

Freetown Board of Selectmen

Meeting Minutes

Thursday, February 11, 2021 – 5:00pm

Meeting Will Be Held Virtually

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Cheryl A. Estrella

****Open Session will be livestreamed at freetownma.gov/FREECAM****

Board of Selectmen

At 5:00pm, Selectmen Pacheco opened the public meeting. In attendance Selectmen Pacheco, Selectmen Grunwald, Town Administrator Peter Jankowski, Board of Health Agent Tanya Daigneault, Fire Chief Gary Silvia, Millie Garcia-Serrano Regional Director MassDEP southeast Regional Office, Representative Carole Fiola, Courtney Rainey Director of Government Affairs & Municipal Partnership DEP, Caitlin Rowley District Director for State Senator Michael Rodrigues, Representative Paul Schmid, MassDEP Senior Attorney Dan d'Hedouville, Seth Pickering Deputy Regional Director Bureau of Mass Air and Waste, Excel Attorney John Markey, Executive Assistant Timm McIntosh, Senior Clerk Lu-Ann Souza, Freetown. Tyler Cotta Legislative Aide for State Rep. Carole Fiola, Selectmen Matthews was not in attendance. Selectmen Pacheco welcomed everyone to the meeting and specially thanked Representative Paul Schmid and Representative Carole Fiola.

Discussion/possible action on the following topics:

1. Excel Recycling.

Selectmen Pacheco welcomed everyone to the meeting and thanked Representative Fiola and Representative Schmid for attending and pushing to have this meeting with DEP.

Selectmen Pacheco asked Millie Garcia-Serrano from MassDEP to introduce everyone from MassDEP on the call which she did. Selectmen Pacheco noted Attorney John Markey representing Excel was also on the call and asked if anyone else from Excel would be joining? Attorney Markey noted that one staff from Excel may come on to just listen but was not currently present.

Selectmen Pacheco noted tonight's discussion is to cover three areas of concern for the Town that are : the so called explosions, the container wall that is not yet built and also hours of operation which continue to be a hinderance to the area and the Town.

Selectmen Pacheco referenced that she had sent a letter and email that lately these explosions are happening way too frequently and that on 12/30, 1/5, 1/12, 1/20, 1/21, 1/23, 1/25, 1/26, 1/28, 2/9 & 2/10 there were explosions at Excel. Selectmen Pacheco asked the DEP what you think that these explosions are?

Millie Garcia-Serrano noted she received twenty-six questions in total and wanted to know, as rules of engagement, if we are addressing them all or just the three that Selectmen Pacheco noted. Millie Garcia-Serrano noted Mass DEP spent a good portion of the day preparing to discuss these very important questions and would like to clarify if the goal is to discuss all twenty-six questions or just the three areas Selectmen Pacheco has identified. Selectmen Pacheco noted that she was speaking just on behalf of the Town right now and noted that the questions Ms. Garcia-Serrano received from the residents are of imminent importance as well. Selectmen Pacheco noted that she was going to focus on the three areas previously identified, noted we were trying to keep this meeting to one hour so she is going to keep everything synced.

Millie Garcia-Serrano suggests we start with the phenomenon of the explosions. DEP Rep wants to discuss the safety realm in regards to these explosions and noted she is happy that Fire Chief Gary Silvia is on this meeting to weigh in. As to loud noises that is what Mass DEP is focusing on with regards to ensuring there is compliance as to that end. There is a requirement of the administrator consent order that was sent on 12/2020 and is coming to full head and by 2/26/21 there will be a completion of a third row of containers as per the order which would serve as mitigation for the sound. She asked Fire Chief's thoughts on these explosions, if these are indeed explosions, are they an actual explosion and what his thoughts. Chief Silvia noted that whatever is happening at Excel it is happening so quickly that by the time the Fire Dept. arrives it's already done and they do not find evidence of fire, smoke by the time we get down to the scene at Excel. He noted they have not found an evidence of exploding containers or anything like that but that there is a lot of scrap metal and pieces everywhere, so they do not know if an actual explosion occurred or it was a loud noise or something falling down. They have had a couple of fires that the Fire Department has had to put out which is a concern for us. He notes the residents are not lying and obviously something is going on but by the time the Police or Fire arrive the event is resolved. Chief noted that the Fire Department goes there weekly to ensure they will have proper access around the facility to get the Fire fighters through. Selectmen Pacheco notes as you can see it is a snipit in time, we hear it, the residents feel it, and hear it, they call in Fire Dept. gets there and its over. She continued that they have hoses out, she has seen them, and they even put the fire out, but its one snipit of time and perhaps at one point something is going to happen and we want to bring this to DEPs attention, we need to investigate this further as we cannot let this go. Millie Garcia-Serrano stated we agree with Selectmen Pacheco's statement that we have to work jointly and she appreciates the observations from Fire Chief Silvia, we share that and when they do happen they happen instantaneously and to get there to investigate that is the question. Ms. Garcia-Serrano invites Excel's Attorney Markey to give some input as when this happens DEP contacts Excel. Attorney Markey noted he has received from Attorney D'Hedouville and Seth Pickering calls in last 6 months on 4 or 5 occasions where someone complained about an explosion. He called Excel

right away and they go outside and ask their staff and the staff does not report anything unusual. He noted "we" have been unable to unidentified the source. Attorney Markey also noted that there have been no business changes since December to warrant any increase in these explosions. Attorney Markey noted there was an active effort when sound testing was done before and a number of policies and procedures and best management practices were put into place. As in any workplace we cannot guarantee that someone would not drop steel from a low level of ten feet above and made a mistake and dropped it from a higher point. Attorney Markey noted that there has been no significant changes over the few years that would have an effect on the line that would explain an increase in issues over the last sixty days. He also noted that if someone was dropping steel from higher than approved height there would be disciplinary action taken.

Selectmen Pacheco started to pay closer attention between 12/30/20-2/10/21 and this is happening so much so there has to be some sort of a change that is increasing these explosions. Selectmen Pacheco also stated that if someone was dropping steel from higher than approved height there must be some disciplinary actions and follow-up taken and she requested this documentation be shared with the Town. Selectmen Pacheco suggested that we do an experiment and drop steel from a higher than approved height and see if that is the sound being heard. She also suggested installing cameras to monitor to see if that is what is going on. Millie Garcia-Serrano agrees that there should be some follow-up. Selectmen Grunwald questioned can we enforce having cameras to help discover what is going on? Attorney Markey noted that no employee wants to be on camera all the time however if the issues are not resolved by the container installation he is willing to work with Governmental Agencies that oversee us. He just does not want to make agreements at this time that infringe on people's privacy. He noted there is a camera system at the gates to track comings and goings. Millie Garcia-Serrano noted this is an action item for MassDEP to follow-up on.

Selectmen Pacheco noted correspondence between DEP and Town of Freetown regarding the third containers and there has been some significant wrong information. Selectmen Pacheco wanted to make clear that she spoke with the Building Inspector today and he gave me a clear timeline of exactly when Excel turned in their paperwork. On 9/13/20 the permit was received but it was incomplete as it was missing contractor's information. On 10/15/20 they received the contractor information. On 10/22/20 the permit was reviewed. On 10/30/20 the taxes were signed off on. On 11/2/20 the permit was typed up and signed. On 11/2/20 1:17pm the secretary called and let management at Excel that the permit was ready to be picked up. On 12/28/20 1:35pm emailed the permit was ready for pickup. Selectmen Pacheco asked for this meeting on 1/21/21. On 1/27/21 Victoria from the Building Department called once again that the building permit was ready. And the permit was picked up the afternoon of 1/27/21. Now that the permit is done, after a year, when will this be complete? Millie Garcia-Serrano Mass DEP is looking into and making sure is abided by is III paragraph three, the administrative order

noting that within sixty days of the permit being issued that the third row of containers intended to mitigate the noise issue are installed. Millie Garcia-Serrano noted correspondence from Mass DEP on 12/15/20 to The Town asking for a status update on the permit. Based on that correspondence Mass DEP has the date of 12/28/20 as the permit date and the deadline for container installation is 2/26/21. Dan d'Hedouville noted they have an email from Excel which came from the Town on 12/28/20 stating permit is ready for pick up. They are using this document as the trigger date for the sixty days for container installation. His understanding was the permit was filed back in June from an existing building permit. There was communication from the Town to Seth Pickering that the permit was deficient. Later that month or July Excel heard from the town and resubmitted a new application and from Excels perspective that was the last time they heard from the town until they heard that it was ready to be picked up which is why the Dept. sent two separate correspondence to the Town to see where the permit was at that time. Attorney d'Hedouville noted all of this may be mute now as Excel has it and are currently in the process to install the containers. Thirty days after installation there will be a supplemental sound mitigation plan that is looking for facility wide sound monitoring as Mass DEP did the last time. Millie Garcia-Serrano verified that their sound testing is very separate from Excel's and will be looking for resident support to secure access and have same locations and duplicate this effort. She continued they are aware of comments of elevated sounds and background sound and will be monitoring this protocol judiciously. Selectmen Grunwald asked Ms. Garcia-Serrano the correspondence on 12/15/20 and unfortunately, we were without a Town Administrator at that point and that is why it was not answered and offered to have her correspond directly to her in the future. Selectmen Pacheco noted DEP has date of 12/28/20 as their trigger date. Dan d'Hedouville said yes, this is the date as the email from town, through Excel was the only document they had to use as a trigger date. Selectmen Pacheco offered to send copies of other correspondences to add to their record. Attorney d'Hedouville said any information Selectmen Pacheco wishes to send would be very helpful.

Selectmen Pacheco said her last thing was from the Towns perspective hours of operation. Lately, Excel has been working weekends and extended hours. The initial permit given to Excel from DEP had hours of operation noted on page 5, and on page 5 it note number 7 "does not intend to conflict with the power of the Town of Freetown on hours of operation for the facility" Ms. Garcia-Serrano agreed. Selectmen Pacheco would like to know why knowing with frustration of the neighbors, knowing the frustration with the Town, having to deal with toxic odors, loud noise, debris falling all over the place and all of these other issues why have you not amended your permit to reflect what the Town truly wanted. Millie Garcia-Serrano noted that once we hear about the outcome of the current litigation Mass DEP will certainly adhere to the results of that decision. When something is going under an appeal Mass DEP waits until that is

finalized. She noted their permit does not wish to conflict with the town but noted that until the litigation is complete Mass DEP cannot adhere to wishes of the town as we are waiting for resolution from the courts. Selectmen Pacheco declined to hear from Attorney Markey as it is ongoing litigation. Selectmen Pacheco continued all she wants to know is knowing this is what the town wanted why do you not support the town? Seth Pickering stated the way DEP's air permitting works is that they are unable to go in and amend a permit that has already been issued. So, without the applicant coming back asking for modification or the Town asking to modify the DEP cannot go in unilaterally and change the operating hours. Attorney Dan d'Hedouville concurred and stated if the Town adjusts the hours the DEP permit would not preempt that agreement.

Selectmen Pacheco asked Millie Garcia-Serrano to address the resident's questions. Rep. noted that the questions provided to Millie from Rep. Finola's office. Rep. Fiola asked how does DEP determine the air quality, ground water and smell are safe for the residents health? Millie Garcia-Serrano said they tried to compile the questions as they came in in a rolling basis and received 26. She addressed the questions and noted her team would be taking turns based on their area of expertise. They questions are:

- What does DEP think the explosions are? Millie Garcia-Serrano said through conversations with the Fire Chief and Excel Counsel we will work together. She noted Selectmen Pacheco had some great recommendations to consider. Millie Garcia-Serrano noted they will take all of these things into consideration and will have more to come on explosions on short notice.
- Is it Excel or DEP's role to figure out what these explosions are? Millie Garcia-Serrano stated that it is everyone's role to work together to figure this out. Residents advising DEP and Town when these explosions happen DEP calls Excel right away and Ms. Garcia-Serrano noted DEP should be calling the Town as well so we can put our heads together to figure this out.
- Can Mass DEP conduct surveillance? This was brought up by Rep. Fiola 2 years ago and Millie Garcia-Serrano will be happy to provide that letter of MA DEP description of use of cameras are for the purpose of illegal dumping and cameras are placed in a public place and pan to get the vehicle license plate and is done in conjunction with the police. These are conducted by the strike force and do not have audio which we are trying to pursue. Millie Garcia-Serrano noted this is not the best use for investigating the explosions and MA DEP does not have the technology to address that.
- Update on DEP's role with Excel and the ACO on the permit of third-row licenses. Attorney d'Hedouville said the ACO sets the schedule for installation. All containers are on site and a site engineer is working to get them in place and need to be in

place by 2/26/21. The goal of the containers is to further mitigate the noise level. There will be independent/joint testing after installation to see if this will significantly reduce noise. Millie Garcia-Serrano noted that ultimately it is Excels responsibility to be in compliance with the ACO more to come once the containers are installed. She noted she will need help from residents with regards to access akin to past efforts and will be disclosing information clearly once the information is back as the sounds are taken from private property. Seth Pickering is the lead on this study and will call the night/morning before the testing is done and they are very cognizant that there be no rigging of sound during these tests.

- What does the DEP permit allows for hours of operation? Millie Garcia-Serrano stated that she felt we had covered this subject and asked Selectmen Pacheco is she agreed. Selectmen Pacheco concurred we were good on this topic.
- Was there a legal mediation of some kind? Millie Garcia-Serrano said we are not in any type of arbitration so from their end the answer is no.
- There is a disconnect between DEP Permits and the cease and assist issued by the Town. Is there a way for these things to meet in the middle? State is not respecting the will of the town. Attorney d'Hedouville issue of the Town would not renew the second hand merchandise license and from the Towns perspective they do not have the ability to operate shouldn't the DEP revoke their air permit? Attorney d'Hedouville wanted to make it clear that their regulations and our air statute do not give them the right to revoke the permit based upon whether its municipal, state or federal permit being revoked, suspended etc. They can only revoke air permit if those regulations are violated. This does not mean that the DEP Permit overrides the Town. Selectmen Pacheco had a follow-up question based on a question from one of the residents. If DEP can suspend operations for a company like PJ Keating in Acushnet why can't they do the same for Excel? Seth Pickering said very different set of circumstances at PJ Keating. It had to do with a piece of equipment that was relocated and triggered our CPA (Comprehensive Plan Application) requirements the actual change that was made at the facility was subject to permitting so before they were allowed to operate the equipment, they were told they could not operate the equipment and a new permit and sound quality study would need to be done before the equipment could be operated. So, it is a different set of circumstances than the existing set up at Excel.
- "Excel told us one story, Excel never answered our questions and then picked up the permit." Attorney Dan d'Hedouville said it has been pretty thoroughly covered.
- Has DEP Done air quality tests? Seth Pickering stated yes in 2/2018 MA DEP Field Assessment and Support Team did sampling with their mobile unit at 9 Alexander Dr and 34 High St. which is downwind while the site was operating and also did upwind

at Ridge Hill Rd near turnaround area. Also did stack testing in 2017. Both showed no negative effects to the public. Selectmen Pacheco asked how often do you (DEP) plan to do testing? Millie Garcia-Serrano noted that she wants to check with the Boston Team through the Volvo settlement there are plans to deploy sensors throughout the state and she wishes to discuss with the Assistant Commissioner of Air & Waste to see if sensors can be deployed in the Southeast region that may be of assistance in our area. Selectmen Pacheco noted that if Ms. Garcia-Serrano could follow-up that would be truly appreciated.

- Millie Garcia-Serrano noted the next question is Ground water testing, MA DEP spends a lot of time working with potential responsible parties or themselves she will go on MASSGIS to see if she sees any sites that are sites with releases or hazardous materials to the environment. Rep. Schmid and Rep. Fiola have requested a search be conducted. Millie Garcia-Serrano note that the records do show Alexander Dr. is on municipal water so that ingesting groundwater is not present there. High St. is on private wells which are regulated by Board of Health. Millie Garcia-Serrano says review of local topography the groundwater flows towards the Assonet River so private wells seem to be upgradient from Excel. 1/13/21 MA DEP met with Town of Freetown, Acting Health Agent, Rep. Schmid, and Rep. from Sarah Rodrick's Office was there and they talked about a new program of private well sampling to monitor Fluorinated compounds there are 81 towns that the resident's drink private well water. Town of Freetown is one of these. DEP understands Town of Freetown wants to work with DEP and partner with UMASS on this project. DEP will be reaching out to around 180 private well owners with the hope of 20-40 of them will agree to have their wells tested.
- Any additional engineering things that can be done to prevent the noise? Seth Pickering, measures being implemented through the ACO, the company added magnet stand, material splitter shoot, stacker belt and non ferrous plant, they will not be able to tell until we do next round of sound monitoring, get results and analyze those result and move forward after these are received Millie Garcia-Serrano said this will determine best management practices that may tie in with the explosions as they have been represented.
- Next question – how many violations does DEP get before they revoke their license? Millie Garcia-Serrano noted we are waiting until container installation on 2/26/21, then Excel and MA DEP will do their own sound studies and compare results to see if they match up or are far apart and if so why? Atty D'Hedouville noted they try to work with entities to get into compliance and revoke a license as a last resort. There is not a number of instances then your done. Attorney d'Hedouville agreed and noted it is not the departments goal to revoke a permit but to work with entities to be compliant.

Millie Garcia-Serrano says the ACO explains the actions if there is default. Selectmen Pacheco noted there is hardly any revocations of permits so if a company continues to have loud explosions and noises and has poor air quality, debris and everything else and it's over and over their license is not revoked? Atty d'Hedouville said scenario Selectmen Pacheco describes is very severe and would be looked at very different than an entity that is slightly out of compliance. Selectmen Pacheco asked what is the threshold to risk for human health as you see it ? Millie Garcia- Serrano noted right now we are trying to see if the third row will mitigate the sound. We will need to see if the mitigation works and pursue the administrative consent order. She noted that if the company does not follow through with the installation of containers and mitigation noise that is a very different situation. Selectmen Pacheco requested to take Excel out of the question and asked do you have a threshold that you cannot take it anymore and will revoke a license? Millie Garcia-Serrano says every program is different, were talking about air permits which is a separate from a superfund site. In regards to this situation here the answer is through mitigation. If the noise is not mitigated then we have to decide what are the next steps. Selectmen Pacheco noted that DEP is going to do more testing on the smokestack, air quality and the toxins in the air. Millie Garcia-Serrano that is an idea she would like to explore with the Boston Team through the VW Settlement. Selectmen Pacheco just wanted to make sure the DEP had a threshold, and this is just not going to continue. Millie Garcia-Serrano said when you say threshold, she would say standards and they do have particulate matter 10, particulate matter 2.5 we have different air quality standards that basically help guide decisions to attainment and non-attainment. Seth Pickering noted that currently the facility is not out of compliance with anything in their permit from MA DEP. The pollutants that are regulated by that permit they are in compliance right now. Selectmen Pacheco noted the testing was done in 2017 and 2018 and we are now in 2021. She continued that she feels it is time for new testing and also wants to know if the town asks for specific testing would DEP be open to that. Millie Garcia-Serrano said she is open to anything and noted that if the permit states Excel is to do testing DEP will pursue it. May be able to deploy some sensors in the area to help get to the bottom of this. She noted she was there this morning and noted it has grown substantially, noted more trailers and the cannabis is up and running. Selectmen Pacheco noted some of the trailers have to do with Excel, yes the cannabis is up and running and as far as she knows there are no new businesses in that area. Millie Garcia-Serrano wants to work with the Town to get to the bottom of this.

- Rep. Fiola raised the question of the responsible parties in the event of illness in the area due to the toxins, air quality. The town has attempted to cease operations of Excel but have been unable to successful. Rep. Fiola would like to know where to focus her

energy in the event of a cancer cluster or other type of health issue arises. Millie Garcia-Serrano stated she has been involved with several referrals to the MA Dep of Public Health, the Bureau of Health Assessments, and currently have two of three efforts of this type in the Southeast region. One has to do with a fireworks site up in Hanover. Concern of cancer in this area. MA DPH is the lead on this case and they use data from cancer registries and perform environmental statistical research. She would be more than happy to have a conversation on behalf of the residents with MA DPH if an issue arises.

Selectmen Pacheco asked if Rep. Fiola or Rep. Schmid had any questions. Rep. Schmid wanted to thank Selectmen Pacheco for bringing us all together, he thanked Rep. Fiola for being the point person of the delegation on this and thanked Millie Garcia-Serrano, Seth Pickering, and Dan d'Hedouville. Rep. Schmid wanted to clarify the sound monitoring that will take place after the container installation on the 26th. That is a 24 hour a day monitoring? Millie Garcia-Serrano stated no it is a snapshot in time. Seth Pickering is a number of twenty-minute sampling periods where the sound is monitored and is collected digitally. When conditions are right, they will do sessions in a daytime run while the facility is operating. Prior to the facility operating they will also take sound measurements to determine the normal background sounds while the facility is not operating. Rep. Schmid would like to discuss this with Rep. Fiola and Seth Pickering offline as he feels that these explosions are happening about three times a week and that he feels we need longer monitoring to capture this activity. Rep. Schmid also noted one of our residents have pointed to the OSHA reports as they clearly point to the cause of the explosions. Rep. Schmid asked if anyone can provide any information on that? Millie Garcia-Serrano is unsure of the OSHA reports are filed by Excel. Attorney Markey is unaware of OSHA reports that pertain to this area. Selectmen Pacheco do you think the State Fire Marshall should be involved at this point. Millie Garcia-Serrano did note that the State Fire Marshall was there when Excel had a fire and did a report on that but that she cannot speak to that. Rep. Fiola wanted to thank everyone for being here and noted everyone wants to see this resolved. Rep. Fiola will follow up with Rep. Schmid and the state on the VW funding. Rep. Fiola asked what cost would be involved as she and Rep. Schmid can work on that. Millie Garcia-Serrano noted the sensors were not expensive at all but may be covered in the VW settlement and she will advocate for Freetown's inclusion on this front. She noted the city of Brockton was going to be included and will advocate that Freetown also be included. Rep. Fiola noted the groundwater testing was discussed and they should examine funding for that as well. Millie Garcia-Serrano's first pass would be doing some GIS viewing to see what is already available. She noted that residents drinking municipal water it is monitored and reports are available to residents. The issue more is private wells and there is free testing through the clean water trust to pursue this effort. Rep. Fiola thanked the residents, Excel for participating in this meeting and noted that everyone shares the concern that this be right, and we will continue to work on

this. Selectmen Pacheco noted there is a natural Aquaphor in the area that there is a map of and she is happy to share that. She also would like to talk offline and has some questions that she will forward to Millie Garcia-Serrano for follow-up. Selectmen Pacheco noted that the health and welfare of the residents of that area to ensure that everything is done above board and to ensure to protect the health and welfare of the residents of the Town of Freetown, that is why we were elected, and she will work to do just that. Selectmen Pacheco noted she will have Rep. Schmid and Rep. Fiola in to meet new staff.

- Motion: Selectmen Pacheco proposed to adjourn the meeting at 6:15pm
- Vote: Approved in a unanimous roll call vote
- Vote: Selectmen Grunwald, yes Selectmen Pacheco yes, Selectmen Matthews was not present.

Respectfully submitted,



Lu-Ann Souza

Senior Clerk

List of documents/Exhibits used by the Board in this meeting:

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