

# Perry County Herald

**January 29, 2010**

## **LANDFILL BANKRUPT?**

Bankruptcy proceedings will halt pending environmental lawsuits against the two owners of PCA Arrowhead Landfill in Uniontown, but they won't stop shipments from coal ash from coming to the Perry County facility. Two business entities that own the landfill, Perry-Uniontown Venture I (PUV) and Perry County Associates (PCA), began Chapter 11 bankruptcy proceedings Tuesday in Mobile's U.S. District Court, Southern District.

Environmental lawyer David Ludder entered notices of intent to sue the two companies in December of last year on behalf of Perry County citizens living near the landfill. The notices allege violations of the federal Solid Waste Disposal Act and Clean Air Act following the disposal of what environmentalists say is potentially hazardous and toxic coal ash waste there.

"When a party files for bankruptcy, the law imposes an automatic stay against the filing of new litigation against that entity," Ludder said Wednesday. As long as both companies' cases remain in bankruptcy court, he said, the environmental lawsuits cannot proceed. "That doesn't mean we are without options," he said. Ludder said he could not yet elaborate on what those options might be.

PCA and PUV claim they are owed substantial amounts of money by Phillips and Jordan, a large regional contracting firm that has worked closely with the Tennessee Valley Authority for decades, and Phill-Con Services, an entity created by Phillips and Jordan to operate the Uniontown landfill. Phill-Con has also worked in waste disposal in northern New Jersey, and is one of the firms overseeing the cleanup of the Emory River following the Kingston ash spill. These two companies, though they have no apparent ownership in the landfill itself, were hired by PUV and PCA to operate the facility when it opened in 2007.

P&J and Phill-Con have a \$95 million contract to dispose of coal ash from TVA's 2008 Kingston Coal Plant disaster. Perry County Commission will receive about \$3 million of that as part of a "host county fee." The complaint says Perry County Commission is owed over \$700,000 in fees that P&J has failed to pay.

Perry County Commissioner Brett Harrison said he knew money from the landfill was in fact coming into county bank accounts because he had seen printouts of the quarterly wire transfers. The last payment came at the end of December. He said the county had been paid close to \$1 million in the agreement so far.

Harrison said had spoken with representatives from PUV since news of the bankruptcy broke. Based on what he had been told, Harrison said all landfill contracts should remain in effect, although he acknowledged the bankruptcy could slow down payments.

Jeffery J. Hartley is the Mobile bankruptcy attorney retained by PUV. In a statement released Monday, Hartley blamed the bankruptcy on “Phillips and Jordan’s refusal to turn over monies to ownership, to make payments they had agreed to make, or to provide a proper accounting of the funds.”

The release goes on to allege that P&J have received “more than sufficient funds” to make payments to PUV and PCA, but failed to do so. As a result, the owners “had no choice but to petition the court to seek Chapter 11 bankruptcy protection while it reorganizes,” Hartley said. Despite the bankruptcy proceedings, Hartley said his clients have “all the elements necessary to pay its obligations, to be profitable, and to ensure safe disposal of coal ash.”

Hartley’s release touted the landfill as a “public-private partnership,” saying it has created an “unprecedented economic boost” for Perry County.

Phill Con Services’ website lists Stuart C. Davis of Mobile as its “project executive.” When contacted by the Herald about the allegations against his company in the bankruptcy case Wednesday, Davis was mum, saying he was “on the road all the time” and had “no earthly idea” about the matter.

Besides halting legal action against the facility’s owners, the bankruptcy proceedings help to reveal the complicated nature of the landfill’s business organization. Rather than a single business venture, the landfill is the product of many large and small corporations and limited liability companies, along with a large group of loosely connected personalities whose level of involvement with the project at any given time is often murky.

Atlanta real estate businessmen Larry Matthews [by way of another corporation Matthews formed a year before, SKS International, Inc.], Charles Dinsmore, and Charles Bartenfeld formed Perry County Associates in 1999. Matthews became the public face of “the landfill” in Perry County years before construction even began on the facility. He attended several public hearings in Uniontown while working to gain a landfill permit on the 1113-acre Pitts property south of Uniontown.

That property, however, never belonged to Matthews. Another Georgia real estate developer, Brent Scarbrough, owned the parcel until 2006 when Matthews’ company finally gained the permit it needed to operate a Subtitle D landfill from Alabama’s Dept. of Environmental Management. Scarbrough then sold the land to newly created Perry-Uniontown Venture I for about \$16.5 million. Under Alabama law, landfill permits are tied to a parcel of land itself, not the landowner or landfill operator.

At the same time, PUV purchased 231 acres from the Goodson family for \$1.5 million. Mike Smith, an attorney in Tuscaloosa who married into the Goodson family, appeared at Perry County's first public hearing on the landfill to speak out against the landfill. At that time, he said he was concerned over the potential harm it could cause to Perry County's environment. After the land sale, however, Smith was retained by PCA and PUV as part of their team of attorneys. Since that time, Smith has often appeared at Perry County meetings speaking on behalf of the landfill owners.

It is unclear who currently owns Perry County Associates. Reporters from the Herald attempted to reach Matthews on his cellular phone, but were unsuccessful. Matthews is also a broker for ReMax realty in Georgia, and according to his website, sells real estate through his family company, the Matthews Group. A receptionist at S&D Associates, the ReMax office in Duluth, Georgia through which Matthews works, said she did not know how to reach him. "He's probably only been in this office one time," she said. The phone number on Matthews' website redirects callers to an automated ReMax broker directory.

The major investor behind Perry-Uniontown Venture I, and an as-yet unused entity formed in 2007, Perry-Uniontown Venture II, is Atlanta real-estate heir John K. Porter. According to unsubstantiated reports, Porter may also now own Perry County Associates in its entirety. Porter was the single largest contributor to former Perry County Commission Chairman Johnny Flowers' failed bid for re-election in 2006, and his only public visit to Perry County was during that election cycle.

At that time, Porter and Matthews held a press conference on the Perry County Courthouse lawn expressing their support of Flowers' candidacy. At that time, Porter also announced plans to build what he called a "waste-to-energy" plant at the [at the time, proposed] landfill site. He and Matthews claimed that very little of the waste sent to the facility would actually be put in the ground, and most would be processed and burned to generate electricity for the region. As yet, such a facility has yet to materialize. A prominent member of the Atlanta business community, Porter works for international commercial real estate brokers CB Richard Ellis, Inc.

CB Richard Ellis, which often works with Phillips and Jordan, was one of the firms PUV hired to develop the landfill site in 2006. Ellis employee John Delvac took the lead in developing the site and emceed the landfill's "grand opening" in 2007. When the Herald contacted him last year regarding the coal ash contract, Delvac said his involvement with the project had ended when construction ended and the landfill was open. On Wednesday, however, Delvac contacted the Herald and forwarded Hartley's press release to its newsroom. At that time, Delvac said he was "still involved" with the venture. He directed any further questions on the matter to Guy McCullough, who he called "our PR guy." McCullough owns an advertising firm based in Birmingham.

Perry-Uniontown Venture I's bankruptcy filings also reveal the creditors holding the 20 largest unsecured claims against it. While PUV's complaint claims Phillips and Jordan and Phill-Con Services are withholding large sums of money they owe the landfill owners, filings reveal that P&J and Phill-Con are also two of the firm's largest creditors. According to filings, Phillips and

Jordan holds a \$4 million lien against PUV, and Phill-Con Services is owed \$2.5 million in trade debt from the landfill owners.

PUV also lists two other companies owned by its owner John K. Porter as major creditors: it owes nearly \$2 million in trade debt to Porter's corporation Team Porter, Inc. and has a \$600,000 loan from Briarcliff 55 LLC, another Porter concern.

Insurance giant Metropolitan Life loaned PUV about \$1.25 million, as did Ensign Peak Advisors Inc, a Utah investment firm affiliated with the Church of Jesus Christ of Latter-Day Saints.

Perry County Commission is listed as a major creditor; with PUV claiming it owes the county around \$780,000 in hosting fees. The company also says it owes Alabama's Dept. of Revenue around \$11,000 in sales tax. Filings also say PUV owes a \$10,000 loan to Seagull Consulting II, an information technology firm based in Naples, Florida; a \$7,695.54 trade debt to First Insurance Funding Corp.; a \$5,395.24 loan to Georgia law firm Hartman Simons, which incorporated both Perry Uniontown Venture I and II; a \$4,112.30 trade debt to Sadat Associates, a Trenton NJ environmental engineering firm; and \$242.25 to Smith & Staggs, Mike Smith's Tuscaloosa law firm.

The filings list the firm's unsecured debts, but its largest creditor by far is the mortgage holder on the Uniontown landfill property itself, a Florida-based private equity firm known as Palm Beach Multi-Strategy Fund, to which PUV mortgaged the property for its \$16.5 million purchase price in 2006. Palm Beach is part of a group of around 25 business entities affiliated with Palm Beach Capital Management. That bank itself filed for bankruptcy protection late last year following fallout from its participation in a multi-billion dollar Ponzi scheme headed up by Minnesota businessman Tom Petters.