
Le Sueur County, MN

Tuesday, December 2, 2014

Board Meeting

Item 3

9:15 a.m. Al Christensen, Tri-County (20 min)

Staff Contact:

**Tri-County Solid Waste Joint Powers Board
Amended Joint Powers Agreement**

THIS AGREEMENT is made by and entered into this _____ day of _____, 2014 between the political subdivisions organized and existing under the Constitution and laws of the State of Minnesota, hereafter collectively referred to as “Parties”, and individually as “Party” which are signatories to this “Agreement.”

WHEREAS, Minnesota Statutes, Section 471.59 provides that two or more governmental units may by Agreement jointly exercise any power common to the contracting Parties; and

WHEREAS, the Minnesota Pollution Control Agency, pursuant to the Waste Management Act and M.S. 115A.46, have established Comprehensive Solid Waste Management Planning and Certificate of Need Rules that require counties to develop County Solid Waste Management Planning; and

WHEREAS, the participating County Boards have completed and approved a County Solid Waste Management Plan and will begin implementation of the said plan; and

WHEREAS, the participating County Boards desire to improve the planning and coordination of Solid Waste Management Services, within the multi-county area covered by this agreement, and

WHEREAS, the original Joint Powers Agreement was adopted on November 3, 1987, and this Joint Powers Agreement amends the original Agreement; and

WHEREAS, along with providing Solid Waste Management Services, the participating County Boards, through this agreement, also agree to provide Recycling Services, Hazardous Waste Services, and other services as deemed needed by the participating County Boards.

ARTICLE 1 – ENABLING AUTHORITY

NOW THEREFORE, in consideration of the covenants and mutual agreements contained herein and subject to the provisions of Minnesota Statutes, Sections 471.59 and Minnesota Statute Section 115A.46, and all other applicable statutes, rules and regulations, the following Board of Commissioners of the following counties of the State of Minnesota:

Le Sueur County
Nicollet County
Sibley County

do hereby establish a Tri-County Solid Waste Joint Powers Board having the composition, powers and duties provided in this agreement.

ARTICLE 2 – PURPOSE

The Parties desire to establish a mechanism whereby they may jointly exercise powers common to each participating Party on issues requiring:

- A. Planning, engineering, and design necessary to implement the participating Parties solid waste and hazardous waste management plans, along with recycling services and other services as deemed necessary by the participating Parties.
- B. Provide other similar or related services and programs as determined by the Board.
- C. Establish procedures to add qualifying Parties to this Agreement.
- D. Establish a mechanism whereby additional and/or alternative programs and services may be developed for the benefit of the Parties and in furtherance of the objectives of the Parties.

ARTICLE 3 – NAME

The name of this entity shall be the “Tri-County Solid Waste Joint Powers Board” hereinafter sometimes referred to as “Tri-County Solid Waste” or “Tri-County Solid Waste Board”.

ARTICLE 4 – AGREEMENT TO PARTICIPATE

- 4.1 Charter Members. The Counties of Le Sueur, Nicollet, and Sibley are the Charter Members of the Tri-County Solid Waste Board who were originally involved with the formation of the group by resolution in November of 1987.
- 4.2 New Members. The addition of a new Member will be allowed at the discretion of the participating Parties through a unanimous vote of the Board.
- 4.3. Compliance. A Party agrees to abide by the terms and conditions of the Agreement; including but not limited to the Joint Powers Agreement, bylaws, policies and procedures as adopted by the Board.

ARTICLE 5 – GOVERNANCE

- 5.1. Governing Board. A governing board shall be formed to oversee the operation of the Tri-County Solid Waste and shall be known as the “Board”.
 - 5.1.1. Membership. The Board shall be comprised of two Commissioners from each Party. Each Party shall appoint one (1) staff person as an ex-officio member who is responsible for assisting the Board with its duties. The Board may also appoint an ex-officio “citizen” member to the Board. Ex-officio members will not have voting rights.
- 5.2. By-Laws. The Board may adopt bylaws to govern its operations. Such bylaws shall be consistent with the Agreement and applicable law.

- 5.3. Amendments. This Agreement may be amended only by the agreement of all participating Parties by resolution of their County Boards of Commissioners. Notice of any proposed amendment must be provided to all participating County Boards of Commissioners at least thirty (30) days prior to the effective date of the proposed amendment.

ARTICLE 6 – POWERS OF THE BOARD

The Board is hereby authorized to exercise such authority and powers common to the Parties as is necessary and proper to fulfill its purposes and perform its duties. Such authority shall include the specific powers enumerated in this Agreement or in the bylaws.

ARTICLE 7 – INDEMNIFICATION AND HOLD HARMLESS

- 7.1. Applicability. The Tri-County Solid Waste Board shall be considered a separate and distinct public entity to which the Parties have transferred all responsibility and control for actions taken pursuant to this Agreement. Tri-County Solid Waste Board shall comply with all laws and rules that govern a public entity in the State of Minnesota and shall be entitled to the protections of M.S. 466.
- 7.2. Indemnification and Hold Harmless. The Tri-County Solid Waste Board shall fully defend, indemnify and hold harmless the Parties against all claims, losses, liability, suits, judgments, costs and expenses by reason of the action or inaction of the Board and/or employees and/or the agents of the Tri-County Solid Waste. This Agreement to indemnify and hold harmless does not constitute a waiver by any participant of limitations on liability provided under Minnesota Statutes, Section 466.04.

To the full extent permitted by law, actions by the Parties pursuant to this Agreement are intended to be and shall be construed as a “cooperative activity” and it is the intent of the Parties that they shall be deemed a “single governmental unit” for the purpose of liability, as set forth in Minnesota Statutes, Section 471.59, subd. 1a(a); provided further that for purposes of that statute, each Party to this Agreement expressly declines responsibility for the acts or omissions of the other Party.

The Parties of this Agreement are not liable for the acts or omissions of the other participants to this Agreement except to the extent to which they have agreed in writing to be responsible for acts or omissions of the other Parties.

ARTICLE 8 – TERM

This Agreement shall commence upon approval of the governing body of each Party and signature of the official with authority to bind the entity listed in Article 1. The Agreement shall be in effect only with respect to the Parties who have approved and signed it.

ARTICLE 9 – WITHDRAWAL AND TERMINATION

9.1 Withdrawal. A Party may terminate and withdraw from the Tri-County Solid Waste Board only on a notice of an intention to terminate delivered to the other participating Parties not less than 180 days before the effective date of termination and withdrawal.

9.2 Termination. This Agreement shall remain in force until one or more Parties terminate or withdraw pursuant to this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the persons authorized to act for their respective Parties on the date shown below.

Each Party must complete the following. An original of each Party's execution of the Agreement should be attached to the Agreement and remain in a permanent file.

Approved as to form and execution:

COUNTY OF _____

County Attorney/Date

By: _____
Chair of Board

Date of Signature: _____

Attest: _____

Approved as to form and execution:

COUNTY OF _____

County Attorney/Date

By: _____
Chair of Board

Date of Signature: _____

Attest: _____

Approved as to form and execution:

COUNTY OF _____

County Attorney/Date

By: _____
Chair of Board

Date of Signature: _____

Attest: _____

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Article 1: Statement

This document shall be the official bylaws of the Tri-County Solid Waste Joint Powers Board, which consists of the participating Counties of Le Sueur, Nicollet, and Sibley, (hereinafter, the Board), which is an official legal entity according to Minnesota Statutes, Section 471.59. These bylaws replace the current existing bylaws which were dated March 4, 2004.

Article 2: Purpose

The purpose of those of this policy is to set regulations for the proper organization of the Tri-County Solid Waste Joint Powers Board. The adoption of these bylaws is to provide for the proper governance of the Board's operations.

- 2.1 Focus. One of the main focus' of this Board is to provide for the proper planning, engineering, and design necessary to implement the participating counties' solid waste management and hazardous waste plans, along with recycling services.
- 2.2 Solid Waste Management Facility. A new joint powers agreement must be approved by the participating counties in order for the Board to construct a solid waste management facility.
- 2.3 Participation Not Required. No member county shall be obligated to participate in a new joint powers agreement for construction, operation, financing or management of any solid waste facility.

Article 3: Governance

- 3.1 Annual and Regular Meetings. The Board shall hold an annual meeting and other meetings as needed. The times and places of regular and special meetings shall be fixed by the Board.
- 3.2 Voting. Each county shall have two (2) votes on all matters before the Board. Board actions shall be determined by a majority of the votes cast at the meeting. Abstentions shall not be counted as votes cast. Proxy votes are not permitted.
 - 3.2.1 Exception on Voting. When a county, by resolution of its board of commissioners, has decided not to participate in a contract for services, then the representatives of said county shall not participate in the negotiation of the contract and shall abstain from voting on the contract.
- 3.3 Quorum. A quorum shall consist of a simple majority of the Board; however each Party must be represented by at least one member. Ex-officio members are not counted as members for a quorum.

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3.3.1 Exception on Quorum. An exception to 3.3 is provided when a county, by resolution of its board of commissioners, does not participate in a contract for services, then a quorum, for the purpose of taking action on the contract, shall consist of a simple majority of the remaining participating counties and a representative of the non-participating county need not be present.

3.4 Documentation. Resolutions or other documentation of designation shall be filed with the Secretary of the Board.

3.5 Terms; Vacancies. The term of each Board Member shall be indefinite or until the appointing Party makes a change. In the case of a vacancy, the appointing Party shall appoint a designee and/or an alternate as soon as a vacancy occurs.

3.6 Officers of the Board. The Board shall elect a Chair and Vice Chair from its membership who shall serve a term of one (1) year and may serve for successive terms.

3.6.1 Election of Officers. The election of the Chair and Vice-Chair shall be conducted at the first meeting of the calendar year.

3.6.2 Additions to the Board. The Board may elect or appoint such other officers as it deems necessary to conduct the affairs of the organization.

3.6.3 Secretary/Treasurer. The Tri-County Solid Waste Director shall act as the Secretary/Treasurer to the Board.

3.6.4 Committees. The Board shall have the authority to appoint such committees as it deems necessary to fulfill the purpose of the organization.

3.7 Meetings. The Board shall comply with Minnesota Statutes Chapter 13D (Open Meeting Law).

3.8 Records, Accounts and Reports.

3.8.1 Records and Reports. The books and records, including minutes and the original fully executed Agreement, of the Board shall be subject to the provisions of Minn. Stat. Ch. 13. They shall be maintained in offices of the Fiscal Host. Records, accounts and reports shall be maintained by the Secretary/Treasurer.

3.8.2 Receipts and Disbursements. The Tri-County Solid Waste Board will ensure strict accountability for all funds of the organization and will require reports on all receipts and disbursements made to, or on behalf of the Tri-County Solid Waste Board

Article 4: Operation and Finance

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- 4.1 Annual Budget. The Board shall prepare an annual budget, which shall be presented to the Board of County Commissioners of each member county for review and comment.
- 4.2 Fiscal Contribution. Contributions from individual Parties will be allocated based on the following formula: Fifty percent (50%) of the costs divided equally among the member counties and the remaining fifty percent (50%) of the costs allocated on the basis of population.
- 4.2.1 Exception. When a county, by resolution of its board of commissioners, has decided not to participate in a contract for services, then the representatives of said county shall not participate in the financial contribution and reward of such services. The fiscal contribution from those deciding to participate in the contract for services shall use the same formula as stated in Section 4.2 minus the county that decided to not participate.
- 4.3 Fiscal Agent. The Board shall designate one of the member counties to act as Fiscal Agent for the Board. The Fiscal Agent shall establish an account in order to keep proper records of all receipts and expenditures. The Fiscal Agent is empowered to prepare a list of proposed obligations of the Board, including expenses incurred by the Agent, and present them at regular intervals to the Board for approval.
- 4.4 Per Diem. Board members may receive a per diem and may be reimbursed for travel and other necessary expenses while engaged in their official duties. Claims for per diem, travel and other necessary expenses shall be submitted by Board members and staff to their respective county board of commissioners for payment. The Ex-Officio member shall have its per diem and travel costs paid for by the Joint Powers Board.
- 4.5 Incidental Work. If the Tri-County staff does more than incidental work solely for one of the member counties, and this work is not within the normally accepted scope of work to be performed, the other member counties shall be compensated accordingly through an adjustment in the quarterly billing by the Tri-County office.

Article 5: Officers and Duties

- 5.1 Chairperson. The chairperson shall preside at all meetings of the Board. The chairperson shall be an ex-officio member of all standing committees and shall appoint all standing committees.
- 5.3 Vice-Chairperson. The vice-chairperson shall assume the responsibilities of the chairperson when the chairperson is absent or unavailable to serve. A vacancy in the chairperson's office shall be filled by the vice-chairperson for the rest of the term.
- 5.4 Secretary to the Board. The Tri-County Solid Waste Director shall act as Secretary to the Board, keeping the minutes of Board meetings, and ensuring that financial matters of the Board are addressed.

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Article 6: Specific Powers

The Board shall have all the powers and duties under Minn. Stat. § 471.59, governing the formation of joint powers agreements. The Board shall also have all the powers necessary to carry out its obligation to implement a solid waste management plan in accordance with Minn. Stat. § 115A.46, along with hazardous waste management and recycling services.

- 6.1 Contracts. The Board may enter into contracts necessary for the exercise of its duties and responsibilities to govern the Tri-County Solid Waste Board. The Board may take such action as is necessary to enforce such contracts to the extent available in equity or at law. Contracts let and purchases made pursuant to this Agreement shall conform to the requirements applicable to contracts required by law (i.e. fiscal management, personnel management)
- 6.2 Receive and Expend. For the purposes of implementing the County Solid Waste and Hazardous Waste Management Plans, funds designated by the Parties or from any other lawful source, including any governmental source, shall be used to create a budget and properly account for the financial affairs of this Agreement.
- 6.3 Staffing. The Board may employ such staff as is necessary to carry out the purpose of this agreement, subject to the financial limitations imposed by law and this Agreement. The staff shall receive the same benefits as non-union employees of one of the member counties as determined by the Board. Staff shall also follow the personnel policies adopted by one of the member counties as determined by the Board. Staff shall follow a salary structure as established by the Board.
- 6.4 Insurance. The Board shall obtain liability, property, auto, and worker's comp. insurance and may obtain such other insurance it deems necessary to indemnify the Board, its staff, and its members for actions of the Board and its members or staff arising out of this Agreement.

Article 7: Amendments

The by-laws may be reviewed by the Board at any time.

- 7.1 Amendments. The by-laws may be amended at any regular meeting of the Board by a majority vote provided that each member county has a voting representative present. Notice of the proposed amendment(s) must be given at least 30 days prior to any action taken by the Board.
- 7.3 County Board Notification. Notice of any proposed amendment to Article 4, must be sent to the member county board of commissioners.

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- 7.4 Board Action. The proposed amendment(s) must be included with the agenda of the Board meeting, and a time must be specified on the agenda when the proposed amendment will be acted upon.

Article 8: Termination of the Agreement or Withdrawal

The Tri-County Solid Waste Joint Powers Agreement (hereinafter, the Agreement) shall remain in full force and effect until one or more Parties terminates or withdraws pursuant to Article 9 of the Agreement.

- 8.1 Effective Date and Obligations. The notice of termination and withdrawal must be received by July 1 of the current fiscal year. A withdrawing Party is obligated for all expenses incurred during the 180-day period prior to withdrawal and shall continue to make its allocated share of contributions.
- 8.2 Effects of Termination. Termination shall not discharge any liability incurred by the Board or by the Parties during the term of the Agreement.
- 8.2.1 The financial obligations shall continue until discharged by law, this Agreement or any other agreement. Upon the effective date of termination, expenses will cease to accrue but the member Parties agree that, notwithstanding the termination, the Parties shall continue to provide for payment of expenses owing but unpaid as of the date of termination.
- 8.2.2 Property acquired by the Tri-County Solid Waste Board shall be distributed according to the following:
- a) Direct negotiation between the Parties for the property.
- b) If the negotiations result in an impasse, the Parties agree to go to Mediation for the property.
- c) If Mediation results in a continued impasse, the Parties agree to go to Arbitration. The arbitrator's decision shall be binding on all the Parties.
- 8.2.3 Cash assets of the Tri-County Solid Waste Board shall be returned to the Parties in the same manner that the fiscal contribution is calculated in Section 4.2.
- 8.3 Notice. Notice that is required to be given may be done by either of the following methods: Mailing by first class mail, postage pre-paid, addressed to the Board representatives of each member county and sent to the county courthouse, or served in person to the Board representatives of each member county.

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Approved by the Tri-County Solid Waste Board on _____, 2014.

By: _____
Board Chair

Attest:

By: _____