

SOLID WASTE TECHNICAL COMMITTEE
August 23, 1991

Committee Members Present

Greg Fritts, Clackamas County
Ed Gronke, Citizen
Estle Harlan, OSSI
Merle Irvine, Willamette Resource Inc.
Delyn Kies, Washington County
Lynda Kotta, City of Gresham
Dave Phillips, Clackamas County
Al Smith, City of Portland

Staff Members Present

Mark Buscher, Planning and Development Department
John Houser, Council Staff
Henry Markus, Planning and Development Department
Bill Metzler, Planning and Development Department
Todd Sadlo, Office of General Counsel

Visitors Present

Sharron Kelley, Multnomah County
Kim Roske, Multnomah County
Robert Trachtenberg, Multnomah County

**Solid Waste Technical Committee
Minutes
August 23, 1991
Page 2**

Protocols

Rich Carson called the meeting to order.

Updates

Becky Crockett stated that Metro and DEQ are in the process of scheduling a joint Household Hazardous Waste/Conditionally Exempt Generator (CEG) Hazardous Waste Collection Event located at Metro Central on October 10, 11 and 12. CEG hazardous waste would be collected on October 10 and 11, with household hazardous waste collected on Saturday, October 12.

Ms. Crockett updated the Committee on the Washington County Plan Chapter. She stated that the Council Solid Waste Committee (CSWC), Washington County Steering Committee and Metro staff agreed to hold the Plan Chapter until the Procurement Documents have been prepared. It is believed that it would be easier to answer all the questions pertaining to the transfer stations in Washington County if both documents were before the CSWC at the same time. The public hearing for both documents is projected to be September 17, 1991.

Minutes

Rich Carson called for the approval of the June 28, 1991, Solid Waste Technical Committee meeting minutes. Passed.

Action Item -- Approval of Amended Draft Model Zoning Ordinance for Siting Solid Waste Facilities

Ms. Crockett stated that there will be a public hearing at the CSWC on October 1, 1991, to entertain a resolution to adopt the Model Siting Ordinance for Solid Waste Facilities.

Ms. Crockett presented background information on the Model Zoning Ordinance to the Committee. Questions were raised by Council members to Legal Counsel prior to forwarding the Ordinance to the entire Council. Legal Counsel made major revisions of the document. Now the Model Ordinance contains only one option (originally there were four). The changes to the Model Ordinance were approved by the Land Use Subcommittee.

Todd Sadlo reviewed the changes that were made to the Ordinance with the Committee. He stated that Legal Counsel felt that it was a serious problem for the Ordinance to have an option that incorporated DEQ standards as approval criteria. Their opinion was that this was not something that should be made part of a "model" ordinance. If a local jurisdiction were to adopt the DEQ standards as a approval criteria, it may still meet the clear and objective requirement of the Regional

**Solid Waste Technical Committee
Minutes
August 23, 1991
Page 3**

Solid Waste Management Plan (RSWMP), but it was not something that we wanted to encourage them to do.

Mr. Sadlo stated that while they were revising the options section, they also made technical changes to clarify the definitions.

Mr. Sadlo stated that the Ordinance still allows for local decisionmakers to prepare for and participate in the DEQ approval processes that would allow the permit to come back to the local government if the DEQ approval is significantly different than what was anticipated. It provides for the applicant to submit applications to local governments that are also being submitted to DEQ, so that they have an understanding of what is happening on DEQ's end.

Mr. Sadlo stated that DEQ will no longer have a program dealing with violation of DEQ noise standards. They will continue to have their standards, but will not have an enforcement arm. Mr. Sadlo suggested that in the Ordinance page 22, line 13 that the reference to DEQ be removed.

Mr. Sadlo stated that in the original draft of the Ordinance, page 34, referenced a (in caps) Land Use Compatibility Statement. DEQ is the only one that has a specific statement and form. It should be changed to have a generic reference such as, "The approval authority shall issue all necessary land use compatibility statements to the applicant or to applicable local, state or federal agencies." This will cause a change on page 35, line 25, "Issue all necessary land use compatibility statements."

Ms. Crockett stated that Stephanie Hallock at DEQ approved this draft of the Ordinance.

Ed Gronke motioned for approval of the Draft Model Siting Ordinance with the suggested change on page 22 (noise impacts).

Delyn Kies motioned that the changes on pages 34 and 35 be made (land use compatibility).

Approved.

Action Item -- Approval of Proposed Amendments to Chapter 16 of the Regional Solid Waste Management Plan

Ms. Crockett asked the Committee to approve the addition of the following sentence to Chapter 16 of the RSWMP:

"If adoption of other clear and objective standards in addition to or lieu of those in the model ordinance are proposed, findings and conclusions supporting the use of such other standards will be provided to Metro by the local government."

Solid Waste Technical Committee

Minutes

August 23, 1991

Page 4

Ms. Crockett explained that the sentence added language to clarify how Metro will sign off that the local government has completed the task of putting in place clear and objective standards. If a local government decides they do not want to use Metro's model ordinance, they have an option to do whatever kind of findings/standards they want, but when they submit it to Metro they have to document through findings that whatever they did will in fact meet the intent of the policies (that there standards are clear and objective). This sentence puts the burden of proof on the local government. This will alleviate Metro having to provide findings to the Council that show the local government completed the policy objective.

Mr. Carson called for a vote to approve the amendment to Chapter 16. Passed.

Discussion Item -- Guidelines to Local Governments for Implementation of Policy 16.2/Metro Sign Off Guidelines

Henry Markus stated that in the Technical Assistance portion of Chapter 16 of the RSWMP there is a requirement that Metro provide guidelines to local government for implementing the policy. He asked for comments and reactions to the draft guidelines as referred to in his August 15, 1991 memo to the Committee. Several strikeouts and additions were made by the Land Use Subcommittee. The Land Use Subcommittee suggested that the Metro Sign Off Guidelines be published as a separate document for in-house use.

Discussion Item -- Proposed Consultant Scope of Work

Mr. Markus referred to his August 15, 1991, memo to the Committee. He stated that he was in the process of putting together an RFP. There is \$45,000 in the budget for land use studies related to recycling and to implementation of Chapter 16 of the RSWMP. The first section is model zoning code provisions and site design guidelines for recycling in new multi-family, commercial, institutional and industrial facilities (to draft model zoning provisions on this topic and site design guidelines to help local governments and developers comply with the new requirements).

Dave Phillips stated that some of this work has been done by other jurisdictions and asked should a consultant be hired when these documents could be pulled together. He suggested that this work should include trash collection facilities as well, as design standards for recycling facilities.

Estle Harlan stated that she also felt that the trash collection facilities should be addressed.

Lynda Kotta stated that since several jurisdictions had this in their work programs for this year, she was concerned with the timing, and questioned if it wouldn't be more beneficial to bring together the jurisdictions that are already working on this. Most of these jurisdictions will be working with the haulers as well which will give us invaluable input. She said that if Metro did continue with the

Solid Waste Technical Committee

Minutes

August 23, 1991

Page 5

RFP, that input from the local governments and haulers would be very valuable in putting together the RFP.

Ms. Crockett stated that this project would need to be reviewed internally; the objective would need to be expanded to meet the needs of the local governments. She agreed that the timeline is not useful in providing local jurisdictions the information they need.

Mr. Markus stated the second section, Siting Standards for Solid Waste Facilities, is a follow through to the Model Ordinance project and the amendments to Chapter 16. Jurisdictions that have little or no industrial/commercial land will have the option under Chapter 16 to sign an intergovernmental agreement with Metro that allows the local government to make the case that they do not have sites for some or all the facilities and for Metro to agree that they don't. In response to the RFP, the consultant would propose the strategy they would use for conducting this work, but Metro would not actually allow the consultant to proceed until each city agreed that they wanted this assistance and Metro agrees to the specific strategy for that jurisdiction.

Ms. Kotta asked if Metro has had a requests from these jurisdictions to do this work.

Mr. Markus stated that several had indicated that they had run into some difficulty preparing the necessary findings and conclusions. No jurisdiction has called and asked Metro to come do the work for them. This is why it is contingent on the city wanting the assistance and approving the work program before the work will proceed.

Ms. Kotta asked if the funds that are allocated for this would not be spent unless the city actually requested that technical assistance.

Mr. Markus, "That is correct."

Mr. Markus stated that the findings would be a lot of work. Five or six of these jurisdictions do not have even one full-time planner in their employ and it seems appropriate to provide some assistance. Money will be saved for everybody in the long run if Metro does them all at the same time because all the work is very similar.

Ms. Kotta asked if there would be a fee expected to be paid by those small cities or will this pay for all of the cost of putting this document together.

Mr. Markus, "We are expecting it would pay the full cost of the document. They would still incur their own hearing costs and notice costs. They would probably want to have their attorney review the work, but this work would be fully paid for by Metro."

Mr. Markus stated that the third section relates to the guidelines for Metro staff in reviewing local implementation of Chapter 16. The list of questions is consistent with the guidelines. Metro is

expecting a large number jurisdictions acting in a very short amount of time which would make it difficult for Metro staff to keep up and provide timely comments. If this should happen, Metro wanted the capability to call in a consultant to provide backup for that short period of time.

Mr. Markus stated that the last section was a catch all contingency for any particular technical assistance and requests that Metro receives in regard to Chapter 16 implementation, Metro would have the ability to provide technical backup that staff otherwise could not provide.

Action Item – Approval of Amended Draft Illegal Dumping Chapter of the Regional Solid Waste Management Plan

Ms. Crockett distributed to the Committee comments from John Drew on the Draft Illegal Dumping Chapter and Senate Bill 66.

Ms. Crockett stated the CSWC had suggested several substantive changes to the Draft Chapter. She reviewed these changes with the Committee.

- The Policy of the Chapter was changed.
- Statements in the Chapter suggested that as tip fees increase in the region you get a correlating increase in illegal dumping throughout the region. These statements were expanded to include other issues that cause illegal dumping.
- The Chapter now references the provision in House Bill 3361 which allows local governments the increased capability of imposing civil penalties and increased fees for persons caught illegally dumping their waste.
- The Chapter now suggests how the hearings officer system could work. It is clear that Metro is not obligated to a major cost program, it would be funded through the collection of penalties.
- The Chapter now contains cost data to justify the recommendations.
- The format of the Chapter was revised.

Ms. Kies (referring to page 4-1 relating to the cost issue) felt that the increased tip fees issue was one of many factors and was not clearly stated in the paragraph and that it was negative to having a user fee type of garbage collection cost system. She felt that the Chapter should clearly say that increased tip fees are one factor in illegal dumping.

Ms. Crockett stated that there are several references in the body of the Chapter to the increased tip fees issue.

Ms. Kies stated that the other references were lost in the text.

**Solid Waste Technical Committee
Minutes
August 23, 1991
Page 7**

Ms. Harlan (referring to page 4-9, last paragraph) suggested that the first sentence read:
"Currently, localized clean up events are sponsored by neighborhood and nonprofit organizations such as Scout Troops in cooperation with haulers."

Ms. Kotta stated that illegal dumping increases when the costs go up not because we are adding new user fee systems.

Al Smith stated that the City of Portland would like it stated as explicitly possible. The Bureau of Buildings has completed data showing that the costs have gone up dramatically in Portland. The dollars are being driven up because of the contractor's increased cost of disposing.

Robert Trachtenberg suggested that the sentence, "An additional concern is cost." be deleted and add a comma at the end of the previous sentence and insert "and the cost of disposal."

Mr. Smith suggested using a menu approach to show the cause items.

Ms. Kies stated that the last sentence was not necessary.

Ms. Harlan suggested striking the last sentence.

Mr. Carson restated that the recommendation was to strike the last sentence and rework the citation elsewhere in the document.

Ms. Kies (referring to page 4-2) suggested a separate bullet for medical waste collection and disposal. She suggested the sentence read, "Local government regulates medical waste collection because it is solid waste, there are State rules that regulate medical waste collection and disposal."

Mr. Phillips stated that it should be clear that Metro is responsible for disposal.

Mr. Phillips (referring to page 4-10) objected to the suggestions for correcting convenience. He felt that the majority of the illegal dump sites are very close to disposal facilities. He did not like the suggestion to place permanently located containers in rural areas, he felt that this would cause more illegal dumping.

Mr. Trachtenberg suggested adding the word "attended" at the beginning of the second sentence.

Ms. Crockett stated that maybe some discussion should be added to clarify the need for having an attended site.

Ms. Kies asked if the Chapter was approved today, would there still be time for her to submit additional information for the Appendix from Washington County because at the present time it contains inaccurate information.

Solid Waste Technical Committee

Minutes

August 23, 1991

Page 8

Ms. Crockett explained that at the Illegal Dumping Subcommittee meeting they added a contingency meeting (September 18, 1991) for the Illegal Dumping Subcommittee to entertain final changes prior to sending the Chapter forward to the Policy Committee and the CSWC. She suggested that the Committee approve the Chapter with the understanding that the Subcommittee will make modifications. A copy of the Chapter with these modifications would be mailed to the Committee.

Mr. Phillips explained that Senate Bill 66 basically bans tires from disposal.

Mr. Trachtenberg (referring to John Drew's comments) stated that Mr. Drew had raised a number of issues that had been addressed in a meeting with county attorneys and Metro's legal counsel. At that time we were told that the regulation of illegal dumping, setting fines along the roads was not something that Metro would do, it would be done by the cities and counties in terms of who adopted the ordinance. It would have been simpler if we could have done a single Metro ordinance if there was a desire for consistent penalties and that could certainly be looked at again. What was left out of that meeting was that a model ordinance would be adopted by the local jurisdictions.

The issue of Metro enforcement is a possibility. In terms of getting this started, the various cities and counties do have code/nuisance enforcement personnel that are charged with illegal dumping along with everything else. The hearings officer approach allows them to take their violation cases through a system that would work more effectively with an incremental approach that would have a significant improvement. There could be a system where Metro would hire personnel that would specialize in this area and there are merits to that. That would be a more difficult budgetary item just to get through. There is some desire to come up with at least an incremental improvement and get that going. Metro enforcement is a legitimate option.

The State Law was drafted so it gave local jurisdictions the authority to set fines. The reason for that was that different parts of the State would want to set different fines. We may feel in the Portland area that we need that \$300 or \$500 minimum fine, and they may want to only set a \$50 fine in Medford. Generally, it was thought that local option was the best way to go.

The penalty issue has been discussed at length too. The preference of everyone on the Committee has always been for the community service option in a lot of these cases. Under current criminal law there is a community service option if you proceed through the criminal system and prove beyond reasonable doubt that you have caught the right person, the Judge can give community service as an option. Another way to get community service would be for the code enforcement officer to make informal arrangements in which he would not put the person through the hearings officer system if they were to sign onto something. As far as involuntarily sentencing somebody to community service it was the opinion of counsel that it was a constitutional problem. It was probably unconstitutional if the community service was anything more than two days and possibly not even valid at the lower end. The whole point of a civil system is that you do not get counsel at public expense, you do not have a right to a jury trial, and because of that the courts have said you cannot infringe on people's liberty interests. Community service could still be an option of the local

**Solid Waste Technical Committee
Minutes
August 23, 1991
Page 9**

jurisdiction if they caught somebody, they just have to send them through the criminal system and there is a state statute to do that. As far as imposing fines, the hearings officer approach would be a quicker and more effective way to do that.

Mr. Carson asked if changes to the Chapter were needed to respond to John Drew's comments.

Mr. Trachtenberg stated that he did not know if it was worth explaining what he just said in the Chapter.

Ms. Kies motioned approval of the Illegal Dumping Chapter to the Regional Solid Waste Management Plan contingent upon final review and approval by the Illegal Dumping Subcommittee both in terms of the Chapter and the Appendix and the items that were discussed today.

Mr. Carson called for a vote. Passed.

Technical Committee next meeting, Thursday, January 23, 1992, 9:00 a.m., Council Chamber.

The meeting was adjourned.

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