



METROPOLITAN SERVICE DISTRICT

1220 S.W. MORRISON, ROOM 300, PORTLAND, OREGON 97205

(503) 222-3671

MSD BOARD OF DIRECTORS

December 9, 1977

EXECUTIVE SESSION

BOARD MEMBERS IN ATTENDANCE

Ray Miller, Chairman
Connie McCready
Sidney Bartels
James Robnett
Lyle Salquist

STAFF IN ATTENDANCE

Charles C. Kemper, Paul
Paul Norr
Cordell Ketterling
Dean Gisvold
Chuck Estes
John Hanke
Jean Woodman

The Board met in Executive Session to consider the dismissal of Tiregon contested case; salvage center permit requirements; and related Scrap Tire Ordinance revisions.

After discussion of the attached material, the Board reconvened in public meeting to take the following action:

Commissioner McCready moved to direct staff to discontinue legal actions against Tiregon; and to revise the MSD Code to eliminate collection of scrap tires in accordance with the revised ORS 268. Councilman Bartels seconded the motion. The motion carried unanimously by roll call vote. (Commissioner Gordon was not present.)



METROPOLITAN SERVICE DISTRICT

1220 S. W. MORRISON ROOM 300 PORTLAND, OREGON 97205

(503) 248-5470

MEMO

TO: MSD Board of Directors

FROM: Paul Norr, Solid Waste Compliance Officer

SUBJ: 1. Dismissal of Tiregon Contested Case
2. Salvage Center Permit Requirements
3. Related Scrap Tire Ordinance Revisions

DATE: December 1, 1977

This memorandum relates to agenda item 77-965. Since this item concerns a pending contested case, it should be discussed in Executive Session.

1) DISMISSAL OF TIREGON CONTESTED CASE

Our Notice of Proposed Suspension filed against Tiregon in October, 1976 contained several allegations regarding their scrap tire slavage operation. As a result of remedial action taken by Tiregon and in light of testimony presented at the public hearing, our counsel advise, and the staff agrees, that the only remaining allegation of significance relates to Tiregon's refusal to pay the administrative user fees. In addition, Tiregon has filed a number of affirmative defenses attacking MSD's authority.

Attached is an opinion letter from our attorneys which further details this matter and contains their advice.

It is our opinion, based on the attached letter, that MSD ought to move to dismiss the case pending against Tiregon.

It is our understanding that we will run into problems if we treat similar materials differently with regard to the collection of user fees. Currently we assess fees against the salvaged and processed scrap tires. However, we do not assess fees against retreaded scrap tires or other source separated wastes that don't go to the landfill. The processed and salvaged tires are not different enough from the retreaded scrap tires and other source separated waste to justify this unequal treatment. Thus, from a legal standpoint, our options are to either assess a fee against all of these materials or to not assess a fee against any of them. In view of MSD's policy of promoting resource recovery and reuse, and in view of our not having charged the fee on other source separated wastes or retreaded tires, we recommend not assessing user fees against scrap tires being processed and salvaged.

From a financial point of view, the scrap tire salvaging and processing fees in the fiscal year 1976-77 totaled approximately \$15,000. These fees for the first three months of this fiscal year amount to approximately \$3,000. Our budget projects these fees for the remainder of this year to be approximately \$14,000. Thus, eliminating the tire user fee will decrease MSD revenue by approximately \$15,000 to \$17,000 per year. MSD would still receive a user fee from the landfill for any tire chips that are actually disposed at the landfill, as we do for all other solid wastes.

2) SALVAGE CENTER PERMIT REQUIREMENTS

It is further our recommendation that the permit and bond requirements regarding salvage and processing centers be maintained and in some areas increased.

Our attorneys advise, and we agree, that a reasonable distinction can be drawn between retreaders and other tire salvagers for the purposes of permit requirements. As the attached letter indicates, this distinction is based on the historical nature of the businesses, not on the possible harm of the materials.

3) RELATED SCRAP TIRE ORDINANCE REVISIONS

HB 2683, which became effective in April, 1977, seriously limits MSD's authority to act in the area of solid waste collection. This legislation applies not only to garbage collectors, but to tire collectors as well. Thus, we are apparently acting beyond the scope of our authority by requiring carrier permits and the payment of administrative fees. Thus, in spite of the fact that we feel we are providing a useful service, it is our recommendation that we phase ourselves out of tire carrier regulation. It is our hope that this phase-out can be coordinated with more rigorous enforcement of local franchise agreements and with the franchise ordinances being considered in Multnomah County and the City of Portland.

In light of the need to amend the MSD ordinance in this regard, and our desire to remove the scrap tire salvage and processing fees from the ordinances, we believe this is an appropriate time to begin an overhaul of the present tire code, and to explore the advisability of incorporating the tire ordinances into the main solid waste program.

4) SUMMARY

- A. It is our recommendation that MSD move to dismiss the pending contested case against Tiregon as the first step toward removing the requirement of salvage and processing tire user fees.
- B. It is our recommendation that MSD continue and in some areas increase the permit and bond requirements for salvaging and processing centers.
- C. It is our recommendation that the MSD code be overhauled to reflect our lack of authority to act in the area of tire carrier regulation.

5) RECOMMENDED BOARD ACTION

The staff recommends that the Board, either by means of discussion or resolution, indicate its approval of the direction in which the staff would like to move on these matters.

HARDY, McEWEN, WEISS, NEWMAN & FAUST

(FOUNDED AS CAKE & CAKE - 1886)

ATTORNEYS AT LAW

1408 STANDARD PLAZA

PORTLAND, OREGON 97204

November 16, 1977

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METRO SERVICE DISTRICT

Mr. Paul Norr
Metropolitan Service District
Room 200 - 1220 S. W. Morrison
Portland, Oregon 97205

RE: Tiregon

Dear Paul:

Although testimony in the Tiregon case has been concluded for some time, final disposition of the case is in abeyance, pending a policy decision by MSD. As Dean and I stated at our meeting with you, Merle and Chuck on October 5, 1977, MSD's allegations concerning Tiregon's failure to salvage tires within a reasonable time, failure to establish markets for its chips and beads, willful misrepresentation and failure to develop an operating truck machine are no longer sustainable given Tiregon's evidentiary showing at the hearing. The only remaining allegations with any merit are Tiregon's failure to take and receive the agreed-upon number of truck tires and failure to pay the MSD administrative fee. Tiregon has entered several affirmative defenses attacking MSD's jurisdiction, which it is eager to pursue.

We recommended at the meeting that the hearing be dropped if Tiregon's market for chips appeared bona fide. It is our understanding that you are now satisfied that Tiregon has legitimate contracts for the sale of its chips. We also recommended that MSD would not request payment of past or future administrative fees from Tiregon because no such fees are presently assessed against tires suitable for retreading or on source separated waste and because the fee is inconsistent with MSD's policy of promoting resource recovery.

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As Dean and I stressed at the meeting, if the administrative fee is eliminated with respect to Tiregon, then it must also be eliminated for all other salvage operations, including Bunch Tire Bailer. MSD is required by law to treat similarly situated persons equally. Unless MSD can find a reasonable distinction between Tiregon's shredding operation and other salvage operations, it must eliminate the fee for all types of tires salvaged. We feel that such a reasonable distinction does not exist.

A likely result of elimination of the administrative fee will be for tire processors such as MSD to stockpile tire chips, rather than landfill them, in the hopes of finding a market for the chips for fuel or other uses. This is not undesirable given:

- (1) an acute shortage of landfill space,
- (2) MSD's policy of resource recovery, and
- (3) the lack of health or safety hazards present in a pile of tire chips, based on our experience with Tiregon's pile.

Another likely result will be a lack of revenue for enforcement of the scrap tire program. Of course, a fee will still be charged for tires which are landfilled and are not salvaged. This fee is collected at the landfills as a user fee, part of which could be earmarked for the scrap tire program.

You will recall that we also struggled with the requirement of a bond and permit for Tiregon when MSD does not impose a similar requirement on retreaders who also reuse scrap tires. We noted, however, that a reasonable distinction could be drawn between retreaders and other salvage operations on the basis that retreaders:

- (1) receive fewer complaints from the public,
- (2) operate an established and stable business,
- (3) receive only sorted, graded tires suitable for retreading, and

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(4) return tires to their original form.

Therefore, we advised MSD to retain its permit and bond requirement for Tiregon and other salvage operations.

Please advise as to whether we should move to dismiss the hearing pending against Tiregon, whether Tiregon is exempt from the administrative fee and/or permit and/or bond, and whether we should proceed to amend the scrap tire regulations to eliminate the administrative fee on salvaged tires.

Very truly yours,

HARDY, McEWEN, WEISS, NEWMAN & FAUST


Janice M. Stewart

JMS:cln
cc: Charles Kemper