independent report on Barlow proposed retrofit			
10-10-03	Harrisburg Authority	Local citizens appeal air permit for incinerator			Harrisburg Authority represented by Andrew Giorgione of Obermeyer Rebmann Maxwell & Hippell
10-21-03	Dauphin County	HRG provides review of retrofit project for county. Review of Barlow's September 2003 pro forma, admits they did not examine all assumptions in detail, but HRG felt the values and projections fall within a reasonable range.			

		<p>PFM provides financial review of the retrofit bonds. Review was based upon September 22, 2003 pro forma. PFM wrote its review was subject to review of final documents as they become available. Closing documents do not reveal any additional review submitted by PFM to County.</p>			
10-28-03	Dauphin County	<p>County's law firm, Mette Evans & Woodside provided commissioners with summary report on retrofit project. "Based upon our experience and review of this matter, we have been impressed with the team assembled by the Authority and the City and their approach to this very difficult project. Furthermore, as indicated above, Barlow, based upon a review of its background and experience, has delivered, successfully, similar, albeit</p>			

		smaller, projects in the past."			
11-5-03	City Council	Approves resolution guaranteeing financing of retrofit project			
11-6-03	Dauphin County	Approves secondary guarantee of retrofit project financing			Barlow's final pro forma issued claiming retrofit will result in sufficient revenues to pay stranded debt and retrofit bonds.
12-30-03	Harrisburg Authority	Retrofit project. Proceeds used to finance costs of retrofit; fund debt service reserve for 2003 bonds; provide working capital to authority to pay estimated interest on 1998A bonds, 2002 notes and 2003 notes during construction of retrofit; pay estimated capitalized interest on 2003 bonds; pay transition costs of operating transfer station and maintaining RRF during shutdown; and paying costs of issuance and guarantee fees.	<p>\$96,480,000 Guaranteed Resource Recovery Facility Revenue Bonds Series D consisting of \$31,480,000 subseries D-1 and \$65,000,000 subseries D-2</p> <p>\$14,500,000 Guaranteed Federally Taxable Resource Recovery Facility Revenue Bonds Series E</p> <p>\$14,020,000 Guaranteed Federally Taxable Resource Recovery Facility</p>		<p>Total costs of issuance \$7,614,314.99</p> <p>Harrisburg Authority administrative fee \$50,000</p> <p>Klett Rooney trustee counsel fee \$5000, special counsel fee \$80,000</p> <p>Eckert Seamans underwriters counsel fee \$205,000, swap legal services</p> <p>Rhodes & Sinon authority solicitor fee \$15,000</p> <p>Obermeyer Rebmann bond counsel fee, swap counsel fee, litigation opinion fee \$263,370.99</p> <p>Stanley Mitchell bond counsel fee \$20,000</p> <p>Milt Lopus Associates financial advisor fee, swap advisor fee \$75,000</p> <p>IMAGE swap advisor fee \$105,000</p>

			Revenue Bonds Series F		<p>City of Harrisburg guarantee fee \$2,834,544.00</p> <p>Dauphin County guarantee fee \$1,900,000</p>
12-31-03	Barlow Projects	Enters into purchase order with Victory Energy for design, fabrication and supply of three boilers.			Steel prices increased in first quarter of 2004, Victory and its boiler design subcontractor and fabricators were off schedule. Eventually Barlow sent Notice of Default to Victory late February 2005.
1-5-04	Project Team	First of 86 weekly meetings among THA, City, Barlow and contractors			
4-1-04	Barlow Projects	Barlow entered into Professional Consulting Services Agreement with Reynolds Construction Management, Inc.			
4-2-04	City and THA	City and Authority enter into Consulting Agreement with DRL Consulting and Development LLC (Dan Lispi) to, among other things, provide advice and recommendations to assist in decision-making, scheduling, cost control, financing matters and dispute resolution during construction phase of the retrofit project. Payment from resource recovery fund or bond proceeds \$90,000 annually for three years.			
5-6-04	Harrisburg Authority	THA closes on contract with Barlow Projects to			

		supply combustion, boiler and air pollution control systems and supply construction management services; Barlow, in addition to providing final engineering and design work, is assisting in the procurement of the remaining equipment and services necessary to undertake the retrofit.			
6-04	Harrisburg Authority	THA enters into agreement with Reynolds Construction Management as owner's representative.			
1-31-05	Harrisburg Redevelopment Authority	RDA issues \$9 million stadium bonds guaranteed by City. City certifies 2003 retrofit bonds are still self-liquidating			
3-16-05	THA/Barlow	Barlow meeting with Dan Lispi, Barlow in crisis regarding boiler contractor			
4-27-05	THA/Barlow	Amendment No. 3 to Barlow Equipment Contract reduces percentage of retainage held as security for performance			
9-15-05	Harrisburg Authority	EHB grants summary judgment and dismisses 2003 appeal of incinerator air permit filed by local citizens			Harrisburg Authority represented by Andrew Giorgione of Klett Rooney Lieber & Schorling
12-22-05	Harrisburg Authority	Harris Group prepares confidential report for CIT of the costs to complete the Barlow			

		retrofit project.			
1-1-06	Harrisburg Authority	Financial advisor certifies the outstanding indebtedness of the RRF is \$229,895,000.		Balances for each issue: 1998A \$11,970,000 2002A \$17,000,000 2003A \$22,555,000 2003B \$29,085,000 2003C \$24,285,000 2003D-1 \$31,480,000 2003D-2 \$65,000,000 2003E \$14,500,000 2003F \$14,020,000	
12-06	Harrisburg Authority	Barlow fired. THA terminates agreement with City to operate facility.			
1-2-07	Harrisburg Authority	Covanta hired on temporary basis to operate facility			
3-29-07	Harrisburg Authority	THA enters into long term contract with Covanta to operate facility			
8-29-07	Harrisburg Authority	City Council appointments to Board take over			
12-27-07	Harrisburg Authority	Proceeds used as follows: County- \$2,250,000 reimbursement for advance to Covanta County- \$3,100,000 reimbursement for 12-1-07 debt service and swap, cap payments	\$20,961,574.40 Guaranteed Resource Recovery Facility Limited Obligation Notes Series C \$9,033,234.45 Federally Taxable	County paid off Notes in December 2010	

		<p>County- \$1,067,783.00 payment of county's \$4.90/ton administrative fees for 2006 and 2007</p> <p>City- \$250,000 reimbursement for advance to Covanta City- \$600,000 reimbursement of 11-1- 07 debt service payment City- \$3,456,097.99 reimbursement of 6-1-07 and 9-1-07 debt service, swap payments</p> <p>2008 debt service on 2003 notes, bonds - \$9,136,674.00 2008 debt service on 1998A bonds- \$469,836.00 2008 debt service on 2002 notes - \$914,417.86</p> <p>Covanta - \$5,716,728.55 amounts owed under interim operating agreement</p> <p>Public Finance Management (THA financial advisor) \$142,410.00</p> <p>Eckert Seamans (note counsel and THA special counsel fees) \$300,000</p> <p>Mette Evans & Woodside (County special counsel fees) \$207,650.00</p> <p>Goldberg Katzman (THA litigation counsel fee) \$45,308.98</p>	<p>Guaranteed Resource Recovery Facility Limited Obligation Notes Series D</p>		
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		<p>Milt Lopus Associates (THA financial advisor fee) \$ 150,000.00</p> <p>Foreman & Foreman (THA general counsel fee) \$2925.00</p> <p>Susquehanna Group Advisors (County financial advisor fee) \$115,000.00</p> <p>HRG (County consulting engineer) \$35,935.58</p> <p>HDR (THA consulting engineer) \$38,500.00</p>			
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