State of New Hampshire

HOUSE OF REPRESENTATIVES

CONCORD

RECEIVED
MAR - 5 2018
OFFICE OF THE REGIONAL ADMINISTRATOR

Tuesday, February 27, 2018

Alexandra Dunn United States Environmental Protection Agency
USEPA REGION 1 - New England
5 Post Office Square,Mail Code: ORA01-4
Boston, MA 02109-3912

Dear Ms Dunn Dunn,

Enclosed please find a copy of a letter with attachments that was sent by Representatives Mindi Messmer, Philip Bean and Mike Edgar and myself to Attorney General Gordon MacDonald and Director of Charitable Trusts Tom Donovan requesting an investigation into the finances and operations of the Coakley Landfill Group.

If you have any questions of me about the letter and our concerns about the Coakley Landfill Group, please do not hesitate to contact me by phone (603 962-2737) or email (reprennycushing@gmail.com).

Thank you for your attention to this letter.

Respectfully,

Representative Renny Cushing, Rockingham 21
395 Winnacunnet Road
Hampton, NH 03842

Enclosure

State of New Hampshire

HOUSE OF REPRESENTATIVES

CONCORD

February 19, 2018

Attorney General Gordon MacDonald
Office of the Attorney General
33 Capitol Street
Concord, NH 03301

Director of Charitable Trusts Tom Donovan
Office of the Attorney General
33 Capitol Street
Concord, NH 03301

Dear General MacDonald and Director Donovan:

This letter is a follow-up to a conversation last Monday afternoon (2/12/18) between Director Tom Donavan and Representative Renny Cushing. The purpose of the phone call by Representative Cushing to Director Donovan was to inquire about the status of required reporting by the Coakley Landfill Group (CLG) to the Charitable Trust Unit of the Office of Attorney. Director Donovan confirmed to Representative Cushing that, according to the records he was able to access at that moment, Coakley Landfill Group is not on the registry of Charitable Trusts established pursuant to RSA 7:19 and maintained by the Unit, it has not registered with the Unit or completed an NHCT1, and it has not filed annual reports, form NHCT2A, or copies of IRS form 990's with the Charitable Trust Unit.

The undersigned, Representative Mindi Messmer (Rock 24), Representative Renny Cushing (Rock 21), Representative Philip Bean (Rock 21), and Representative Mikd Edgar write as lawmakers, as members of the Commission on the Seacoast Cancer Cluster Commission established under RSA 126-A:74, and as citizens, who been working to protect health and safety of the people of the seacoast from toxins escaping from the Coakley Superfund Site. In that work and in our concerns we are not alone. In a letter sent to a us and other seacoast legislators last summer from NHDES, we were told the *"New Hampshire Department of Environmental Services (NHDES) shares these concerns, and believes that the migration of contaminants from site groundwater to surface water and the resultant impacts on Berrys Brook are unacceptable and need to be addressed."* That letter went on to state *"NHDES believes that actions need to be implemented at the site to provide additional removal or containment of the*

contamination, in order to mitigate these surface water quality impacts."

As part of our work to protect the public, on February 2, 2018 we filed a request pursuant to RSA 91-A, with the Coakley Landfill Group, the City of Portsmouth, the towns of Newington and North Hampton, and the Department of Defense. Our letter to the CLG and municipalities requests copies of reports to the Attorney General on behalf of Coakley Landfill Group, copies of all submittals to the NH Division of Charitable Trusts, including all annual financial reports (IRS Form 990, or functional equivalent), Coakley Landfill Group bank records, and copies of annual audited financial reports of the operations of the parties listed in the Coakley Landfill Group Participation Agreement.

On February 7, 2018, we received a reply to our request from Attorney Robert Sullivan. Attorney Sullivan is the Portsmouth City Attorney and at the same time Chair of the Executive Committee of the Coakley Landfill Group. Mr. Sullivan, apparently acting on behalf of the CLG, asserted that "*because the **Coakley Landfill Group is a voluntary association** of parties and not a governmental entity, the Right to Know Law would not extend to the Coakley Landfill Group.*" (Emphasis added)

As to the request made to the City of Portsmouth, Mr. Sullivan informed us that the materials we requested would not be available for approximately six weeks. To date we have received no response from the Towns of Newington and North Hampton.

A copy of both our request under RSA 91-A and Mr. Sullivan's response is included with this letter.

Based upon the response of Mr. Sullivan to our request, as well as accounts that have been reported in local press and responses to inquiries each one of us have made at various times to officials close to CLG, we have grave concerns about the management and the oversight of millions of dollars of funds by the Coakley Landfill Group. We are mindful that CLG is a voluntary association that is a somewhat unique hybrid: 63% of which is composed of municipalities whose taxpayers' public dollars fund the group, 20% are generators, companies that acknowledged toxins they are responsible for ended up in the Coakley Dump, and 17% are transporters who hauled waste and dumped it in Coakley. Though 63% of the multimillion dollar voluntary association is composed of municipalities, there is no accounting to the NH Department of Revenue Administration of Income and Expenses, and there is no audit as required by state law of all municipalities done by CLG to oversee and control the expenditure of public moneys once they are paid to CLG.

On February 2, 2018, Mr. Sullivan stated publicly that he estimated CLG will extract $278,000 in the coming year from the City of Portsmouth. Three days later journalist Jeff McMenemy reported that Sullivan had "acknowledged there has been no formal accounting of where the money has been spent" by the Coakley Landfill Group. This, despite a requirement of the CLG Group Participation Agreement that there be "at least annually, a formal accounting of monies received, spent and obligated" there apparently has been no audit of how the approximately $27 million dollars has been used. Yet

another report quotes Sullivan as saying about CLG: "The group doesn't have a checkbook, it doesn't have cash."

In addition to the sketchy reports about CLG expenses, it has also been revealed that CLG has hired one of the state's most powerful law firms, headed by the former New Hampshire Attorney General, to lobby in the state legislature to oppose legislation sponsored by the signers of this letter to remediate the Coakley Site and require transparency by CLG. The irony of CLG, a seemingly unaccountable entity established for the purpose of cleaning up and remediating the Coakley Superfund Dump spending tens of thousands of dollars to defeat legislation to clean up and remediate the Coakley landfill, is not lost on us. We recognize that under IRS rules there are limits to the amount of money a non profit 501 C(3) organization can spend on lobbying and the amount spent lobbying becomes a public record. Because CLG apparently has not filed an IRS Form 990 and a copy of that with the Charitable Trust Unit, there is no way for the public to review how taxpayer dollars that are being spent to defeat legislation to protect public health.

RSA 7:24 **Investigation** gives authority and responsibility to the attorney general to investigate at any time a charitable trust for the purpose of ascertaining whether the trust is being administered in accordance with law and the terms and purposes for which the entity was established. As outlined in this letter, Coakley Landfill Group, a "charitable organization" as defined by RSA 7:21 II (a) and subject to the reporting requirement authorized by RSA 7:22, is, in our view, in clear violation of the laws of our state, in that:

1. CLG is not registered as a charitable trust, failed to file NHCT 1, and its trustees failed to file with the Attorney General within six months after the start of financial transactions, in violation of RSA 7:28 I.

2. CLG failed to file required annual financial reports and form NHCT 2A or any required audited financial accounting to the Attorney General in any year, in violation of RSA 7:28 II.

3. The trustees of CLG, as a charitable trust, have failed to adopt a conflict of interest policy in violation of RSA 7:19-a IV.

4. In a breach of its fiduciary responsibility and purpose, CLG apparently took millions of dollars from the Department of Defense for the express purpose of constructing the Operating Unit 2 groundwater collection and treatment system to remediate the Coakley Superfund Dump to prevent migration of contaminants away from the site and protect human health and the environment, and then CLG did not construct the project or return the moneys to the federal government. While members of the public are not privy to any secret agreements between the Department of Defense and CLG to not proceed with pump and treat remediation at Coakley and modification of the agreement that instead lets CLG retain the federal funds, absent such a modification of the agreement there may be possible violations of RSA 637 and/or RSA 638.

5. In a breach of fiduciary responsibility, CLG used funds intended to clean up and mitigate Coakley and protect the public health, including taxpayer money, and diverted that money into lobbying activity against the very purpose of the charitable trust.

Accordingly, by this letter, the undersigned Representatives Mindi Messmer, Renny Cushing, Philip Bean and Mike Edgar formally request the New Hampshire Attorney to conduct a full investigation into the finances and operations of the Coakley Landfill Group, make a full report to the public of the results of such investigation, and take all necessary and appropriate actions to enforce the laws governing charitable trusts and other laws of the state of New Hampshire.

We look forward to hearing from you and providing any assistance you need in your investigation.

Sincerely,

Rep Mindi Messmer

Rep Renny Cushing

s/Philip Bean
Rep Philip Bean

S/Mike Edgar
Rep Mike Edgar

Enclosed Attachments

1. Letter from NHDES to Seacoast lawmakers 7/7/17
2. Messmer, Cushing, Bean, Right-to-Know Request 2/2/18
3. Response of Attorney Sullivan 2/7/18
4. Coakley Landfill Group Members List
5. Portsmouth to Pay $278K to Coakley Group in 2018 2/2/18
6. City officials discuss Coakley Landfill Group expenses 2/5/18
7. Seacoast lawmakers push for Coakley financial report 2/5/18
8. Sullivan: 6 weeks needed to respond to Coakley requests 2/9/18

Copies to:

Attorney Robert Sullivan, Coakley Landfill Group
Robert Scott, Commissioner of Environmental Services
Governor Christopher Sununu
Speaker Gene Chandler
Senate President Chuck Morse
Seacoast Legislative Delegation

Commission of Seacoast Cancer Cluster Investigation
Acting United States Attorney John Farley, District of New Hampshire
Glenn Fine, Principal Deputy Inspector General, US Department of Defense
Alexandra Dunn, Region 1 United States Environmental Protection Agency
Honorable Jim Splaine
Portsmouth City Council
Newington Select Board
North Hampton Select Board
Hampton Select Board
Senator Jeanne Shaheen
Senator Maggie Hassan
Representative Carol Shea-Porter
David Collins, Lobbyist for Coakley Landfill Group
David McKillop, Lobbyist for Coakley Landfill Group
Richard Parsons, Lobbyist for Coakley Landfill Group
Gina Powers, Lobbyist for Coakley Landfill Group
Glen Wallace, Lobbyist for Coakley Landfill Group

The State of New Hampshire
Department **of Environmental Services**

Robert R. Scott, Commissioner

EMAIL ONLY

July 7, 2017

The Honorable Mindi Messmer
Health, Human Services & Elderly Affairs Committee
Legislative Office Building, Room 205
Concord, New Hampshire 03301

The Honorable Martha Fuller Clark
Senate Energy Committee
Legislative Office Building, Room 102-A
Concord, New Hampshire 03301

The Honorable Mike Edgar
The Honorable Henry Marsh
The Honorable Dennis Malloy
The Honorable Becky McBeath
The Honorable Pam Gordon
The Honorable Tamara Le
The Honorable Phil Bean
The Honorable Laura Pantelakos
The Honorable Renny Cushing
New Hampshire House of Representatives
Legislative Office Building
Concord, New Hampshire 03301

SUBJECT: Coakley Landfill Superfund Site

Dear Representative Messmer, Senator Fuller Clark, et al.:

Thank you for your letter of June 29, expressing concerns relative to surface water impacts from the Coakley Landfill Superfund site. The New Hampshire Department of Environmental Services (NHDES) shares these concerns, and believes that the migration of contaminants from site groundwater to surface water and the resultant impacts on Berrys Brook are unacceptable and need to be addressed. Acting in its support role, NHDES has communicated these concerns to the U.S. Environmental Protection Agency (USEPA), which serves as the lead agency for management and oversight of the Coakley site. Our concerns can be divided into three areas.

First, and in the near term, NHDES believes that signage to alert the public to the presence of contaminants in the adjacent wetlands, seasonally flooded railroad bed, and the uppermost reach of Berrys Brook is appropriate. We have discussed this issue with USEPA and are working with them to determine how to best accomplish this.

www.des.nh.gov
P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095
Telephone: (603) 271-2905 Fax: (603) 271-2456 TDD Access: Relay NH 1-800-735-2964

Second, with regard to the expressed concerns about potential impacts to fish in Berrys Brook, NHDES believes that additional work needs to be completed, in concert with NH Fish & Game (NHFG), to determine whether the surface water quality in the lower reaches of the brook poses any risk to recreational anglers who catch and consume the stocked brown trout or other species from the brook. Since early May, NHDES has been engaged with USEPA on this topic. NHFG is currently working to address a number of relevant questions developed by USEPA about the fisheries. Once that information is received, we will work with USEPA and NHFG to determine how best to address this question.

Third, NHDES believes that actions need to be implemented at the site to provide additional removal or containment of the contamination, in order to mitigate these surface water quality impacts. In the long run, this will be the most reliable way to limit exposure to site contaminants via the surface water pathway.

NHDES and USEPA are meeting during the week of July 10 in order to determine action items for each of these areas of concern. Following those discussions, I will be prepared to provide further details.

Thank you again for your letter and your interest in this topic. If you have any questions, please do not hesitate to contact me.

Sincerely yours,

Waste Management Division

Digitally signed by Waste Management Division
DN: cn=Waste Management Division, o=Wasste, ou=ORCB, email=michele.l.regan@des.nh.gov, c=US
Date: 2017.07.07 15:14:37 -04'00'

Michael J. Wimsatt, P.G., Director
Waste Management Division
Tel. (603) 271-1997
Email: michael.wimsatt@des.nh.gov

ec: Paul Sanderson, Selectman, Town of Greenland
Karen Anderson, Town Administrator, Greenland
Martha Wassell, Health Officer, Town of Greenland
Andrew Hoffman, NHDES
Gerardo Millan-Ramos, USEPA
Jim Murphy, USEPA
Doug Grout, NH Fish & Game Department
Patrick Carroll, Office of Rep. Carol Shea Porter
Maddie DeSantis, Office of Rep. Carol Shea Porter
Liz Wester, Office of Sen. Jeanne Shaheen
William Hinkle, Office of Sen. Maggie Hassan

CITY OF PORTSMOUTH

LEGAL DEPARTMENT

Robert P. Sullivan, City Attorney – 603-610-7204 (Direct Dial)
Suzanne M. Woodland, Deputy City Attorney – 603-610-7240 (Direct Dial)
Kathleen M. Dwyer, Assistant City Attorney – 603-498-2126 (Direct Dial)
Jane M. Ferrini, Assistant City Attorney – 603-610-7256 (Direct Dial)

February 7, 2018

VIA E-MAIL
Rep. Mindi Messmer (*mindi.messmer@leg.state.nh.us*)
Rep. Robert Renny Cushing (*renny.cushing@leg.state.nh.us*)
Rep. Philip Bean (*philip.bean@leg.state.nh.us*)
Rep. Henry Marsh (*henry.marsh@leg.state.nh.us*)
State of New Hampshire

RE: Right-to-Know Request

Dear Representatives Messmer, Cushing, Bean and Marsh,

The City acknowledges receipt of your letter dated January 31, 2018 addressed to Coakley Landfill Group c/o Attorney Robert Sullivan and Peter Forbes of U.S. Air Force Civil Engineering Center and received by this office on February 1, 2018 requesting, "an opportunity to inspect or obtain copies of public records that pertain to the following:

1. Minutes of non-public meetings between responsible parties including but not limited to those listed in the Participation Agreement dated September 27, 1991 ("Participation Agreement").
2. Minutes of non-public meetings between the Coakley Landfill Group, City of Portsmouth, Department of Defense and regulatory agencies including but not limited to the USEPA and New Hampshire DES.
3. Copies of all reports to the New Hampshire Attorney General on behalf of Coakley Landfill Group or the City of Portsmouth.
4. Copies of all submittals to the New Hampshire Division of Charitable Trust including all annual financial reports (IRS Form 990, or functional equivalent).
5. Copies of all Coakley Landfill Group bank records.
6. Copies of annual audited financial reports of the operations of the parties listed in the Participation Agreement and other responsible parties from 1991 to current.
7. All correspondence from 1991 to present relating to Coakley Landfill Group meetings concerning moneys paid by the Department of Defense (DOD) to carry out the pump and treat system for the Coakley Landfill Superfund Site.
8. A copy of the Memorandum of Agreement and any other correspondence between the Department of Defense, the USEPA and/or state regulators regarding the allocation of $5.25M referenced in Section 6.3 of the Participation Agreement. Copies of any documents relating or referencing the payment for the pump and treat system installation and following correspondences relating to the decision made by Coakley Landfill Group and regulators regarding the decision not to install said system and the response form the DOD about that decision.

9. Any and all correspondence relating to the Coakley Landfill Group notification to the Department of Defense that the pump and treat system would not be installed.
10. Coakley Landfill Group is to provide an estimate of the current liabilities for the all towns listed in the Participation Agreement for payback of all money owed upon closure of the Coakley Landfill Superfund site.
11. Any and all correspondence relating to any waiving of the refund of monies received from the Department of Defense for the pump and treat system, if not installed.
12. Any and all correspondence relating to the abandonment of the pump and treat installation.
13. Any and all correspondence regarding waiving liability for off-site migration for contamination to responsible parties.
14. Any and all correspondence with government officials regarding Coakley Landfill Superfund Site, including but not limited to, former Senator Bob Smith."

The City also acknowledges receipt of your supplement to that request dated January 31, 2018 and received in this office via e-mail on February 2, 2018 which indicated:

"Under the New Hampshire Right to Know Law R.S.A. Ch. 91-A et seq., we are requesting an opportunity to inspect or obtain copies of public records that pertain to the following:

1. Minutes of non-public meetings between responsible parties including but not limited to those listed in the Participation Agreement dated September 27, 1991 ("Participation Agreement").
2. Minutes of non-public meetings between the Coakley Landfill Group, City of Portsmouth, Department of Defense and regulatory agencies including but not limited to the USEPA and New Hampshire DES.
3. Copies of all reports to the New Hampshire Attorney General on behalf of Coakley Landfill Group or the City of Portsmouth.
4. Copies of all submittals to the New Hampshire Division of Charitable Trust including all annual financial reports (IRS Form 990, or functional equivalent).
5. Copies of all Coakley Landfill Group bank records.
6. Copies of annual audited financial reports of the operations of the parties listed in the Participation Agreement and other responsible parties from 1991 to current.
7. All correspondence from 1991 to present relating to Coakley Landfill Group meetings concerning moneys paid by the Department of Defense (DOD) to carry out the pump and treat system for the Coakley Landfill Superfund Site.
8. A copy of the Memorandum of Agreement and any other correspondence between the Department of Defense, the USEPA and/or state regulators regarding the allocation of $5.25M referenced in Section 6.3 of the Participation Agreement. Copies of any documents relating or referencing the payment for the pump and treat system installation and following correspondences relating to the decision made by Coakley Landfill Group and regulators regarding the decision not to install said system and the response form the DOD about that decision.

9. Any and all correspondence relating to the Coakley Landfill Group notification to the Department of Defense that the pump and treat system would not be installed.
10. Coakley Landfill Group is to provide an estimate of the current liabilities for the all towns listed in the Participation Agreement for payback of all money owed upon closure of the Coakley Landfill Superfund site.
11. Any and all correspondence relating to any waiving of the refund of monies received from the Department of Defense for the pump and treat system, if not installed.
12. Any and all correspondence relating to the abandonment of the pump and treat installation.
13. Any and all correspondence regarding waiving liability for off-site migration for contamination to responsible parties.
14. Any and all correspondence with government officials regarding Coakley Landfill Superfund Site, including but not limited to, former Senator Bob Smith."

Because the Coakley Landfill Group is a voluntary association of parties and not a governmental entity the Right-to-Know law would not apply to the Coakley Landfill Group. Therefore, your requests are being treated as Right-to-Know law requests of the City of Portsmouth, which is subject to the provisions of the Right-to-Know law (RSA 91-A).

Accordingly, all City records responsive to your requests are being assembled, and generally being made suitable for your review. This is a large complex project insofar as the records commence in approximately 1992 and the landfill has been in very active remediation since that time to the present date. It appears that when fully assembled the records which you seek will constitute approximately one hundred (100) bankers boxes of documents, each box measuring 12" x 15.5". Moreover, since 1992 Portsmouth City Hall has moved from a former location on Daniel Street to its current location on Junkins Avenue. The boxes of documents have become re-distributed to several municipal buildings located in different parts of the City. The work of collecting and indexing the documents is being performed by municipal employees who simultaneously have other work which needs to be done. Therefore, it is anticipated that all records will not be in one place for your review for approximately six (6) weeks.

When the project described in the previous paragraph is completed, I believe that all existing City records responsive to your requests will be located in a single place and available for your review per RSA 91-A.

Once the records are all assembled in one place, a City staff member with some familiarity with them will be assigned to assist you in reviewing whatever records you wish to see. I will also be available for that purpose. You may either make arrangements for copying whatever documents you wish or the City will provide copies at the City's nominal rate of $2.00 for the first page and $0.50 for each page thereafter.

To the extent that you would like to discuss the foregoing approach to the City's response to your Right-to-Know law request I am available to do so. Depending upon the focus of your inquiry it may be possible to simplify the work for both the City staff and yourselves by narrowing the scope of your requests. The City is open to discussing any approach to this very involved project.

Notwithstanding the daunting logistical issue created by the number of your requests in light of the volume of the City's records, you may be assured that the City will cooperate with you to fully comply with the City's obligation under Right-to-Know law jurisprudence.

Insofar as the City has received a Right-to-Know law request which is similar in many ways to yours from Mr. James Splaine dated January 31, 2017 he will be receiving a letter very similar to this one.

Please call if you have any questions.

Sincerely,

Robert P. Sullivan
City Attorney

RPS/rao

cc: John P. Bohenko, City Manager
Coakley Landfill Executive Committee
Town of North Hampton
Town of Newington
Peter Forbes, U.S. Air Force Civil Engineer Center
James Splaine

h\right-to-know requests\rep ltr re-initial response (6 weeks)

ATTACHMENT 3

MUNICIPAL MEMBERS (63.077%)

City of Portsmouth (53.553%)
Town of North Hampton (4.062%)
Town of Newington (5.462%)

GENERATOR MEMBERS (20%)

Booth Fisheries Corporation (5.03%)
Custom Pools, Inc. (0.481%)
J. Edwards, Inc. (0%)
Erie Scientific Company Division of Fybron (1.389%)
Gary W. Blake, Inc. (0%)
Goss Lincoln Mercury Isuzu (0%)
GTE Products Corporation (0%)
Gypsum Haulage, Inc. (0.302%)
Jet-Line Services, Inc. (4.241%)
John Iafolla Company, Inc. (0%)
K mart Corporation (0.481%)
Mobil Oil Corporation (0%)
Montgomery Ward & Co., Incorporated (2.219%)
Newington Midas Muffler Shops (0%)
New England Telephone and Telegraph Co. (0%)
Northern Utilities, Inc. (0%)
Pike Associates, Inc. (0.302%)
Post Machinery Company, Inc. (0%)
Public Service Company of New Hampshire (1.978%)
K.J. Quinn & Co., Inc. (0.302%)
S&H Precision Manufacturing Co., Inc. (0.302%)
Sanel Auto Parts, Inc. (0%)
Seacoast Volkswagen, Inc. (0%)
Simplex Wire and Cable Company (2.973%)
United Technologies Corporation (0%)

Eversource

TRANSPORTERS (16.923%)

Browning-Ferris Industries of New Hampshire, Inc. and Seacoast Trucking and Moving Co. (12.308%)
Waste Management of Maine, Inc. and Waste Management of New Hampshire, Inc. (4.615%)

ED_002300_00000933-00013

Portsmouth to pay $278K to Coakley group in 2018

By Jeff McMenemy
jmcmenemy@seacoastonline.com
Posted Feb 2, 2018 at 4:42 PM
Updated Feb 2, 2018 at 4:42 PM

PORTSMOUTH -- The Coakley landfill Superfund cleanup site has been closed for about 33 years, but it's still costing the taxpayers of Portsmouth hundreds of thousands of dollars.

During the past three years, the city has been "assessed" slightly more than $350,000 for its part in the Coakley Landfill Group's required remediation of the site, according to an examination of CLG meeting minutes. The Coakley landfill is a 27-acre site in Greenland and North Hampton that accepted waste from 1972 to 1982 and then incinerator waste until 1985.

The city's taxpayers are expected to pay $278,465 to the CLG in 2018, according to Peter Britz, the city's environmental planner, who also works for the CLG.

During the past three years, the CLG has paid its primary consultants, CES, Inc., about $294,034, according to an examination of the CLG's meeting minutes.

City Attorney Robert Sullivan, a member of the CLG's executive committee, acknowledged Friday the consultants have received "a lot of money" the past three years. Sullivan has previously said the CLG spent about $27 million on remediation at the landfill, $13 million of which came from Portsmouth taxpayers.

He has acknowledged previously there is no formal record of how the money was spent, but maintains the spending is all documented in minutes of teleconference meetings the CLG has held over the past decades. Sullivan is trying to put together a more formal report, but said, "it's a huge job. The issue is that records go back to the early 1990s, a pre-computer era, so it's all paper records."

Much of those records are in "cardboard boxes at various places around the city," Sullivan said. "We're in the process of locating and collecting those."

Sullivan, Britz and Mike Deyling, a vice president at CES, Inc., are scheduled to make a report to the City Council Monday night about the CLG. The presentation will include an explanation of the CLG's decision to hire a lobbyist, who state Rep. Mindi Messmer, D-Rye, said told her he was hired to lobby against her legislation. The lobbyist denies that.

CES, Inc. by far received the most money from the CLG the past three years, according to the meeting minutes. Sullivan said the group is "the primary consulting engineers and hydrologists" for the CLG. "They engage subcontractors to drill the wells and do the monitoring," he said. "We have a very intensive monitoring imposed on us by the EPA."

During the past three years, the CLG has also paid the city about $50,000 - typically $2,500 per meeting - for Britz's services. Sullivan denied having Britz work for the city and CLG is a conflict of interest. The decision was made to have Britz work for the CLG too "to save the city money," Sullivan said.

"Peter Britz performs certain services for the Coakley Landfill Group ... services that would otherwise have to be provided by an outside consultant at outside consultant rates," Sullivan said. "In turn, the Coakley Landfill Group reimburses the city for those frankly nominal amounts rather than having to pay an outside consultant significantly higher amounts."

The city, and not Britz, receives the fee for his services, Sullivan said. He stressed the city and CLG share the common interest of wanting to protect public health around the landfill.

Tests on monitoring wells at the landfill found PFASs and 1,4-dioxane, both suspected carcinogens, at levels above the EPA's health advisory levels. Many people living near the landfill fear chemicals leaching from Coakley will contaminate their wells, but so far PFCs found in private wells have tested below the EPA's health advisory level. N.H. Department of Environmental Services officials, however, confirmed high levels of PFASs in nearby Berry's Brook pose a risk to the environment and should be cleaned up.

"Peter is the main contact between the Coakley Landfill Group and the regulatory agencies," Sullivan said. "If EPA has to contact the group, they contact them through Peter and vise versa. He's an administrator, he's not a policy maker."

Sullivan further maintained Britz "has saved tremendous sums of money for the city and the CLG."

Britz also denied any conflict. "I would say it's in support of the city. The city is 53 percent of the Coakley Landfill Group," he said. "It's something the city has to do." He too maintained he is saving the city money.

"If we hired engineers overseeing this stuff, their hourly billable rate is way higher than mine," Britz said, adding "there's plenty of environmental planners that work on remediation projects. It's in keeping with my background and my experience."

The CLG is made up of municipalities and groups that used the landfill including companies that transported trash there. The entities have been required to pay into a trust created through a 1991 Record of Decision by the EPA and DES. The city of Portsmouth is required to pay 53.6 percent of remediation costs.

City officials discuss Coakley Landfill Group expenses

By Jeff McMenemy
jmcmenemy@seacoastonline.com
Posted Feb 5, 2018 at 11:25 PM
Updated Feb 6, 2018 at 10:24 AM

PORTSMOUTH - The Coakley Landfill Group (CLG) is paying a lobbyist it hired $4,000 a month for up to five months, City Attorney Robert Sullivan told the City Council Monday night.

Sullivan said the CLG hired the lobbyist because there were a number of items introduced in the state Legislature this year that were "aimed at the Coakley Landfill Group by name."

Sullivan, who also serves on the CLG's executive committee, said the group hired the lobbyist "to find out what the proposals were about."

The lobbyist was hired "to perform whatever services are needed," Sullivan added during Monday night's City Council meeting.

Sullivan's comments came during a lengthy presentation about the Coakley Landfill, a Superfund clean-up site in North Hampton and Greenland, and the CLG.

The Coakley landfill is a 27-acre site that accepted waste from 1972 to 1982 and then incinerator waste until 1985.

Some residents have been upset by the CLG's decision to hire the lobbyist, who state Rep. Mindi Messmer, D-Rye, said told her he was hired to fight against her CLG-related legislation.

The lobbyist has denied this.

Sullivan recently testified against a bill that Messmer and other Seacoast lawmakers have sponsored calling for the CLG to fall under the provisions of the state Right to Know Law.

Assistant Mayor Cliff Lazenby pointed out that when Sullivan testified in Concord he "wasn't acting on behalf" of something the City Council approved.

He suggested that because Sullivan works for both the city and CLG, it makes sense for the council to "pass a more specific set of principles" to guide when staff can lobby for or against legislation.

Other residents have been troubled by the lack of details concerning how much money the CLG - and Portsmouth taxpayers - have spent on remediation at the site.

Sullivan has repeatedly said the group has spent about $27 million on remediation at the site with roughly $13 million coming from city taxpayers.

But there has been no formal accounting of how the money was spent during the past 27 years.

The CLG is made up of municipalities and groups that used the landfill including companies that transported trash there.

The entities have been required to pay into a trust created through a 1991 Record of Decision by the EPA and DES. The city of Portsmouth is required to pay 53.6 percent of remediation costs.

Sullivan acknowledged Monday that the $13 million estimate is not accurate.

"The actual city expense is lower than that," Sullivan said, after first pointing out that when he went to Boston College "I was an English major."

City Manager John Bohenko said during a break it is unclear how much Portsmouth taxpayers have paid to the CLG over its existence.

In his research so far, Bohenko said the city borrowed about $4.2 million to pay for Coakley-related costs when the group was formed, and the cost of the principal and interest will be $5.8 million when it's paid off shortly.

In addition, the city has paid about $1.2 million for other Coakley costs from 2000 to 2018, Bohenko said. That brings the total spending he's been able to identify so far to more than $7 million.

Sullivan said other city staff are trying to locate all the paper records connected to spending by the CLG.

"We are right now up to about 100 ... cardboard boxes full of records," Sullivan said.

That translates to "at least 100,000 records connected with the Coakley landfill," Sullivan said.

He stressed that the CLG's executive committee has to approve any and all spending, which is voted on at CLG teleconferences.

"The group doesn't have a checkbook, it doesn't have cash," Sullivan said.

Mike Deyling, a vice president at CES Inc., the CLG's main consultants on the project, stressed that despite the concerns raised by people who live around the landfill, the remediation required by the Environmental Protection Agency is working.

Tests on monitoring wells at the landfill have found PFASs and 1,4-dioxane, both suspected carcinogens, at levels above the EPA's health advisory levels.

Many people living near the landfill fear chemicals leaching from Coakley will contaminate their wells, but so far PFCs found in private wells have tested below the EPA's health advisory level.

"No one is drinking water that has any of these compounds above the health advisory levels," Deyling said Monday night.

The City Council also voted unanimously to host a meeting at City Hall with all the interested parties, including officials from other towns, regulators and the public.

City Councilor Rick Becksted made the motion to hold the meeting, although it has not yet been scheduled.

City Councilor Chris Dwyer backed the idea, but suggested that Hampton town officials in particular should watch the tape of Monday's presentation before all the groups get together.

"They clearly are way out on this stuff," Dwyer said.

She also pointed to a recent letter sent to the City Council by Hampton selectmen.

"Given this letter and the tone of the letter and the clear misstatements that have been accusatory of all of us," is why they should watch the presentation, Dwyer said.

Mayor Jack Blalock said he looks forward to having an "honest, open discussion" at the meeting.

He hopes to create "a real level of trust that all the entities involved want the same thing: a clean environment."

SIGN UP FOR DAILY E-MAIL
Wake up to the day's top news, delivered to your inbox

MOST POPULAR STORIES

Seacoast lawmakers push for Coakley financial report

By Jeff McMenemy
jmcmenemy@seacoastonline.com
Posted Feb 5, 2018 at 5:54 PM
Updated Feb 5, 2018 at 5:54 PM

PORTSMOUTH - Three area lawmakers have sent a letter to the Coakley Landfill Group asking for financial information from the group that says it has spent $27 million on remediation at the Superfund landfill site.

State Reps. Mindi Messmer, D-Rye, Renny Cushing, D-Hampton and Phil Bean, R-Hampton, filed a Right to Know request for the information with City Attorney Robert Sullivan last week. Sullivan serves on the CLG's executive committee.

The lawmakers asked for "copies of all Coakley Landfill Group bank records, copies of annual audited financial reports of the operations of the parties" that make up the CLG and an estimate "of the current liabilities for all towns" in the CLG, according to a copy of the Right to Know request.

Messmer stated they asked for the information "because we want to know exactly what the Coakley Landfill Group is doing with their money."

"They're taking money from the taxpayers of Portsmouth and taxpayers from other towns and we're concerned with what they're using it for," Messmer said. "They hired a lobbyist who told me he's going to be lobbying against my legislation, too."

"I just want things to be as transparent as possible. They should be accountable to the city of Portsmouth taxpayers, too," she added.

The CLG is made up of municipalities and groups that used the landfill including companies that transported trash there. The entities have been required to pay into a trust created through a 1991 Record of Decision by the Environmental Protection Agency and N.H. Department of Environmental Services.

The city of Portsmouth is required to pay 53.6 percent of all remediation costs under the agreement.

Sullivan has previously said that all the money spent by the CLG has been authorized by the executive committee at their teleconference meetings. But he acknowledged there has been no formal accounting of where the money has been spent. The biggest single expense of the CLG has been the roughly $9 million cost to cap the landfill, Sullivan said Friday.

The lawmakers also asked the CLG for "copies of all reports to the New Hampshire Attorney General on behalf of Coakley Landfill Group or the city of Portsmouth" and all submissions to the New Hampshire Division of Charitable Trusts, "including all annual financial reports (IRS Form 990, or functional equivalent," according to their letter.

Messmer said the lawmakers are concerned with what they see as the lack of transparency from the CLG and want to know how they could have spent that much money at Coakley, especially because there is no treatment system there.

"We don't understand what they are and who they report to," Messmer said. "No entity can take in $27 million and not report how they're spending it in some way."

Sullivan contended in a recent interview that the CLG has been compiling monthly meeting minutes when they hold conference calls that contain "all details of our financial transactions."

The CLG's Group Participation Agreement calls for the executive committee to provide "from time to time but at least annually, a formal accounting of monies received, spent and obligated."

Sullivan stated that he believes the minutes that are kept from each CLG meeting fulfill the obligations of that provision of the agreement.

Asked if in retrospect he thinks the CLG should have kept annual reports, Sullivan said, "In retrospect there are a great many things that might have been done differently."

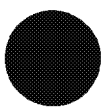
The Coakley landfill is a 27-acre site in Greenland and North Hampton that accepted waste from 1972 to 1982 and then incinerator waste until 1985.

Many people living near the site are worried that contaminants leaching from the landfill could harm their residential drinking water wells and have asked the CLG to provide municipal water to them.

The CLG has so far refused.

Tests on monitoring wells at the landfill found PFASs and 1,4-dioxane, both suspected carcinogens, at levels above the EPA's health advisory levels.

But so far PFCs found in private wells have tested below the EPA's health advisory level. N.H. Department of Environmental Services officials, however, confirmed high levels of PFASs in nearby Berry's Brook pose a risk to the environment and should be cleaned up.



SIGN UP FOR DAILY E-MAIL

Wake up to the day's top news, delivered to your inbox

Sullivan: 6 weeks needed to respond to Coakley requests

By Jeff McMenemy
jmcmenemy@seacoastonline.com
Posted Feb 9, 2018 at 5:15 PM
Updated Feb 9, 2018 at 5:15 PM

PORTSMOUTH - City Attorney Robert Sullivan said it will take "approximately six weeks" for city staff to collect records related to the Coakley Landfill Group (CLG) that a group of Seacoast lawmakers and the former assistant mayor are seeking.

In responses to two different Right to Know requests - one filed by former Assistant Mayor Jim Splaine, a second filed by state Reps. Mindi Messmer, D-Rye, Renny Cushing, D-Hampton and Phil Bean, R-Hampton - Sullivan repeats comments about the CLG's record-keeping that he has made previously to the Portsmouth Herald.

"This is a large complex project insofar as the records commence in approximately 1992 and the landfill has been in very active remediation since that time to the present date," Sullivan states in his response to the Right to Know requests. "It appears that when fully assembled the records which you seek will constitute approximately 100 bankers boxes of documents ... ," Sullivan said.

The search for the records has been complicated by the fact that since 1992, Portsmouth City Hall has moved from Daniel Street to its current location on Junkins Avenue, Sullivan said.

"The boxes of documents have become redistributed to several municipal buildings located in different parts of the city," Sullivan stated. "The work of collecting and indexing the documents is being performed by municipal employees who simultaneously have other work which needs to be done."

The CLG is made up of municipalities and groups that used the landfill - a Superfund cleanup site in North Hampton and Greenland - including companies that transported trash there.

The entities have been required to pay into a trust created through a 1991 Record of Decision by the Environmental Protection Agency and N.H. Department of Environmental Services.

The city of Portsmouth is required to pay 53.6 percent of all remediation costs under the agreement.

The lawmakers asked for "copies of all Coakley Landfill Group bank records, copies of annual audited financial reports of the operations of the parties" that make up the CLG and an estimate "of the current liabilities for all towns" in the CLG, according to a copy of the Right to Know request.

Messmer stated previously that they asked for the information "because we want to know exactly what the Coakley Landfill Group is doing with their money."

"They're taking money from the taxpayers of Portsmouth and taxpayers from other towns and we're concerned with what they're using it for," Messmer said. "They hired a lobbyist who told me he's going to be lobbying against my legislation, too."

"I just want things to be as transparent as possible. They should be accountable to the city of Portsmouth taxpayers, too," she added.

Sullivan has repeatedly said the group has spent about $27 million on remediation at the site with roughly $13 million coming from city taxpayers.

But at Monday's City Council meeting, Sullivan acknowledged that the $13 million estimate is not accurate.

"The actual city expense is lower than that," Sullivan said, after first pointing out that when he went to Boston College "I was an English major."

City Manager John Bohenko said Monday it is unclear how much Portsmouth taxpayers have paid to the CLG over its existence.

In his research so far, Bohenko said the city borrowed about $4.2 million to pay for Coakley-related costs when the group was formed, and the cost of the principal and interest will be $5.8 million when it's paid off shortly.

In addition, the city has paid about $1.2 million for other Coakley costs from 2000 to 2018, Bohenko said. That brings the total spending he's been able to identify so far to more than $7 million.

Bohenko said he is continuing to work "with members of the Finance Department" to get the exact amount of money that the city of Portsmouth has had to pay to the CLG.

"I want to be absolutely certain we have the right number," Bohenko said Friday.

Splaine, in an interview Friday, said he was "not impressed with the response."

"What is stunning to me is the oversight, the management of the records, tells me that the Coakley Landfill Group has not been doing a good job," Splaine said.

He also is disappointed that it appears instead of getting an organized response and answers to questions he and the lawmakers asked, they are being told to "go in and look at thousands of records."

"There needs to be an accounting, there needs to be an audit. That audit must go back to the beginning," Splaine said about the CLG's spending.

Because the CLG did not have a clerk to make sure the work that was billed for was done properly, "then we're wasting money and that is malfeasance."

"It's time for the City Council to take this extraordinarily seriously," Splaine said.

He acknowledged that he takes "part of the blame" for not asking questions about CLG's spending and management sooner.

"I'm embarrassed for myself after four years on the council it got by me," Splaine said.

Messmer, in an interview Friday, said she's been surprised that the City Council hasn't shown more concern about the CLG's spending.

"The only concern I heard was about the need to make different rules in terms of lobbying," Messmer said about the City Council's conversation on the CLG during their meeting this week. "I didn't hear any concern about the money."

Sullivan has previously said that all the money spent by the CLG has been authorized by the executive committee at their teleconference meetings. But he acknowledged there has been no formal accounting of how the money has been spent.

The biggest single expense of the CLG has been the roughly $9 million cost to cap the landfill, Sullivan said Friday.

The lawmakers also asked the CLG for "copies of all reports to the New Hampshire Attorney General on behalf of Coakley Landfill Group or the city of Portsmouth" and all submissions to the New Hampshire Division of Charitable Trusts, "including all annual financial reports (IRS Form 990, or functional equivalent," according to their letter.

Messmer said the lawmakers are concerned with what they see as the lack of transparency from the CLG and want to know how they could have spent that much money at Coakley, especially because there is no treatment system there.

"We don't understand what they are and who they report to," Messmer said. "No entity can take in $27 million and not report how they're spending it in some way."

SIGN UP FOR DAILY E-MAIL
Wake up to the day's top news, delivered to your inbox

Seacoastonline.com

Lawmakers ask AG to investigate Coakley group

By Jeff McMenemy
jmcmenemy@seacoastonline.com
Posted Feb 19, 2018 at 4:47 PM
Updated Feb 20, 2018 at 6:57 AM

PORTSMOUTH — Four Seacoast lawmakers are asking the state attorney general's office to conduct "a full investigation into the finances and operations of the Coakley Landfill Group."

State Reps. Renny Cushing, D-Hampton, Mindi Messmer, D-Rye, Phil Bean, R-Hampton and Mike Edgar, D-Hampton, sent the letter Monday afternoon to Attorney General Gordon MacDonald and Tom Donovan, who is the head of the AG's Charitable Trusts Unit.

The lawmakers state in the letter they "have grave concerns about the management and the oversight of millions of dollars of funds by the Coakley Landfill Group."

The CLG is made up of municipalities and groups that used the landfill, including companies that transported trash at the Superfund cleanup site in Greenland and North Hampton.

The entities have been required to pay into a trust created through a 1991 Record of Decision by the EPA and DES. The city of Portsmouth is required to pay 53.6 percent of remediation costs.

In the letter and in an interview Monday, Cushing stated that the CLG meets the state definition of a charitable organization, and because of that should have been filing annual reports to the AG's office since its creation.

"The idea they can raise and spend millions of dollars of public money and not have any oversight is wrong," Cushing said Monday. He said he is "shocked" the CLG has not been filing annual reports with the AG's office.

"There's this entity out there spending millions of dollars, and no one is taking a look at the books," Cushing said. He said the failure by the CLG to file annual financial reports with the state amounts to what lawmakers describe as a "clear violation of the laws of our state."

Reached Monday afternoon, Portsmouth City Attorney Robert Sullivan, who also serves on the CLG's executive committee, said he has not seen the letter. Sullivan said he does not believe the CLG has a responsibility to file annual financial reports with the AG's office.

ED_002300_00000933-00024

"Obviously if we felt we had an obligation to file that, then we would be doing it," Sullivan said. "We feel that the operation of the CLG has been in compliance with all applicable laws."

A charitable organization is defined in part under state law as any "person or entity that is or holds itself out to be established, in whole or in part, for any benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other charitable purpose."

The lawmakers stated in their letter that 63 percent of the CLG "is composed of municipalities whose taxpayers' public dollars fund the group," 20 percent are generators of the trash and 17 percent are transporters who hauled waste to the Superfund cleanup site.

"Though 63 percent of the multi-million-dollar voluntary association is composed of municipalities, there is no accounting to the N.H. Department of Revenue Administration of Income and Expenses, and there is no audit as required by state law of all municipalities done by CLG to oversee and control the expenditure of public monies once they are paid to CLG," the lawmakers stated.

Sullivan has repeatedly said the group has spent about $27 million on remediation at the site and acknowledged there has been no formal reporting of how the money was spent during the past 27 years, other than votes by the CLG's executive committee.

In a recent response to a Right to Know request, Sullivan said boxes containing CLG records "have become redistributed to several municipal buildings located in different parts of the city."

The lawmakers also point to the recent decision by the CLG to hire a lobbyist to fight Coakley related legislation.

"The irony of CLG, a seemingly unaccountable entity established for the purpose of cleaning up and remediating the Coakley Superfund dump spending tens of thousands of dollars to defeat legislation to clean up and remediate the Coakley landfill, is not lost on us," the lawmakers said in the letter.

They also contend the CLG took "millions of dollars from the Department of Defense" to construct a treatment system at the site, but then never installed one.

Sullivan has previously said if the treatment system is never installed at the landfill, the CLG will have to refund the money, and that could cost Portsmouth taxpayers "millions of dollars."

In addition to the investigation, the lawmakers are asking the attorney general's office to "make a full report to the public of the results of such investigation, and take all necessary and appropriate actions to enforce the laws governing charitable trusts and other laws of the state of New Hampshire."

ED_002300_00000933-00025

Many people living near the landfill in North Hampton and Greenland fear chemicals leaching from Coakley will contaminate their wells, but so far PFAS contaminants found in private wells have tested below the EPA's health advisory level.

Tests on monitoring wells at the landfill have found PFASs and 1,4-dioxane, both suspected carcinogens, at levels above the EPA's health advisory levels.

The lawmakers noted that in a letter they received from the N.H. Department of Environmental Services (NHDES) last summer, an official from the agency stated the "migration of contaminants from site groundwater to surface water and the resultant impacts on Berrys Brook are unacceptable and need to be addressed." That letter went on to state "NHDES believes that actions need to be implemented at the site to provide additional removal or containment of the contamination, in order to mitigate these surface water quality impacts."

SIGN UP FOR DAILY E-MAIL
Wake up to the day's top news, delivered to your inbox

MOST POPULAR STORIES

The media playback was aborted due to a corruption problem or because the media used features your browser did not support.

‹ Previous Next ›