

COUNCIL ON DEVELOPMENT FINANCE

**January 23, 2012
PUBLIC HEARING 379**

THOSE PRESENT:

Mr. Andy Lubin, Chairperson
Senator Brian Bushweller
Honorable Nancy Cook
Mr. Tom Gilligan
Mr. Jack Riddle
Representative Darryl Scott
Mr. Fred Sears
Mrs. Richelle Vible

Director Alan Levin
Mr. Robert Merritt
Mr. Gary Smith
Mr. Stephen Bach
Mrs. Rachael Mears
Mrs. Lee Porter
Ms. Beverly Ennis
Ann Marie Johnson, DAG
Mr. Tim McLaughlin
Ms. Patty Cannon
Mrs. Barb DeHaven
Ms. Nikki Lavoie
Mrs. Bernice Whaley

ALSO PRESENT: Ms. Michele Sloan – Office of Management and Budget; Mr. Paul Sample; Projects: **The Henry Francis du Pont Winterthur Museum, Inc.** – Emilie Ninan, Esquire with Ballard Spahr LLP; John Quinn, Esquire with Potter, Anderson & Corroon; and Ms. Denise Adams; **Delaware City Refining Company, LLC** – Mr. Jim Fedena, PBF Energy; **E. I. DuPont de Nemours and Company, Inc.** - Mr. Steve Bonine, Mr. Rick Deadwyler, and Mr. Rick Straitman; **TotalTrax, Inc.** – Mr. William McDonnell and Ms. Janet Dougherty with Fulton Bank; **Testing Machines, Inc.** – Mr. John L. Sullivan and Mr. John Bialecki; **Hughes Delaware Maid Scrapple** – Ms. Dolly Womack

LOCATION: Buena Vista, 661 South DuPont Highway, New Castle, Delaware 19720

TIME: 9:00 A.M.

CALL TO ORDER

The meeting was called to order at 9:05 A.M. by Chairman Lubin, Chairperson, on Monday, January 23, 2012.

OLD BUSINESS:

NEW BUSINESS:

The Henry Francis du Pont Winterthur Museum, Inc., a Delaware corporation (“Winterthur” or the “Applicant”) – Winterthur is requesting approval for the issuance of an amount not to exceed at any time outstanding \$5,000,000, the proceeds of which these Series 2012 Bonds will be applied by the Applicant to (1) refund the outstanding The Delaware Economic Development Authority Variable Rate Demand/Fixed Rate Revenue Bonds (Winterthur Museum Project) Series 2002 which were issued in order to fund (a) a portion of the costs associated with the Applicant’s FY 2003 capital budget that included (i) the upgrade of heating, ventilation and air conditioning systems in the Applicant’s existing facilities, (ii) the acquisition of approximately 13 acres of land located at 4902 Kennett Pike, Wilmington, DE (formerly the Charis School property), (iii) the purchase of computer hardware and software (including a collections management system), and (iv) various other planned capital expenditures in connection with the Applicant’s existing facilities, services and programs located at 4902 Kennett Pike and 5105 Kennett Pike, Winterthur, Delaware; and (2) pay a portion of the cost of issuance of the Series 2012 Bonds (the “Project”). The project will be owned by the Applicant.

Mr. Merritt presented this request to the Council. He stated that the Applicant was requesting that the Winterthur Museum Series 2002 bonds be refunded and that a new Series 2012 bonds be issued.

Mrs. Ninan stated that the Series 2002 bonds were backed by a Letter of Credit and sold to the public through Wachovia Bank which is now Wells Fargo. She stated that the 2002 bonds had a maturity of ten years. She explained that the proposed 2012 financing is a direct purchase and will have a seven year term amortized over 15 years with a bullet payment and that there will not be a Letter of Credit. She further stated that none of the Authority’s volume cap will be used and that there will be no liability to the State.

Chairman Lubin asked if there were any public comments; there were none.

After duly considering, inter alia, the nature of the business, its competitive situation in Delaware, its location, the employment and other requirements under applicable statutory and regulatory provisions, the Council made the following finding: financing the Project will meet a need for assistance in financing the facilities and activities of the Applicant, as an exempt person within the meaning of 29 *Del. C.* §5052(8), in order to contribute to the prosperity, health and general welfare of the citizens of Delaware. Mr. Sears made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson of The Delaware Economic Development Authority, approval of an amount not to exceed Five Million Dollars (\$5,000,000.00), of revenue bonds, not guaranteed by the State, to be used for the Project; and that such approval will remain in effect through and including January 22, 2013. Mrs. Vible seconded the motion, which was then adopted by unanimous vote.

Delaware City Refining Company, LLC (“DCRC” or the “Applicant”) - Pursuant to the April 28, 2010 Offer Letter from the Delaware Economic Development Office

("DEDO") to the Delaware City Refining Company, LLC, the Applicant is requesting a \$10,000,000 Delaware Strategic Fund Grant that will be used to help offset the expense of an environmental control project that converted the combustion turbines at the refinery from syngas to natural gas resulting in significant reductions in nitrogen oxide and sulfur dioxide emissions (the "Request").

Director Levin stated that DCRC's request today is to ratify the last portion of the original agreement described in the letter to DCRC dated April 28, 2010. He stated that this last portion in the amount of \$10,000,000 is for NOx control projects at the Refinery.

Director Levin stated that DEDA's Bond Bill appropriation of \$31,941,100 for the Delaware Strategic Fund included \$10 million for an environmental control project at the refinery that converted the combustion turbines at the refinery from syngas to natural gas, resulting in significant reductions in DCRC's emissions. Further, this conversion has created 174 tons per year NOx emissions reduction and 2,206 tons per year sulfur dioxide emission reduction. He further stated that instead of a direct appropriation from the Bond Bill, the capital expenditure was included in DEDA's budget.

Mr. Fedener stated that PBF will soon be using sulfur heating oil to improve air quality. He further stated that to accommodate this process, DCRC will expend \$1,000,000,000 in expansion projects. He stated that this will allow DCRC to ultimately recover the sulfur that would otherwise go into the atmosphere. DCRC will then resell this sulfur to the chemical industry.

Mr. Fedener stated that DCRC will apply for permits this first quarter of 2012 and expects to receive those permits and start expansion by 2014. He stated that this will be a pretty massive undertaking at the facility with in excess of 1,000,000 man hours. He stated that they expect to receive full approval within the next few months from the Board. He stated that they are currently fine tuning the cost estimates.

Director Levin asked Mr. Fedener to discuss the reduction in emissions that have occurred since DCRC has taken over the facility. Mr. Fedener stated that there has been a step change in several ways. He stated that one change is how DCRC produces power as a result of being able to convert to combustion turbines. He stated that Valero used a synthetic gas and that DCRC had decided not to do the gasification process because of liability issues. Mr. Fedener stated that DCRC put in the latest technology which will allow DCRC to select which cleaner operations they can operate, giving them more flexibility to eliminate NOx.

Mr. Fedener stated that DCRC started the refinery in June of 2011 and that their NOx emissions were less than 1100 tons which was previously emitted. He further stated that they have other projects that will also help reduce their emissions.

Mr. Fedener stated that DCRC currently has 470 direct employees at the refinery and are still recruiting. He further stated that there are also about 200 contractors at the facility.

Mr. Gilligan asked about DCRC's financial condition. Mr. Fedener stated that the first, second and third quarters of 2011 were very good. He further stated that the fourth quarter was a very difficult quarter for all refineries – which is an industry trend. He stated DCRC will report a loss in the fourth quarter; one reason being crude oil is more expensive than gasoline. He also stated that it is DCRC's view that there has been a shift in the market and he believes that DCRC should see a good first quarter.

Mr. Sears asked about the other plants that PBF had purchased. Mr. Fedener stated that the Toledo and Paulsboro plants are not as good as the DCRC plant. He stated that there have been more improvements at the Delaware City plants. He further stated that there have been a few infrastructure projects at Toledo, but nothing significant. Mr. Fedener stated that most of PBF's investments have been in Delaware City.

Chairman Lubin asked if any federal funds have been used. Mr. Fedener stated that DCRC has not received any federal funding.

Chairman Lubin asked if there were any public comments; there were none.

After duly considering, Representative Scott made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of the Request, contingent upon the approval remaining in effect through and including January 22, 2013. Senator Bushweller seconded the motion, which was then adopted by unanimous vote.

E. I. du Pont de Nemours and Company, Inc. (“E. I. du Pont” or the “Applicant”) - The Applicant is requesting a grant from the Delaware Strategic Fund program in an amount of \$920,000. E. I. du Pont, located in Newark and Wilmington, Delaware, proposes to use the funds to assist in a multi-year plan to develop the manufacturing process for a new product (the “Project”).

Mrs. DeHaven presented this request to the Council. She stated that the proposed project is a semi-works project and DuPont needs to find a suitable site. She further stated that Delaware is competing with two other states - North Carolina and New Jersey. Mr. John stated that the technology is new. He stated that he believes this Project will bring 35 permanent positions.

Chairman Lubin asked the location of the building on Stine Haskell highway. Mr. John stated that they will be using one of the existing buildings located next to the entrance gates.

Mr. Riddle asked what comprised the \$30,000,000 capital investment. Mr. Richard stated that the building had to be renovated to accommodate the pyramid design of the equipment and for the cost and installation of the new equipment.

Representative Scott asked when the final decision would be made on the definite site for this Project. Mr. Richard stated that if CDF approval is received today, he felt confident that the final decision would be made very promptly.

Chairman Lubin asked if there were any public comments; there were none.

After duly considering, inter alia, the nature of the business, its competitive situation in Delaware, its location, the employment and other requirements under applicable statutory and regulatory provisions, the Council made the following findings: (i) the Project will contribute to maintaining or providing gainful employment of the citizens of the State, (ii) the Project will serve a public purpose by contributing to the prosperity, health or general welfare of the State; (iii) the Project will require a capital investment of at least \$10,000, which funds, including the loan proceeds, will be available or expended on the date on which The Delaware Economic Development Authority disburses the requested loan funds; (iv) the loan will effectuate the purposes of Chapter 50, Subchapter IV of Title 29 of the *Delaware Code*, and (v) the Applicant is a financially responsible person to the extent required by statute and has not been convicted of a major labor law violation or other illegal conduct involving moral turpitude by any agency or court of the federal government or agency or court of any state in the two-year period immediately prior to the approval of the Applicant's application for assistance, Mr. Sears made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of a grant in an amount not to exceed Nine Hundred Twenty Thousand Dollars (\$920,000) to be disbursed from the Delaware Strategic Fund for the Project, contingent upon the approval remaining in effect through and including January 22, 2013. Mr. Gilligan seconded the motion, which was then adopted by unanimous vote.

TotalTrax, Inc. (“TotalTrax” or the “Applicant”) – The Applicant is requesting an \$111,250 participation loan under the State Small Business Credit Initiative for the purchase of a new enterprise resource system and various leasehold improvements at its facility on Water Street in Newport, Delaware (the “Project”).

Mr. Bach presented this request to the Council. He stated that TotalTrax is a newly formed company via the merger of Rush Tracking Systems and Sky-Trax, Inc., an entity with which DEDO formerly held an equity position. He stated that soon after the completion of the merger in July of 2011, TotalTrax acquired the equipment monitoring product line of ShockWatch, Inc., a manufacturer of damage prevention products. Mr. Bach stated that TotalTrax' accounting software is very outdated. TotalTrax would like to purchase enterprise resource planning software which will integrate the finance/accounting, manufacturing, sales and service and customer relationship management functions onto one platform.

Mr. McDonnell stated that TotalTrax which is no longer at Quigley Boulevard is now located in Newport. He stated that their Texas operation will be moved to Newport also.

Mr. McDonnell stated that TotalTrax originally requested a \$45,000 term loan to finance 92 percent of its planned capital expenditures. DEDO has an opportunity to offset a portion of Fulton Bank's exposure via the SSBCI program by providing a 25% participation. He further stated that Fulton's loan would be in the amount of \$333,750 and would be amortized over 36 months at 4.99 percent with a monthly payment of \$10,001.29. Therefore, DEDO's participation would be in the amount of \$111,250, amortized over the same time period at two percent with a monthly payment of \$3,186.49. TotalTrax will realize an overall blended rate of 4.24 percent.

Mr. Riddle stated that it appeared that as a matter of structure, DEDO would not be filing a lien position. He asked if the payments would be on a pro rata basis per the participation; Mr. Bach stated that was correct.

Chairman Lubin asked if DEDO had an equity position in the TotalTrax organization. Mr. Bach stated that DEDO did have an equity position with some voting rights, when it was SkyTrax. When SkyTrak was converted into stock, DEDO did not participate in the new round, and its equity position was converted to about one-half of a percent and now is about one tenth of one percent, and DEDO still has voting rights. Mr. Smith stated that three of the officers of SkyTrax are still with TotalTrax.

Representative Scott asked how many jobs would be created/relocated from moving the Texas operation to Newport. Mr. McDonnell stated that they anticipate 20-30 extra jobs at TotalTrax as a result of the move.

Representative Scott asked for a brief description of their business. Mr. McDonnell explained that TotalTrax develops systems that study and improve the productivity and safety of a company's distribution and delivery systems. TotalTrax uses an indoor GPS system to track forklifts movement. He stated that the system allows management to determine if forklifts operating within the facility are operating safely and being fully utilized.

Chairman Lubin asked if there were any public comments; there were none.

After duly considering, Representative Scott made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of this Project under the State Small Business Credit Initiative Program. Mr. Sears seconded the motion, which was then adopted by unanimous vote.

Testing Machines, Inc. ("TMI" or the "Applicant") – The Applicant received a \$500,000 loan from the Delaware Strategic Fund in February 2010. The proceeds were used to purchase machining tools and service vehicles. Today, TMI is requesting a modification to this loan in regards to the Convertible Grant Provision.

Mr. Merritt presented this request to the Council. He stated that TMI paid off the \$500,000 DSF loan on January 6, 2012. TMI is requesting that DEDO modify the

Convertible Grant Provision pay out date from March 30, 2013 to March 30, 2012 and thereby changing the employment date effective January 1, 2012 (the "Request").

Mr. Sullivan stated that the DSF funds were very much appreciated and were very well used. He stated TMI has had great success in the two years they have been in Delaware. He further stated that they have been so successful they have had the opportunity to make an acquisition. They just completed an acquisition from a company from Stockholm last week. In order to obtain financing for this purchase they needed to pay off the DSF loan to finance the Sweden acquisition. Mr. Sullivan clarified that the Sweden acquisition will actually create Delaware jobs and Delaware is the headquarters of TMI. He further stated that TMI is constantly trying to build and strengthen the operation. He stated that they have had a little problem finding qualified technicians and machinists. He stated that he thinks that this is a national issue, not Delaware specific.

Mr. Sullivan stated that one reason they want to modify the conversion date was that they paid the loan off in two years and even though the employment factor was for three years, they are basically already at the employment level requirement. He stated the original employment requirement was for fifty people. Mr. Sullivan stated they currently have forty-two people and he is aware that they would only be reimbursed for the number of employees they actually have. He stated that TMI is at sixty-five percent production and anticipates going to eighty percent very shortly.

Senator Cook reiterated that TMI would receive grant funds of \$2,000 for each actual number of employees, which was the agreed conversion amount in their original loan.

Representative Scott asked if there was a claw back provision and Mr. Bach stated that there was one in place. The money will be disbursed in June, as the employees must be in place for at least 90 days.

Senator Bushweller asked if receiving the loan was a significant factor in TMI moving to Delaware. Mr. Sullivan stated that it was a very significant factor. He stated that they spent \$5,000 - \$6,000 per employee to move/recruit their employees to Delaware. He stated that seventy percent of its New York staff relocated to Delaware. Mr. Sullivan stated that a combination of factors such as demographics, educated population in Delaware, low tax structure, a good variety of schools, diverse work force – all of these are the reason Delaware was chosen as the site for TMI.

Director Levin stated that he believed TMI's original presentation to the Council was the most enthusiastic presentation that had ever been before the Council.

Mr. Smith stated that the current loan documentation requires that the employees have to be Delaware residents. Mr. Smith stated that DEDO is requesting today that that requirement be modified to reflect residents paying State of Delaware income taxes.

Chairman Lubin asked if there were any public comments; there were none.

After duly considering, Mr. Sears made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of the Request, contingent upon the requirement of employees being Delaware residents being changed to employees paying State of Delaware income taxes and upon the approval remaining in effect through and including January 22, 2013. Senator Cook seconded the motion, which was then adopted by unanimous vote.

Hughes Delaware Maid Scrapple (“Hughes Scrapple” or the “Applicant”) - The Applicant is requesting a grant from the Delaware Strategic Fund program in the amount of \$10,000. Hughes Scrapple proposes to use the funds for cash flow as they rebuild their business located at 8873 Burnite Mill Road, Felton, Delaware (the “Project”).

Ms. Cannon presented this request to the Council. Ms. Cannon stated that what DEDO learned in regards to a rapid response of hurricane victims, was that there is a tremendous infrastructure in place for a collapsed bridge or building, but unfortunately, there are little pockets of small businesses for which there are no sources of help. Ms. Cannon stated that seventeen companies reached out to DEDO; one of which was Hughes Scrapple located in Felton. While meeting with Hughes Scrapple, Ms. Cannon stated that she found out that this particular business and industry were very unique.

Ms. Cannon stated that she met the seven employees, was amazed at the loyalty of the customers and felt that if there was any way possible, DEDO should offer assistance. Ms. Cannon stated that Hughes Scrapple did have insurance but Hughes Scrapple needed the funds now, claims would not be at replacement cost and there was not adequate coverage. Ms. Cannon stated that in order to save money, the employees did a lot of their own demolition – which was intensive labor. Ms. Cannon stated that the \$10,000 grant amount was based on the PIT for the seven jobs.

Mrs. Womack stated that Hughes Scrapple is only sold in Delaware. She stated that the situation was very difficult as there is no money coming in but the bills still have to be paid. She stated that they have tried to save money by doing most of the demolition work themselves and doing whatever they can to start rebuilding. Mrs. Womack stated that the business pays 100 percent of the health benefits for all the employees.

Senator Cook stated that she was very familiar with the business. She stated that the loss of this product is felt by many. She stated this is a perfect example of the State helping a small business get back on its feet.

Mrs. Womack stated that Food Lion and Acme are their biggest clients. She stated that they outsell RAPA Brand and Kirby and Holloway’s scrapple products.

Mrs. Womack stated that she has learned a lot from this experience and that unfortunately she was not clear on building insurance vs. contents insurance. Mr. Riddle asked about the availability of business interruption insurance going forward. Mrs. Womack stated

that she could not get business interruption insurance because she doesn't have the actual pigs to slaughter on site; the meat is frozen and brought to the facility.

Senator Bushweller asked how this funding fits under DEDO's programs. Ms. Cannon stated that if it had been Mrs. Womack's house instead of the business and enough houses in her area were affected, FEMA would have been brought in. She stated that FEMA's mission is to save lives after a disaster. She added that a business in Kent County under these circumstances could possibly have qualified for SBA lending. She stated that in this situation, the case was made that an event occurred where seven people were laid off and these funds are an incentive for the business to be rebuilt.

Mr. Sears asked if there was any fund set up for these types of businesses in these types of situations and Director Levin stated there were not. Director Levin stated that each case is reviewed individually. Mr. Smith reminded the Council of previous projects that had come before the Council for financial assistance at a time of a disaster. DEDO provided assistance to companies that were affected by the Milford fire and the flood in Seaford.

Chairman Lubin asked if there were any public comments; there were none.

After duly considering, inter alia, the nature of the business, its competitive situation in Delaware, its location, the employment and other requirements under applicable statutory and regulatory provisions, the Council made the following findings: (i) the Project will contribute to maintaining or providing gainful employment of the citizens of the State, (ii) the Project will serve a public purpose by contributing to the prosperity, health or general welfare of the State; (iii) the Project will require a capital investment of at least \$10,000, which funds, including the loan proceeds, will be available or expended on the date on which The Delaware Economic Development Authority disburses the requested loan funds; (iv) the loan will effectuate the purposes of Chapter 50, Subchapter IV of Title 29 of the *Delaware Code*, and (v) the Applicant is a financially responsible person to the extent required by statute and has not been convicted of a major labor law violation or other illegal conduct involving moral turpitude by any agency or court of the federal government or agency or court of any state in the two-year period immediately prior to the approval of the Applicant's application for assistance, Senator Cook made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, approval of a grant in an amount not to exceed Ten Thousand Dollars (\$10,000) to be disbursed from the Delaware Strategic Fund for the Project, contingent upon the approval remaining in effect through and including January 22, 2013. Mr. Riddle seconded the motion, which was then adopted by unanimous vote.

2011 The Delaware Economic Development Authority Financial Statements – Mrs. Onorato presented and reviewed the 2011 financial statements for The Delaware Economic Development Authority.

Mrs. Onorato stated that the accounting firm of Santora CPA Group will be conducting the audit in the next few weeks.

Director Levin thanked Mr. Gilligan for his assistance in this endeavor.

After duly considering, Mr. Riddle made a motion that the Council recommend to Mr. Alan B. Levin, Chairperson, The Delaware Economic Development Authority, for the acceptance of the current and yet unaudited 2011 financial statements for The Delaware Economic Development Authority. Mr. Gilligan seconded the motion, which was then adopted by unanimous vote.

ADJOURNMENT

The meeting adjourned at 11:05 a.m.

Respectfully submitted,

Lee Porter, Secretary

LKP

cc: Members of the Council on Development Finance
Director Alan Levin
Ann Marie Johnson, Esquire

The next CDF meeting is scheduled for Monday, February 27, 2012 at 9:00 A.M. at Buena Vista.