UTILITIES SERVICE BOARD SPECIAL MEETING

February 14, 2008

Utilities Service Board meetings are recorded electronically or stenographically and are available during regular business hours in the office of the Director of Utilities.

Board President Swafford called the special meeting of the Utilities Service Board to order at 5:02 p.m. The meeting was held in the Utilities Service Board room at the City of Bloomington Utilities Department Administrative Building in Bloomington, Indiana.

Board members present: Tom Swafford, Pedro Roman, John Whikehart, Tim Henke, Julie Roberts, Jeff Ehman, Jason Banach and ex-officio member Tim Mayer. Staff members present: Patrick Murphy, John Langley, Jon Callahan, Mike Bengtson, Evelyn Brophy and Kevin Robling. Others present: Geoff Grodner of Mallor, Clendening, Grodner & Bohrer, Geoff McKim, Sue Mayer, Susan Sandberg representing the City Council, Sarah Morin representing the Herald Times, Trent Deckard and Jason Carnes representing Congressman Baron Hill,

APPROVAL OF THE PCB CONSENT DECREE WITH THE ENVIRONMENTAL PROTECTION AGENCY, THE STATE OF INDIANA, MONROE COUNTY AND CBS CORPORATION:

Attorney Geoff Grodner gave a power point presentation that gave the history of the consent decree up until the present time. A copy of his presentation is attached to these minutes.

John Langley gave a power point presentation summarizing the remediation work that is being requested. A copy of his presentation is attached.

Board member Henke asked about the payment for Natural Resources Damage which will be less than $2.8 million. He wanted to know if anyone within the community would have any input on how that money is utilized. Mr. Grodner explained that the payment will go to the Department of Natural Resources. The local Fish and Wild Life Office, which was actively involved in the Consent Decree negotiations, will determine where the money will be spent.

Board member Ehman said that his understanding was that the Natural Resources Damage payment would go to the Patoka Wildlife Refuge and not to any local agency. While he understands the reasons for doing that he does believe that our community is being short changed.

Mr. Ehman asked what the status of the cleanup at Winston Thomas WWTP is. Mr. Langley said the only further action that is being contemplated at Winston Thomas is the removal of the interim storage building. Mr. Ehman asked if there would be no more remediation at the plant. Mr. Langley agreed. He said there is one area of soil under the south berm at the lagoon that contains PCBs at a level of less than 25 ppm. The average was probably half that. If the land under that capped area were ever to be used it would have to be remediated. There are also areas that are restricted from further development because it wasn't possible to get all of the material out. No further action is anticipated at this time.

Mr. Ehman said that he sees two sources for potential liability for the USB. The first is for claims for releases of PCBs from Winston Thomas that have occurred in the past. The other would be liability from the storm water conveyance system over which the USB has some sort of purview. Even if it is only speculative he wanted to know what the USB's exposure to

liability from those two sources might be if the Amendment is not approved and the Consent Decree is vacated by the Court. Mr. Grodner said there have already been removal actions involving PCB contaminated sludge from Winston Thomas WWTP that was given away. There were costs associated that could potentially lead to recovery action against the Utilities if the Consent Decree is vacated and the Utilities lost the indemnity from CBS provided for in the Decree. Mr. Grodner said that he has no idea of what the implications would be with the Storm Water Utility but there could be some. The Natural Resource Damage figure is the easiest to predict because it is in the Consent Decree Document. That is a settlement amount. If the Amendment is not approved and the Natural Resource Damage claim was litigated, it might be more and the Utilities Service Board could have potential liability as a responsible party. In dealing with litigation with multiple parties, in this case CBS and the USB, how a jury or judge would apportion the liabilities would be impossible to guess, however CBS would be likely to be apportioned a significant percentage.

Board member Ehman asked if there were claims regarding Clear Creek, would the Utilities be liable for anything downstream of the City boundaries. Mr. Grodner said they would if the Consent Decree were to be vacated.

Board member Banach asked if the USB's liability would be limited without the Consent Decree. Mr. Grodner said under federal law it is not.

Paul Ash who lives in the McDoel Gardens neighborhood said there is still a problem with flooding over W. Allen St. at the west branch of Clear Creek. There is a perception that there could be some contaminated sediment in the creek. He doesn't know if that is really the case but he thinks if the Creek were widened through the Cook Pharmica property it would keep it within its banks.

Mick Harrison who is an attorney representing Libby Frey and Kevin Enright said that he wants to encourage the USB to not approve this proposal at this time for a number of reasons. First there has not been adequate public participation and public comment. He asked if there are copies of the proposed consent decree available for the public. (Mr. Langley gave him a copy.) He asked that there be another opportunity before this vote for some public dialog, longer than five minutes, on something that is this important. He also requests that the public comment period to the court be extended beyond 30 days. There are a lot of technical issues in the document. His clients would like to have the technical information before making comments. Mr. Harrison said he hopes that the City's Counsel has not been saying that the Judge has directed the USB to approve the Consent Decree. The Court can not order them to participate in a settlement. The Court also can't punish them for taking the time to make sure that the public is being protected. He said he wanted to remind the USB that the initial clean up effort that is being approved by the amendment to the Consent Decree had failed. According to Mr. Harrison the ongoing release of PCB's from Lemon Lane and the other sites, from the springs into the surface water the air and the food chain, are continuing at about the same rate,. His second point is that most of the PCB's have been left in the ground in the Karst at Lemon Lane and other sites. Karst is composed of sinkholes, springs, seeps, cracks and crevices. This is a very efficient underground pipe system for making sure these PCB's don't stay where they have been disposed. They are still very mobile which is why there are still a lot of releases into the springs, the water and the air. Karst cannot be controlled. Approval of the Consent Decree would be saying that it is alright to leave the PCB's in the Karst exposing this community and the world for the next several generations.

Mr. Harrison's next point was that there is nothing in the proposal that protects the public from releases of PCB's into the air. Air releases have been ignored since the beginning of this issue. When the PCB's come out of the springs they are semi volatile and they readily volatilize into the air. Even remote areas of the world are exposed to PCB's because they are being transported globally through the atmosphere. Bloomington is one of the reservoirs that are contributing to the global pollution problem from PCB's. There is an ethical responsibility to stop these releases and the Consent Decree doesn't do that. That's why it should be rejected. The average breast fed infant in the USA is getting PCB's from existing sources in the food chain. Infants are getting enough PCB's to be 50 times greater than the two federal standards offered by the EPA and the Agency for Toxic Substances. This has happened due to uncontrolled releases from reservoirs like Bloomington's PCB sites.

Mr. Harrison said that the original Consent Decree required complete excavation of PCB's from the Karst. He believes this portion has not been changed in the amendment but it is not being honored. EPA advisory scientists told the EPA that there is no way to protect the public and the environment by leaving PCB's in karst. Mr. Harrison believes this advice is still valid and that the USB should reject the Consent Decree for this reason. He would like to have heard more discussion about public exposure to PCB's and not so much about the USB's liability. But if they are concerned about their liability he would like them to keep a couple of things in mind. He does not believe they have any liability for past historical events where Westinghouse disposed of PCB's without the Utilities' knowledge. What they will be liable for is the more recent decisions they have made with full knowledge of the situation. If they approve this agreement and allow Lemon Lane Landfill to continue to release PCB's into the environment with knowledge of what is happening they will be liable.

Mr. Harrison advised the USB to reject the proposal or at least give the public some time to read it before they have to comment on it.

Rudy Savage is a co-counsel with Mr. Harrison. He said that the deadline that the Judge chose sounds arbitrary to him. The penalty for not approving it is unknown to him but he thinks it would be appropriate to ask for additional time for the public to read the Consent Decree. There is a provision for a 30 day comment period before the court after the Decree has been lodged but he wants to comment to the USB not the court. He can't do that because he hasn't seen the document. There hasn't been time for the USB or the public to digest this document. Mr. Harrison said he thought that all public documents, including this one, were to be made available to the public on the COPA web site. He checked to see if the document was there. It wasn't. Without being able to see it there is no way for the public or him to make any kind of meaningful comment. It's important that the USB hear public comments before they vote and don't defer the public to Judge Young. The reason for that is that the Judge will put a lot of faith in what the government entities have decided. When a previous attempt was made to intervene in the Consent Decree case decades ago Judge Dillon would not allow any individual members of the public to speak about the case. His theory was that the public is adequately represented by their government such as the State, the USB, the City Council and the County Commissioners. If they are to represent the public they must allow the public to read the document and comment on it to them. He asked them to put off the vote for at least a week. This has been going on for over 30 years so he doesn't see how an extra week or 30 days could make much difference.

Dave Hudak said he is not a lawyer but is a Wildlife Biologist who retired from the US Fish and Wildlife Service 10 years ago. He has kept track of this project because he was heavily involved from the beginning. He had planned to just monitor this meeting until board member Ehman made his comment that he thought the Natural Resource Damage money

going to the Patoka River Natural Wildlife Refuge was a rip off of Monroe County to some extent. That's a legitimate question but he wanted to assure Mr. Ehman that when he started that refuge in 1985 it was and still is the best remaining wetland habitat in Indiana and may be some of the best in the mid west. There are 22,000 acres of which only 6,000 have been purchased. That is because the wildlife appropriations go to the states with Senators who sit on the Appropriations and Finance Committees. The manager at Patoka has to scrounge for money in any way he can to make these purchases of land within the 22,000 acre refuge. There is a 1,000 acre, parcel for sale with just a single owner. He doesn't know how everything will end up but the US Wildlife Services did the heavy lifting on this project as far as developing the data to come up with the Natural Resource Damages claim. Mr. Hudak said that Mr. Ehman had a valid point but he thinks that he has an even more valid one. He also thinks that the Indiana conservation community would agree with him.

Mr. Hudak was on the board for the Sycamore Land Trust. He can assure there is nothing in Monroe County that can compare with the value of those wet lands.

Diane Henshel said that she helped with some of the research for this project. She said she has two requests and 3 questions. First she would like to make sure that the document is made available immediately through the Public Library Indiana Room and the COPA web site. She also agrees that the decision should be held off until the public and the USB has time to evaluate the document. She agrees that after all this time it seems absurd to have only five days to make this decision.

Ms. Henshel asked what monitoring will be in place to make sure that PCB's don't leak out in unexpected places. What conditions are in place to check changes in conditions after drastic weather events or natural phenomena? She pointed out that the New Madrid Fault is expected to cause a major earthquake which could change things significantly. The PCB's will still be in the ground here. There has been more extreme weather over the past few years. Finally what re-openers are in the document in the event that something does happen and it becomes noted that PCB's start leaking out in unexpected places and to levels that are affecting wildlife or humans.

Board member Swafford asked Attorney Grodner and Deputy Director of Utilities Langley to address Ms. Henshel's questions.

Mr. Grodner said there are re-openers in the Consent Decree that will allow the governmental parties to ask the Court for additional remedial activities in the event the remedies are not effective. Mr. Langley said there is a five year review provision that is a part of Superfund law that requires the EPA to return every five years to evaluate the conditions around the sites. He believes the document covers the possibility that conditions change enough that there are PCB's going directly to the environment.

Board member Whikehart said he would like to offer a motion for consideration by the board. He read the motion.

Board member Whikehart moved that the Utilities Services Board of the City of Bloomington approve and adopt the Agreed Amendment to the Consent Decree Providing for Remedial Actions at Neal's Landfill, Lemon Lane Landfill and Bennett's Dump and Addressing General Matters. And that the Utilities Services Board authorize Geoffrey M. Grodner, as attorney for the Board and the civil City, to sign the amendment on behalf of the Board. Board member Roman seconded the motion.

Board member Roman thanked John Langley and Geoff Grodner for dealing with this over such a long period of time. He said he got the document 5 or 6 days ago. Although it is quite big he read through it. These kinds of documents are never perfect; they never satisfy everybody completely on every single issue. He thinks it is the best that can be achieved for now and it satisfies him enough to support it. Mr. Roman said that he has some problems over public input but in this case there has been a long process. Most of this has been in the public's view for 15 to 20 years. Also there will be another chance for public in put when the document is brought to the County Commissioners tomorrow for their approval.

Board member Henke said that it is probably impossible for the USB to completely understand everything in the document, especially because they became involved rather late in the game. He did attempt to read all of it but along with the original Consent Decree it is massive and would be more of a career than week end reading. Because of that they have to rely on the staff and the counsels. He did read a lot of the responses that came from organizations as various different solutions were discussed. He saw a lot of data and a lot of give and take. Not being a scientist he doesn't understand all the data. His gut feeling is that the community has been involved. He believes it is an imperfect but real clean up. He's not sure the technology exists to do a perfect clean up. Mr. Henke said he will support the amendment to the Consent Decree and he wants to thank COPA and Mike Baker. For many years they represented the community in everyone's interests. Sometimes it's not easy to be the person who is rocking the boat and standing against the wind yet they have done it for years. A lot of their input can be seen in the document. They should be commended.

Board member Roberts said that she agrees with Mr. Henke. She did read the document. She was amazed, as she frequently is in this community, at the level of technical expertise and the thought that goes into the comments from the public. There are more than 120 comments. She feels good that there were citizen advocates attending these meetings every 6 weeks for years. The public has been looking out for itself. She will support it because of the level of comment that has been going on all along.

Board member Whikehart said that it was once said that everything has already been said but not by everybody yet. He agreed with what his colleagues said and thanked Mr. Grodner and Mr. Langley. He has had the document for several days. He said he won't pretend that he understands everything in it but he respects the passion of the people who live in this community and their efforts on behalf of our community over all these years as this was moved forward.

Ex-officio board member Mayer said he is the only currently elected official who voted on the original Consent Decree and it's still around! He also thanked John Langley and Geoff Grodner. They both have been there from day one along with Mick Harrison, Rudy Savage and Mitch Rice of COPA. There has been good legal counsel along with good adversarial legal counsel. The City Council during the 1980's spent a lot of time in very vigorous and sometimes contentious debate about the direction in which they were going. Ultimately the Council did adopt the Consent Decree. It was an extremely difficult decision for that Council to make at that time. It included incineration as a way to dispose of PCB's, which was an untested and very controversial method of doing that. It moved things from not going anywhere to being able to start to address the issue. Fortunately for the City of Bloomington the local state representatives worked diligently with the state legislature to ban incineration as a method of disposal. Clearly this is not the final solution that will make the environment pristine. He is not a voting member of the board but he encouraged the other members to vote to adopt this.

Board President Swafford also thanked Mr. Langley and Mr. Grodner noting that they had spent a career on this issue. He said this is not a perfect document. The discussion has been going on for 20 years and if it went on another 20 years it still wouldn't be a perfect document. Another 30 or 60 days won't make any difference. After 20 years there comes a time when you have to say enough is enough and try to move on. He wishes it could have been a perfect document and we could have a pristine environment again. That is not going to happen at least for awhile but we do the best we can.

Motion carried. 6 ayes, 1 nay, (Ehman).

PETITIONS AND COMMUNICATIONS:

There were no petitions or communications.

ADJOURNMENT:

The meeting was adjourned at 6:00 p.m.

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L. Thomas Swafford, President